August 9, 2024

Council President Mitra Jalali — *Via email to ward4@ci.stpaul.mn.us*
Councilmember Anika Bowie — *ward1@ci.stpaul.mn.us*
Councilmember Rebecca Noecker — *ward2@ci.stpaul.mn.us*
Councilmember Saura Jost — *ward3@ci.stpaul.mn.us*
Councilmember HwaJeong Kim — *ward5@ci.stpaul.mn.us*
Councilmember Nelsie Yang — *ward6@ci.stpaul.mn.us*
Councilmember Cheniqua Johnson — *ward7@ci.stpaul.mn.us*
Saint Paul City Hall
15 West Kellogg Blvd.
Saint Paul, MN 55102

Re: Objection to LHO's Recommendation

Dear Council Members:

Please see the enclosed Objection to the Legislative Hearing Officer's July 19, 2024 Recommendation in Ms. Sumeya Mohamed's appeal of a 26.48% building-wide rent increase at The Haven of Battle Creek, 200 Winthrop St. S., Saint Paul, MN 55119.

Ms. Mohamed, along with her counsel, also plan to appear in-person at the August 14, 2024 City Council Hearing.

Best regards,

s/James Poradek
James Poradek
Director of Litigation, Housing Justice Center

CC: Office of the Legislative Hearing Officer, *via email at RentAppeals@ci.stpaul.mn.us*

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OBJECTION TO THE LEGISLATIVE HEARING OFFICER'S RECOMMENDATION IN THE RENT STABILIZATION APPEAL OF SUMEYA MOHAMED

INTRODUCTION

This appeal presents a golden opportunity for the City Council to tell the Department of Safety and Inspections ("DSI") that it needs to start complying with the Mandatory Habitability Precondition of the Rent Stabilization Ordinance ("Ordinance"). The Ordinance is unequivocal that before any application for a rent increase can be approved by the City, 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 Minn. Stats. § 504B.161."**[1] SPLC § 193A.06(c) ("Mandatory Habitability Precondition"). In other words, before Marquette can obtain any exception to the 3% rent increase cap, it must first establish that it has complied with the habitability requirements of section 504B.161 with respect to all relevant rental units. Minnesota law does not permit city government to deviate from the mandatory provisions of its own ordinances. "[P]ublic officials clearly have a duty to adhere to ordinances and statutes." *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 316 (Minn. 1998).

The evidence here is uncontested that The Haven at Battle Creek ("Haven") landlord Marquette Management ("Marquette") has been systematically violating the habitability protections of section 504B.161 since it took over the property in 2021. Most alarmingly, Marquette knowingly engaged in egregious violations of asbestos safety law from the time it took over operation of the property in conducting building-wide renovations pursuant to a self-confessed investment strategy to "drive [up] rents" and "improve the renter profile" so that it can flip the property at a huge profit.[2] These violations have exposed hundreds of Haven tenants over the years—including many children from intergenerational Somali families living at the property—to an unacceptable risk of life-altering asbestos-related lung disease. Behind the scenes, DSI Director Angie Weise immediately recognized the potential danger of asbestos exposure posed by Marquette's renovation activities after reviewing a report submitted by Ms. Mohamed's asbestos expert at the beginning of 2023[3]:

> As the contractor tested for lead or asbestos? Are they taking precautions as is required if there is lead and asbestos present?
>
> The building inspector assigned to this property should be aware but also, I would like to know for our file with Rent Stabilization.

Indeed, DSI's Rent Stabilization Administrator later sent an email to DSI staff emphasizing the importance of doing an "investigation into the expert report [submitted by Ms. Mohamed] on

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[1] Unless otherwise designated, all bolded and italicized text indicates emphasis added.

[2] https://marquette-companies.s3.us-east-2.amazonaws.com/Marquette+-+2022+Investment+Strategies.pdf, at page 19.

[3] HJC Supplemental Ltr. Attached Exhibits.8-9-23, at Exhibit S6. Cites to documents in appeal record found at: https://stpaul.legistar.com/LegislationDetail.aspx?ID=6821056&GUID=737F936C-9C4B-43BE-BAD5-A86BAE17EF39&Options=&Search=. Document titles omit "200 Winthrop St S."

Haven," admitting that "[s]ince there are habitability concerns, and habitability is the key to an approval, we need to get this sorted out to avoid being sued" [4]:

> Asha is wondering about the status of DSI's investigation into the expert report on Haven. Since there are habitability concerns, and habitability is key to an approval, we need to get this sorted out to avoid being sued. Angie moved our meeting to the morning so I figure we can ask her then.

Yet DSI never contacted Ms. Mohamed or her asbestos expert in response to her complaint and there is no evidence that DSI ever independently investigated these asbestos law violations. To the contrary, the same DSI Rent Stabilization Administrator who recognized that "habitability is key to an approval" soon after gave blanket approval to a massive 26.48% building-wide rent increase that was based in large part on Marquette's illegal renovation activity. It is not an exaggeration to say that DSI's determination would require Haven tenants to pay for the very illegal renovation that endangered their lives.

Likewise, with respect to another one of Marquette's uncontested violations of section 504B.161, Ramsey County District Court Judge Grewing has expressly ruled that Marquette's longstanding practice of billing Haven tenants for common utility charges violates the state tenant protection statute section 504B.215[5]:

ORDER

1. This Court adopts the analysis and ruling of the Hennepin County District Court.
2. Formula 8 of the Lease at issue in this case does not contain "an equitable method of apportionment" as required by Minn. Stat. § 504B.215, Subd. 2a(a)(2).
3. The attached memorandum is incorporated herein, by reference.

It is so ordered.

BY THE COURT

Sara Grewing

Grewing, Sara (Judge)
Feb 23 2024 2:20 PM

Dated: February 23, 2024

The Honorable Sara R. Grewing
District Court Judge

As Judge Grewing made clear, under section 504B.215, any violation of that statute by a landlord is also a violation of the implied covenant of habitability of section 504B.161[6]:

[4] HJC Supplemental Ltr Attached Exhibits.8-9-23, at Exhibit S7
[5] Ex D-Motion for Summary Judgment. 62-HG-CV-23-3931.2-23-24, p. 1
[6] Ex D-Motion for Summary Judgment. 62-HG-CV-23-3931.2-23-24, p. 5

> Here, the Court finds that Plaintiff's rent escrow action is proper where Plaintiff's pleaded violation of Minn. Stat. § 504B.215, Subd. 2a is a violation of the general covenant of habitability,

This appeal also presents an important opportunity for the City Council to remind DSI and the LHO that they need to conduct the rent stabilization procedures fairly, neutrally, and diligently. In this case, DSI's own internal communications reveal a one-sided bias in favor of Marquette during the application process, in which DSI engaged in dozens of *ex parte* communications with Marquette about their application while at the same time refusing to respond to well-supported habitability complaints by Ms. Mohamed and other Haven tenants. Nothing shows how far DSI departed from its duties of neutrality and fairness more clearly than DSI Rent Stabilization Administrator's communication with Mayor Carter's office about Marquette's rent increase application: "**While Haven Battle Creek's business practices have left many taken aback, Haven Battle Creek's RROI application is very polished, well put together, and without question, represents a business deserving of an allowable rent increase per ordinance 193A.**"[7] Under basic due process principles, DSI cannot disregard complaints about a landlord's "business practices [that] have left many [tenants] taken aback" and instead affirmatively advocate for the landlord as "a business deserving of an allowable rent increase per ordinance 193A." DSI's biased decision making is even more concerning because, as internal documents reveal, it was fully aware that Haven is a "200+ unit building housing a high percentage of East African immigrants" and knows that "what makes this situation particularly difficult" is "[t]he potential for displacement of a large number of residents in the community."[8]

The City's rent stabilization process became even more Kafkaesque for Ms. Mohamed after she appealed DSI's determination to the LHO on behalf of her family and all Haven tenants—all of whom were facing the blanket 26.48% rent increase for the same reasons. After submitting an appeal supported by extensive uncontested evidence of habitability law violations, the LHO went silent for nearly a year, and then used her own extreme delay to justify a dismissal of the appeal. Even worse, the LHO based her decision on (1) **another** *ex parte* Marquette communication that she did not share with Ms. Mohamed and (2) a legally erroneous "standing" ground about which Ms. Mohamed had no prior notice and no opportunity to be heard.

But the bottom line is that now that the City has in its hands extensive uncontested evidence of systematic habitability violations at Haven, it is simply not relevant that Ms. Mohamed moved out of Haven long after she filed this appeal. No procedural technicality can relieve this Council of its affirmative legal duty under the Ordinance to reject a rent increase for a landlord such as Marquette who has violated the Mandatory Habitability Precondition. The Ordinance unequivocally states that the City "***will not grant an exception*** to the limitation on rent increases" in such a circumstance. SPLC § 193A.06(c). If DSI's approval of the blanket 26.48% rent increase is left in place by this Council, this unlawful increase will continue to cause the displacement from their homes of hundreds of economically vulnerable and racially diverse Haven tenants. The Rent Stabilization Ordinance was enacted to prevent this result—not facilitate it.

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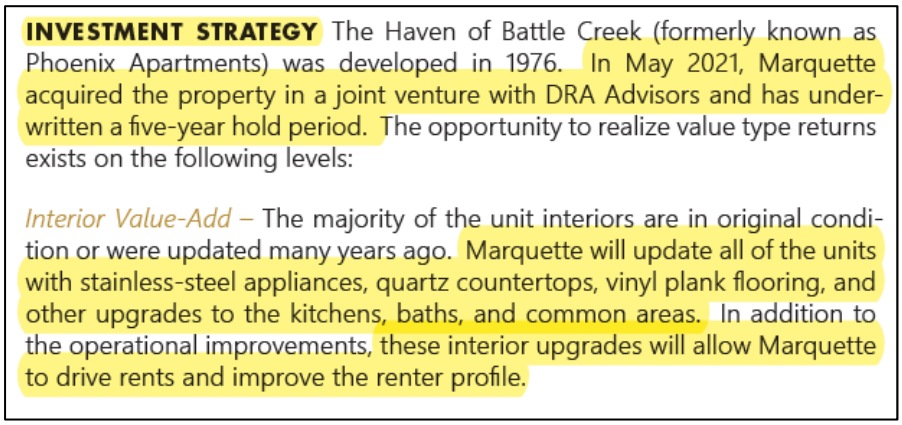
[7] HJC Supplemental Ltr. Attached Exhibits.8-9-23, at Exhibit S1, p. 2
[8] HJC Supplemental Ltr. Attached Exhibits.8-9-23, at Exhibit S2, p. 1

BACKGROUND

In May 2021, Marquette Companies, an Illinois-based affiliate of Marquette, and DRA Advisors, a real estate investment firm headquartered in New York City, acquired Haven.[9] Shortly thereafter, the ownership group installed Marquette as Haven's property manager and began to implement an "investment strategy," under which it planned to "improve the renter profile" and "drive [up] rents" with the ultimate goal of re-selling the Haven property after just five years for an anticipated $11 million in gross profit.[10]



INVESTMENT STRATEGY The Haven of Battle Creek (formerly known as Phoenix Apartments) was developed in 1976. In May 2021, Marquette acquired the property in a joint venture with DRA Advisors and has underwritten a five-year hold period. The opportunity to realize value type returns exists on the following levels:

Interior Value-Add – The majority of the unit interiors are in original condition or were updated many years ago. Marquette will update all of the units with stainless-steel appliances, quartz countertops, vinyl plank flooring, and other upgrades to the kitchens, baths, and common areas. In addition to the operational improvements, these interior upgrades will allow Marquette to drive rents and improve the renter profile.

The "renter profile" that Marquette seeks to "improve" at Haven—that is, **remove** from Haven—is in fact a racially diverse tenant population notable for its large number of multigenerational Somali families and Section 8 Housing Choice Voucher holders, including many children and senior citizens. It is these renters whom Marquette is seeking to replace.

Central to Marquette's tenant displacement strategy is an aggressive plan to renovate most of Haven's 216 units and common areas. Critically, when performing these building-wide renovations, Marquette must adhere to stringent health and safety laws that are designed to minimize exposure to asbestos hazards. It must do so not only because Haven is an older building and certain materials are presumed by law to contain asbestos, *see* 29 C.F.R. § 1926.1101, but also because prior testing at Haven has **confirmed** that some materials, specifically flooring and ceiling texture, contain asbestos.[11]

But, until recently, Marquette performed its widespread renovation and maintenance without adhering to these safety laws. As a result, for much of 2021, 2022, 2023, and the beginning of 2024, Marquette placed Haven tenants at unacceptable risk of asbestos exposure. It was only after counsel at Housing Justice Center put continuous legal pressure on Marquette that it finally agreed in May 2024 to enter into a court-enforceable stipulated preliminary injunction in which it is required to conduct future maintenance and renovations in an asbestos-safe manner.

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[9] https://www.us.jll.com/en/newsroom/sale-of-phoenix-apartments-in-battle-creek

[10] https://marquette-companies.s3.us-east-2.amazonaws.com/Marquette+-+2022+Investment+Strategies.pdf, at page 19.

[11] *See* HJC 2nd Suppl Appeal Ltr.12-14-23, p. 6-7; Myers Rpt re Haven lead & asbestos docs.8-28-23; HJC 3rd Suppl Appeal Ltr.4-16-24, p. 3-4

It is against this background—almost three years of unlawful renovations that endangered the health of the very tenants Marquette is trying to displace—that Marquette sought an exception to Saint Paul's 3% rent cap.

Ms. Mohamed first learned that Marquette was seeking an exception to the rent cap in February 2023. Ms. Mohamed decided to challenge Marquette's eligibility for an exception and submitted a detailed complaint to DSI.[12] Approximately two weeks later, Ms. Mohamed submitted to DSI an equally detailed report[13] authored by Greg Myers, an environmental consultant, in which Mr. Myers provided his opinion that Marquette's extensive, building-wide renovation violated health and safety laws. DSI did not reach out to Ms. Mohamed with any questions, requests for additional evidence, or determinations concerning her complaint.

During this same period, DSI worked with Marquette through email and a virtual meeting to better understand its rent-increase application and seek additional details. In late May 2023, DSI sent Marquette a Department Determination letter ("Determination").[14] The Determination broadly approved a 26.48% rent increase, which applied to all 216 units in Haven, as well as additional increases for select units based on specific capital improvements. The letter made clear that both Marquette and its tenants would "have the right to appeal this determination."

When Ms. Mohamed learned that DSI had approved Marquette's request for a rent increase, she was incredibly frustrated. The rent increase had been approved without DSI attempting to contact her, her attorneys, or, to Ms. Mohamed's knowledge, any of her neighbors who had also submitted complaints. But Ms. Mohamed was also anxious. She and her family were on a month-to-month lease, and because of that the massive 26.48% rent increase could be imposed on her family with only minimal time for them to find other housing or figure out how they would adjust to such a drastic change in monthly expenses. Ms. Mohamed decided to appeal. With the help of her counsel, she timely submitted an appeal on behalf of her family and their unit and all other units who were subject to the same baseline 26.48% rent increase under the same rationale—in other words, **all 216 units at Haven**.[15]

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[12] HJC Exhibits and Court Doc 62-CV-23-2694, at Exhibit 2

[13] HJC Exhibits and Court Doc 62-CV-23-2694, at Exhibit 3

[14] DSI Staff Determination Ltr.5-24-23

[15] The documents comprising Ms. Mohamed's appeal submission are: Appeal Ap.7-13-23; HJC Memo re Mohamed Appeal 7-7-23; Mohamed Declaration.7-7-23; HJC-Hanson Declaration.7-7-23; HJC Exhibits and Court Doc 62-CV-23-2694.

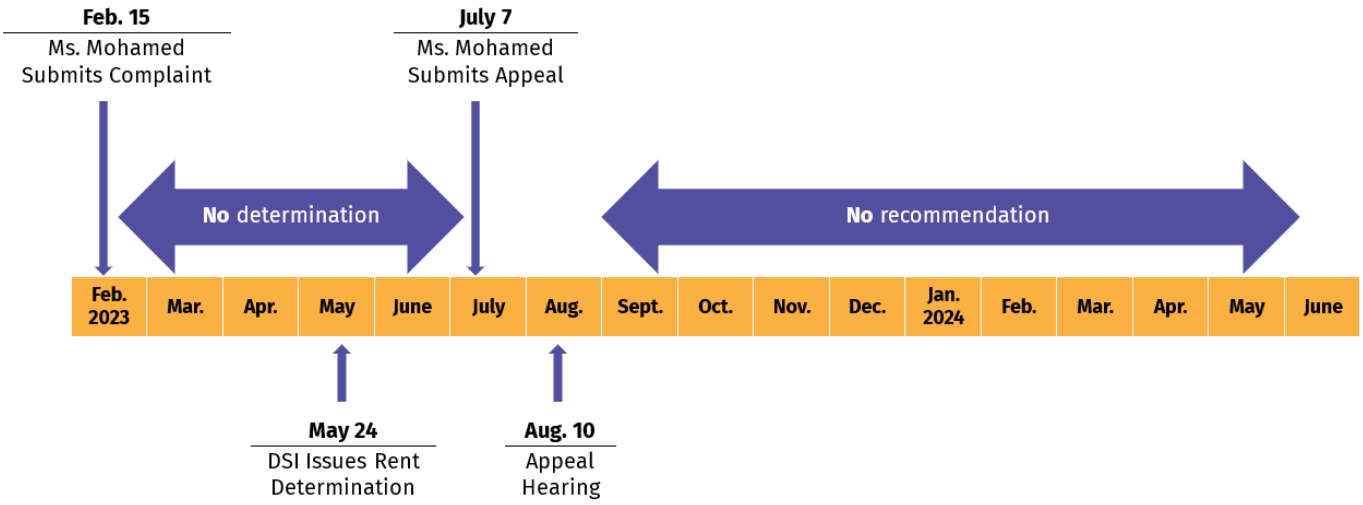
Ms. Mohamed also submitted the following supplemental appeal documents to the LHO:

- August 9, 2023: HJC Supplemental Appeal Submission Ltr.8-9-23; HJC Supplemental Ltr Attached Exhibits.8-9-23
- August 17, 2023: Mohamed Tenancy Supplement.8-17-23
- August 28, 2023: Myers Rpt re Haven lead & asbestos docs.8-28-23
- December 14, 2023: HJC 2nd Suppl Appeal Ltr.12-14-23; Myers Rpt on 10-25-23 Techtron Rpt.11-29-23; Sec 8 Insp Rpts-Redacted.Jan 2021-Jun 2023; Haven Garage Flooding Videos 1, 2, and 3; DSI Response re Haven Garage Flooding ao 10-23-23; HJC Doc of Marquette-DSI Comm Chart-Timelines

On August 10, 2023, the LHO held a hearing on Ms. Mohamed's appeal. At the conclusion of the hearing, the LHO indicated that she intended to have a recommendation within a month.[16]

> Moermond: considering staff vacation and timing and leaving me with the need to have a little bit of time to consider their information. I would really like to have things out to you all in a week in advance of a public hearing on this matter so that you have a chance to reflect on what my recommendation is. There is no City Council public hearing on the 30th. The 6th is going to be a long Council Public Hearing. September 13th is probably going to be long but a better bet. My goal will be to get a letter out to you all that week of the 4th and have this calendar for public hearing on the 13th. The public record is open until the council says the public hearing is closed. For my part, I will tell you the sooner I get it the better for me because I can analyze it versus something showing up at the table. That's hard for both me and the Council. If you all could get things to me sooner rather than later, that is very helpful.

However, a recommendation was not released within the month. Nor by the end of 2023. Nor by the end of winter in 2024. Nor by the end of spring in 2024.



The nearly year-long delay in a recommendation amplified the stress and uncertainty Ms. Mohamed had felt when she initially received notice of the Determination. She and her family decided that they would be better off if they proactively searched for another home, instead of continuing to wait for a recommendation that may ultimately approve a substantial rent increase and give the green light to Marquette for further rent increases in the future notwithstanding their systematic violations of the Mandatory Habitability Precondition.

In June 2024, counsel for Ms. Mohamed emailed a letter to all members of this Council to inform them of this unacceptable delay and request that they direct the LHO to release a

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- April 16, 2024: HJC 3rd Suppl Appeal Ltr.4-16-24; Ex A.Memo Supporting Motion for Prelim Inj 23-CV-1740.4-8-24; Ex B.Declaration of Greg Myers 23-CV-1740.4-2-24; Ex C-Nova Rpt re Asb Mtrls Oper & Mnt Prog.5-13-21;Ex D-Motion for Summary Judgment. 62-HG-CV-23-3931.2-23-24

[16] Minutes 8-10-23, p. 28

recommendation promptly.[17] Upon receiving a copy of this email, after having been silent for months, the LHO immediately communicated to Ms. Mohamed and the Council that she anticipated releasing her recommendation on July 8, 2024. However, on July 8 staff for the LHO informed the parties that the LHO was still "going through her final draft" and they should instead expect a recommendation on July 15.

From: *CI-StPaul_RentAppeals
To: Abbie Hanson
Cc: *CI-StPaul_RentAppeals; Jim Poradek; jwood@marquettecompanies.com; kdelisle@marqnet.com; sumeyamohamed1121@outlook.com
Subject: RE: Supplemental Appeal Submission – The Haven of Battle Creek, RLH RSA 23-13 & RLH RSA 24-4 (200 Winthrop St S)
Date: Monday, July 8, 2024 3:14:38 PM
Attachments: image001.png
image002.png

Hello Ms. Hanson,

Marcia Moermond, Legislative Hearing Officer, wants to inform you that she is going through her final draft and will also be confirming with the councilmember on a City Council public hearing date. She will have a final decision on Monday, July 15 and confirming if the councilmember would like a public hearing date of August 14. If I missed someone who should be copied, please forward.

If you have any questions, please let me know. Thanks.

Mai Vang
(She, her)
Legislative Hearing Coordinator | St Paul City Council

When July 15 came, no recommendation was released, and no reason was provided for the additional delay.

Finally, on July 19, 2024, the LHO released her recommendation (the "Recommendation").[18] In the Recommendation the LHO recommended dismissal of Ms. Mohamed's appeal because she has moved out of Haven and "no longer ha[s] legal standing." The basis of the LHO's Recommendation is a July 10, 2024 email[19] from Jason Wood, a Marquette executive, in which Mr. Wood informed LHO staff that Ms. Mohamed had moved out of Haven on July 1, 2024. Yet Ms. Mohamed was not provided with a copy of this email prior to release of the Recommendation, nor was she afforded an opportunity to address the issue of standing that the LHO was using as the basis of her decision. This was yet another blatant violation of Ms. Mohamed's procedural due process rights in which LHO deprived Ms. Mohamed of her procedural due process rights—just as DSI violated the procedural due process rights of Ms. Mohamed and other Haven tenant complainants by engaging in an *ex parte* approval process with the landlords while at the same time excluding tenants from any direct participation in the decision making.

[17] Chain email & Ltr to SP Council.6-10-24
[18] Apt 313 -LHO Recommendation Letter 7-19-24
[19] Wood Email & Move-Out Notice 7-10-24

ARGUMENT

I. Ms. Mohamed Can Appeal a Determination on Behalf of All Affected Units.

Ms. Mohamed's appeal challenges DSI's grant of a building-wide rent increase at Haven. However, in her Recommendation, the LHO erroneously limits Ms. Mohamed's appeal to a single unit.

A. The LHO Did Not Question Ms. Mohamed's Appeal Authority.

In her Recommendation, the LHO states that "[a]t the outset I indicated the appeal applied only to you and your unit as you did not demonstrate you had authority to act on behalf of any other residents in the building." This is simply not true. The LHO **never** told Ms. Mohamed that she was limiting the scope of the appeal.

Prior to the July 19 Recommendation, the **only** substantive communication the LHO had with Ms. Mohamed or her counsel was during the August 10, 2023 appeal hearing. At no point during the hearing did the LHO indicate that the appeal applied only to Ms. Mohamed and her unit, nor was there any subsequent communication that indicated as much. We have reviewed the minutes and the audio recording of the August 10 hearing and the LHO does not say a word that Ms. Mohamed's appeal was limited to just her and her unit.

Ms. Mohamed, on the other hand, has repeatedly made clear to the LHO throughout the process that the appeal was being brought on behalf of her unit and all units whose rent increases were based on similar rationale. *See Memo re Mohamed Appeal 7-7-23*, p. 1 ("To the extent other units' rent increases were based on the same rationale as that of Ms. Mohamed's, we ask that this appeal serve as a challenge to those rent increases as well."); *HJC Supplemental Appeal Submission Ltr.8-9-23* (seeking reversal of "DSI's decision approving Haven's rent increase application"); *HJC 2nd Suppl Appeal Ltr.12-14-23*, p. 1-7 (discussing building wide habitability issues) *HJC 3rd Suppl Appeal Ltr.4-16-24*, p. 2-6 (discussing building wide habitability problems as they relate to the 26.48% rent increase at her apartment complex); *Minutes 8-10-23*, p. 4-7, 9-10, 29 (explaining building wide habitability problems mandates denial of increase for all units).

Despite Ms. Mohamed repeatedly raising building-wide concerns and requesting building-wide relief, the LHO never questioned the scope of Ms. Mohamed's appeal authority. Had the LHO inquired into Ms. Mohamed's authority to appeal on behalf of other units, Ms. Mohamed would have explained, as she does below, that the Ordinance language expressly allows a single tenant to appeal building-wide rent increases. And, in any event, the Mandatory Habitability Precondition simply does not allow the City to grant a rent limit exception for a landlord who is in systematic violation of section 504B.161—no matter how or from whom the City learns of the violation.

B. The Ordinance Allows Tenants to Challenge Building-Wide Determinations.

Two separate provisions of the Ordinance provide tenants with the authority to challenge building-wide rent increases.

1. "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 Ms. Mohamed, the right to

appeal building-wide rent-cap exceptions that have been approved through a single department determination.

On May 24, 2023, DSI released a **single** department determination that approved rent increases for all units at Haven.[20] The Determination approved a 26.48% rent increase for all 216 units, and additional rent increases based on capital improvements for select units. Under the plain language of the Ordinance, Ms. Mohamed has the right to appeal this Determination, which means that Ms. Mohamed can appeal *all* rent increases approved under that Determination. The Ordinance does not qualify or limit Ms. Mohamed's right by stating that she can only appeal the portion of the Determination that is specific to her unit; the Ordinance gives her the right to appeal the Determination as a whole.

The ability for tenants to appeal building-wide determinations is integral to the Rent Stabilization Ordinance, especially when exceptions are allowed on the basis of costs landlords incur on behalf of an entire complex. For example, DSI's May 24 Determination allowed a building-wide rent cap exception based on "an unavoidable increase in operating expenses" and several common area and exterior capital improvement projects,[21] which by their nature are necessarily building-wide costs. DSI itself has recognized the building-wide nature of these costs and instituted rules to ensure that such costs, in the context of a rent increase, are evenly distributed among units. *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 Haven, where the rationale justifying a 26.48% rent increase is the **same** for all 216 units. Thus, Ms. Mohamed's building-wide appeal is a challenge of a singular determination based on a singular rationale.

2. "A landlord or tenant may appeal <u>any</u> 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 **<u>any</u>** 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, Ms. Mohamed is not confined to challenging an increase only as it relates to her unit. The Ordinance empowers tenants, such as Ms. Mohamed, 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 Rent Stabilization Rules to "protect

[20] DSI Staff Determination Ltr.5-24-23
[21] DSI Staff Report.8-10-23, p. 1-2

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 Ms. Mohamed is challenging an across-the-board 26.48% rent increase on the basis that her landlord engaged in long-term and building-wide violations of habitability law. The grounds on which Ms. Mohamed is challenging the rent-increase apply to and impact all 216 units at Haven.

But if Ms. Mohamed's appeal is granted only as it relates to unit 313, tenants in Haven's 215 other 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 opaque 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.

II. Ms. Mohamed Has Standing to Appeal the Department's Rent-Increase Determination.

Without prior notice or any legal analysis, the LHO recommends that this Council dismiss Ms. Mohamed's appeal because she "no longer ha[s] legal standing in this matter." Standing is a **judicial** doctrine—not a legislative doctrine—which "requires only that a party have a sufficient stake in a justiciable controversy to seek relief from a court." *Minnesota Sands, LLC v. County of Winona*, 940 N.W.2d 183, 192 (Minn. 2020) (quotation omitted). "The purpose of the standing requirement is to ensure that issues before the court will be 'vigorously and adequately presented.'" *Hanson v. Woolston*, 701 N.W.2d 257, 261-62 (Minn. Ct. App. 2005) (quoting *State by Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). "Standing is typically determined 'at the time a lawsuit is commenced and **generally cannot be lost by subsequent events**.'" *Stone v. Invitation Homes, Inc.*, 986 N.W.2d 237, 251 (Minn. Ct. App. 2023) (quoting *Buetow v. A.L.S. Enters.*, 888 F. Supp. 2d 956, 959 (D. Minn. 2012)), *aff'd,* 4 N.W.3d 489 (Minn. 2024).

Thus, to the extent that standing doctrine even applies to this legislative process, this Council must look to the facts as they were on July 7, 2023—the date Ms. Mohamed filed her appeal—to assess whether she has standing. A party can acquire standing in one of two ways: (1) "the party is the beneficiary of a legislative enactment granting standing" or (2) "the party has suffered an injury-in-fact." *Webb Golden Valley, LLC v. State*, 865 N.W.2d 689, 693 (Minn. 2015). Ms. Mohamed has standing under both standards.

A. Ms. Mohamed has standing under the Ordinance.

The Ordinance provides that "The landlord or tenant shall have the right to appeal the department determination." SPLC § 193A.07(g). The plain language of the Ordinance is clear and unambiguous: it confers onto tenants standing to appeal department determinations. *See Petition for Imp. of Cnty. Ditch. No. 86, Branch 1 v. Phillips*, 625 N.W.2d 813, 817 (Minn. 2001) (determining appellants had standing to challenge benefits to lands owned by others in part because of statute's broad appeal language); *State by Schaller v. Cnty. of Blue Earth*, No. C2-96-1004, 1996 WL 438845, at *1 (Minn. Ct. App. Aug. 6, 1996) (concluding plaintiff had standing because statute

at issue allowed suits by "[a]ny person residing within the state"), *aff'd*, 563 N.W.2d 260 (Minn. 1997). Under the Ordinance a "tenant" is "[a] person who is occupying a rental unit in a residential building under a rental agreement that requires the payment of money or exchange of services, as well as other regular occupants of that unit." SPLC § 193A.03(ff).

At the time Ms. Mohamed filed her appeal she was a tenant of Haven because she occupied unit 313 under a rental agreement that required payment of money. And since standing is determined "at the time a lawsuit is commenced," Ms. Mohamed's forced move from Haven nearly a year after she filed her appeal has no impact on her legal standing. *See Stone*, 986 N.W.2d at 251. Accordingly, Ms. Mohamed has standing under the Ordinance to challenge the Determination.

B. Ms. Mohamed has standing as a result of suffering an injury-in-fact.

Although the Ordinance's language is sufficient to confer standing on Ms. Mohamed, she also has standing by suffering an injury-in-fact. "For a party to establish an injury-in-fact, it must demonstrate that it suffered a concrete and particularized invasion of a legally protected interest." *Minnesota Sands, LLC*, 940 N.W.2d at 192 (quotation omitted). The injury must be "'fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision.'" *Stone*, 986 N.W.2d at 248 (quoting *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 663 (Minn. 2014)).

Under the Ordinance, tenants are protected from rent increases above 3% unless their landlords can show they qualify for an exception. *See* SPLC § 193A.04 ("No landlord shall demand, charge, or accept from a tenant a rent increase within a 12-month period that is in excess of three (3) percent of the existing monthly rent for any residential rental property except as otherwise allowed under sections 193A.06 or 193A.08."). Here, Ms. Mohamed suffered an injury because an exception to the 3% rent cap was erroneously granted in violation of section 193A.06(c), the Mandatory Habitability Precondition. As such, there has been a "particularized invasion" of Ms. Mohamed's rights as a tenant under the Ordinance. This injury is clearly traceable to the challenged action—the granting of an exception to the rent cap—and can be redressed by a favorable Council decision. So, Ms. Mohamed has standing under the injury-in-fact standard.

C. Ms. Mohamed's Move Because of the LHO's Delay Is Not Grounds for Dismissal.

Remarkably, the LHO uses her own extensive delay in issuing a recommendation—the very reason Ms. Mohamed was forced to move from Haven—as the reason for dismissing the appeal for lack of "standing." But as just explained, Ms. Mohamed clearly had standing to file her appeal under the legal doctrine of standing. Her requested relief for her unit and all the other units at Haven did not change, nor would its effectiveness be diminished simply because Ms. Mohamed moved out. As made clear above, Ms. Mohamed appealed the **entirety** of DSI's Determination approving a building-wide 26.48% rent increase. The relief requested therefore applies beyond just Ms. Mohamed and her family; the ongoing injury caused by the improperly approved rent increase is very real for every tenant living in Haven's 216 units.

Furthermore, the cap on rents is measured with respect to rental *units*, not tenants. *See* SPLC § 193A.05. The question of whether or not Marquette is eligible for a rent increase does not disappear or become irrelevant simply because a tenant moves out. *See* SPLC § 193A.05. ("The limitation on the amount of annual rent increase shall apply if there is a change of tenancy in a residential rental unit and the vacancy is not supported by just cause, except as otherwise allowed

under sections 193A.06 or 193A.08."). The merits of whether Marquette is eligible for a rent increase under section 193A.06 must be considered.

Finally, at the most basic level, the Mandatory Habitability Precondition of the Ordinance makes it irrelevant as to whether Ms. Mohamed continues to reside at the property once she has alerted the City as to the uncontested existence of systematic habitability violations at Haven. The Mandatory Habitability Precondition requires that "[t]he 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." SPLC § 193A.06(c). Now that undisputed evidence of systematic habitability violations at Haven is in the hands of the City, the City has no choice but to comply with its legal duty under the Ordinance that it "will not grant" the requested rent increase at Haven. There is no procedural technicality related to Ms. Mohamed or any other tenant that can relieve the City of its affirmative legal duty under the Ordinance to reject a rent increase for a landlord such as Marquette who violates the Mandatory Habitability Precondition.

III. Ms. Mohamed Has Presented Uncontested Evidence of Habitability Violations that Mandate the City Deny Marquette's Application for an Exception to the Rent Ordinance.

The Recommendation does not address Ms. Mohamed's substantive arguments opposing the rent increase. However, throughout the complaint and appeal process, Ms. Mohamed has submitted extensive evidence showing that Marquette has engaged in violations of habitability law. Conversely, Marquette has submitted no evidence to effectively rebut the existence of these violations. Because habitability violations preclude Marquette from getting an exception to the 3% rent cap under the Mandatory Habitability Precondition, Ms. Mohamed's appeal must be granted and Marquette's application for a rent increase denied.

A. Violations of Minn. Stat. § 504B.161 Preclude the Granting of an Exception to the Rent Cap.

Although landlords can request an exception to the rent cap based on their right to a reasonable return on their investments, *see* SPLC § 193A.06(a), the Ordinance is unequivocal that before any application for an exception 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 Minn. Stats. § 504B.161.**" SPLC § 193A.06(c). In other words, before it can obtain any exception to the 3% rent increase cap, a landlord such as Marquette must first establish that the relevant rental units comply with section 504B.161. **Full** compliance with section 504B.161 is a precondition for any departure from a 3% rent increase under the Ordinance. Marquette has completely failed to meet this Mandatory Habitability Precondition.

The implied warranty of habitability, section 504B.161, provides, in relevant part, that a residential landlord covenants:

> (1) that the premises and all common areas are fit for the use intended by the parties;
>
> (2) to keep the premises in reasonable repair during the term of the lease or license . . .; [and]

(4) to maintain the premises in compliance with the applicable health and safety laws of the state, and of the local units of government . . .[.]

Minn. Stat. § 504B.161, subd. 1(a)(1), (2), (4).

There is overwhelming evidence that since taking over Haven, Marquette has violated multiple provisions of section 504B.161. Marquette's noncompliance includes violations of asbestos health and safety law, single-meter utility law, and city pest control ordinance. The evidence shows that these are building-wide problems, impacting every unit at Haven. Marquette has not contested these violations, nor has Marquette shown that its apartment complex is in compliance with section 504B.161

Because of Marquette's extensive violations of section 504B.161, the Mandatory Habitability Precondition of the Ordinance requires that its application be denied. **Under Minnesota Supreme Court law, the City must follow the Ordinance as written.** *See Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 316 (Minn. 1998) ("[P]ublic officials clearly have a duty to adhere to ordinances and statutes."); *Waste Recovery Coop. v. County of Hennepin*, 517 N.W.2d 329, 333 (Minn. 1994) ("[City official's] obligation was to enforce Ordinance 12 in conformity with state statutes. This duty was absolute, certain, and imperative, . . . and was fixed by the requirements of [ordinance and] statute.").

Here is a quick summary of the three most serious habitability violations by Marquette:

B. Marquette's Renovation Work Violated Asbestos-Safety Law, Mandating Denial of its Application for a Rent Increase.

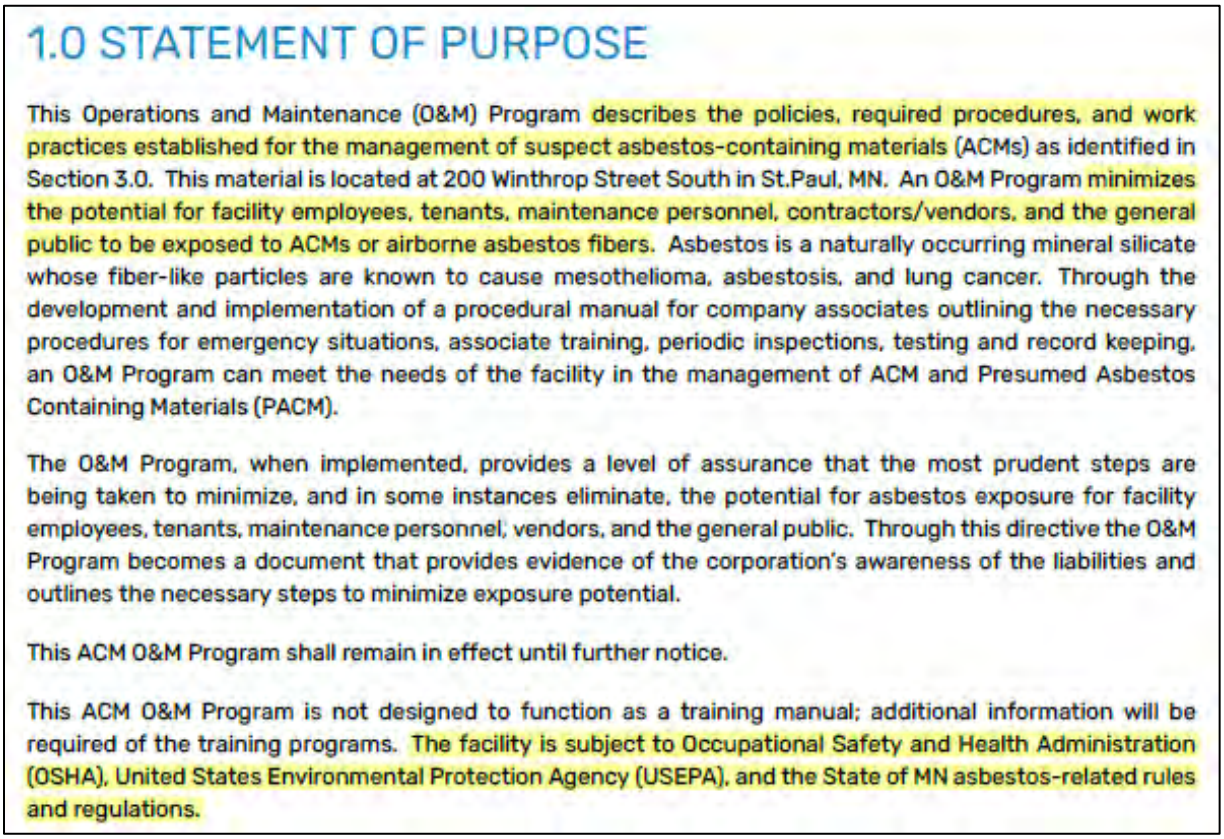
Ms. Mohamed has submitted extensive uncontested evidence that Marquette engaged in egregious violations of asbestos safety law at Haven from the moment it took over operation of the property in May 2021—violations that exposed Haven tenants to an extreme risk of life-altering asbestos-related lung disease. Ms. Mohamed provided a mountain of evidence of these violations, including four expert reports[22] from her asbestos expert Greg Myers, who also testified at the August 10, 2023 hearing before the LHO.[23] But perhaps most telling is a highly significant Marquette internal document that dates back to May 2021 called the **Asbestos Containing Materials Operations and Maintenance Program** ("Haven O&M Program").[24] The Haven O&M Program—which has since been revised, but was in effect from May 2021 until April 2024—not only confirmed the presence of presumed and suspect ACM at Haven, but also detailed required protocols, similar to those of the new revised program, that had to be taken by Haven management to minimize the risk of asbestos exposure for those living at the property. The Program "describes the policies, required procedures, and work practices established for the management of suspect asbestos-containing materials" located at Haven and explicitly recognized

[22] HJC Exhibits and Court Doc 62-CV-23-2694, at Exhibit 3; Myers Rpt re Haven lead & asbestos docs.8-28-23; Myers Rpt on 10-25-23 Techtron Rpt.11-29-23; Ex B.Declaration of Greg Myers 23-CV-1740.4-2-24

[23] Minutes 8-10-23, p. 17-24

[24] Ex C-Nova Rpt re Asb Mtrls Oper & Mnt Prog.5-13-21

that the state and federal asbestos safety laws—for which Ms. Mohamed provided ample evidence of violation—apply to the property.



1.0 STATEMENT OF PURPOSE

This Operations and Maintenance (O&M) Program describes the policies, required procedures, and work practices established for the management of suspect asbestos-containing materials (ACMs) as identified in Section 3.0. This material is located at 200 Winthrop Street South in St.Paul, MN. An O&M Program minimizes the potential for facility employees, tenants, maintenance personnel, contractors/vendors, and the general public to be exposed to ACMs or airborne asbestos fibers. Asbestos is a naturally occurring mineral silicate whose fiber-like particles are known to cause mesothelioma, asbestosis, and lung cancer. Through the development and implementation of a procedural manual for company associates outlining the necessary procedures for emergency situations, associate training, periodic inspections, testing and record keeping, an O&M Program can meet the needs of the facility in the management of ACM and Presumed Asbestos Containing Materials (PACM).

The O&M Program, when implemented, provides a level of assurance that the most prudent steps are being taken to minimize, and in some instances eliminate, the potential for asbestos exposure for facility employees, tenants, maintenance personnel, vendors, and the general public. Through this directive the O&M Program becomes a document that provides evidence of the corporation's awareness of the liabilities and outlines the necessary steps to minimize exposure potential.

This ACM O&M Program shall remain in effect until further notice.

This ACM O&M Program is not designed to function as a training manual; additional information will be required of the training programs. The facility is subject to Occupational Safety and Health Administration (OSHA), United States Environmental Protection Agency (USEPA), and the State of MN asbestos-related rules and regulations.

When implemented, the Haven O&M Program "**minimizes the potential for facility employees, tenants, maintenance personnel, contractors/vendors, and the general public to be exposed to ACMs or airborne asbestos fibers**." And the potential for asbestos exposure at Haven is real. Similar to an earlier report from 2017[25]—which Ms. Mohamed addressed in her second supplemental appeal submission[26]—the Haven O&M Program identified an array of suspect and presumed ACM that permeate virtually every building surface at Haven, including "textured ceiling tile," "drywall," "plaster," "vinyl floor tile and associated mastics," and "carpet mastic." And, similar to the 2017 report, the Haven O&M Program directed that "**No known or suspect ACM or PACM [presumed asbestos containing material] shall be disturbed or involved in any work, in any way, prior to laboratory analysis for asbestos content**."

[25] Nova Phase 1 Environmental Site Assessment.12-12-17

[26] HJC 2nd Suppl Appeal Ltr.12-14-23, p. 5-7; *see also* Myers Rpt re Haven lead & asbestos docs.8-28-23.

3.0 MATERIALS MAINTAINED IN THIS PROGRAM

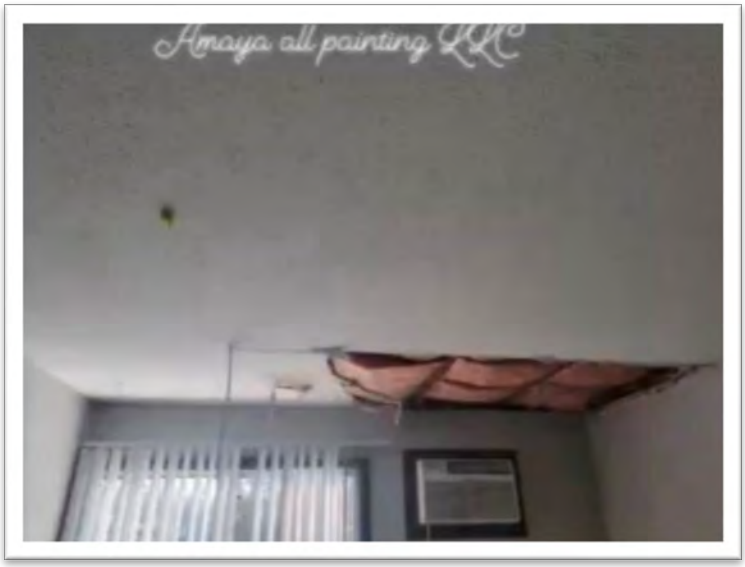
No inspection or sampling was performed during the preparation of this ACM O&M Program. However, suspect materials previously identified include the following: textured ceiling material; ceiling tile; wall system components; drywall and joint compound; plaster; vinyl floor tile and associated mastics; linoleum and associated mastics; carpet mastic; window/door caulk; window glazing; spray on fireproofing; thermal system insulation; and roof materials. Materials were reported to be in generally good condition throughout the Property. Based on the reported condition of the ACM and PACM, it can effectively be managed in place under the provisions of an O&M Program.

The OSHA regulation 29 CFR 1926.1101, requires certain construction materials to be presumed to contain asbestos, for purposes of this regulation. All TSI, surfacing material, and asphalt/vinyl flooring that are present in a building constructed no later than 1980 and have not been appropriately tested are PACM.

Note: There may be supplemental information (reports, addendum, etc.) that may alter the listed materials above. If so, these supplemental documents must be maintained with this O&M Program.

No known or suspect ACM or PACM shall be disturbed or involved in any work, in any way, prior to laboratory analysis for asbestos content.

Despite its own internal asbestos law compliance directives, it is undisputed that for much of 2021, 2022, 2023, and the beginning of 2024, Marquette extensively disturbed numerous suspect and presumed ACM at Haven prior to testing for asbestos content. Here is some of the evidence showing the disturbance of suspect and presumed ACM at Haven:



Disturbance of large section of suspect-asbestos containing textured ceiling material

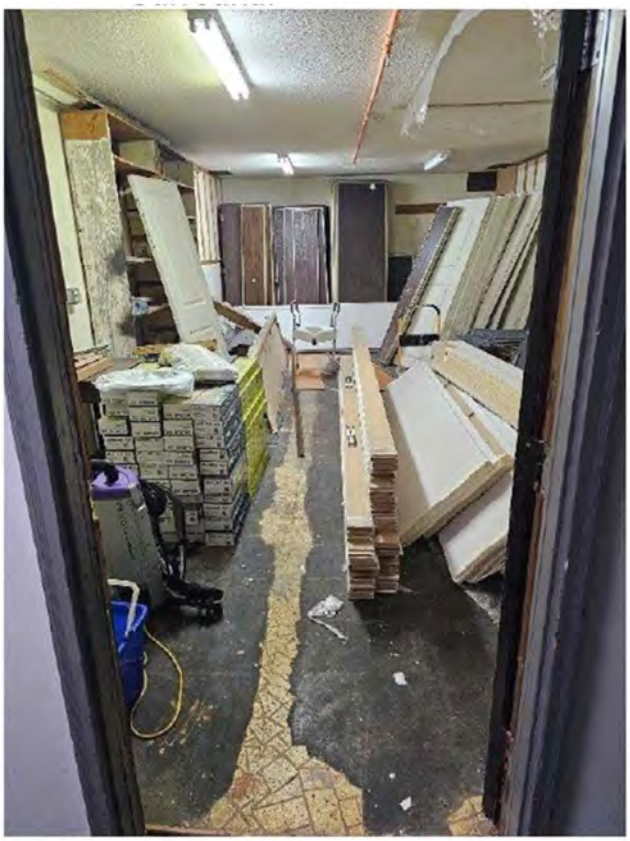
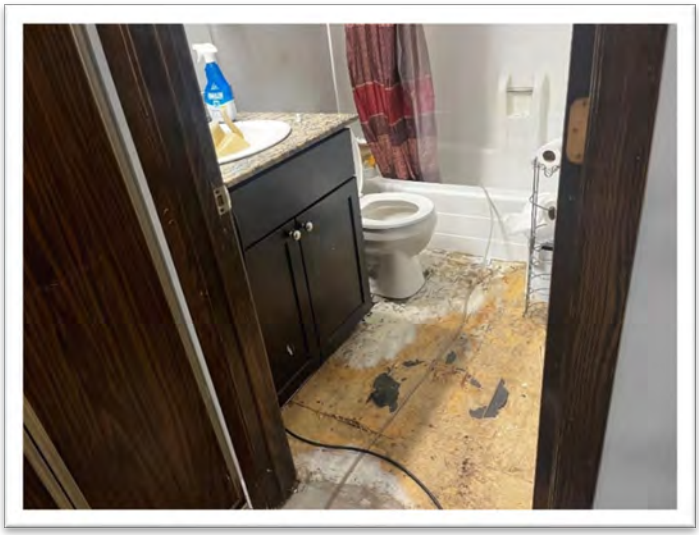
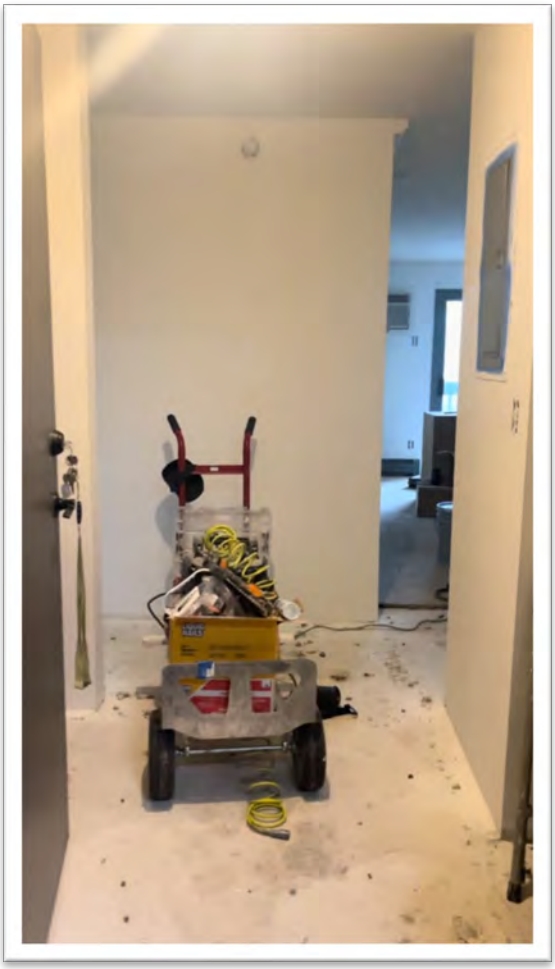


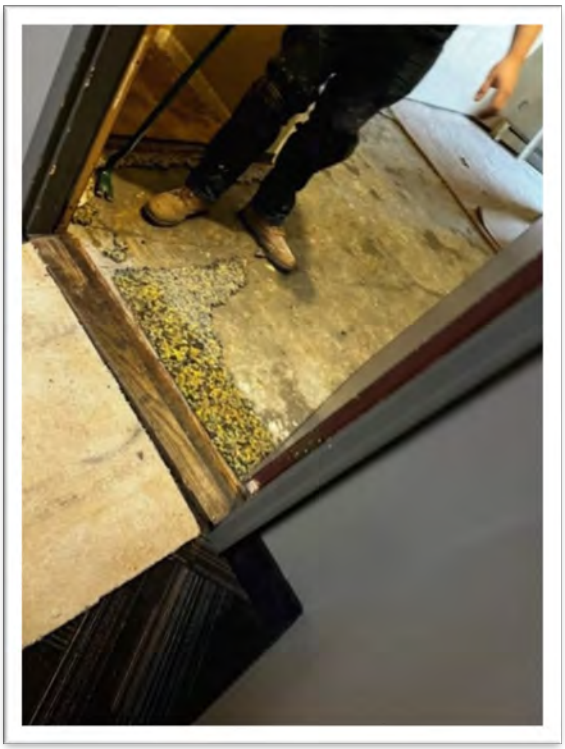
Photo 15 12″ Yellow Floor Tile and Mastic in Damaged Condition in the 2nd Floor East Employee Room.

Badly damaged asbestos-containing flooring and mastic, in a room containing renovation materials. The renovation materials are at risk of being exposed to and potentially transferring asbestos fibers throughout the building.



Bathroom under renovation with suspect asbestos containing mastic.





Flooring completely removed, indicating disturbance of underlying potentially asbestos containing substrate or mastic.

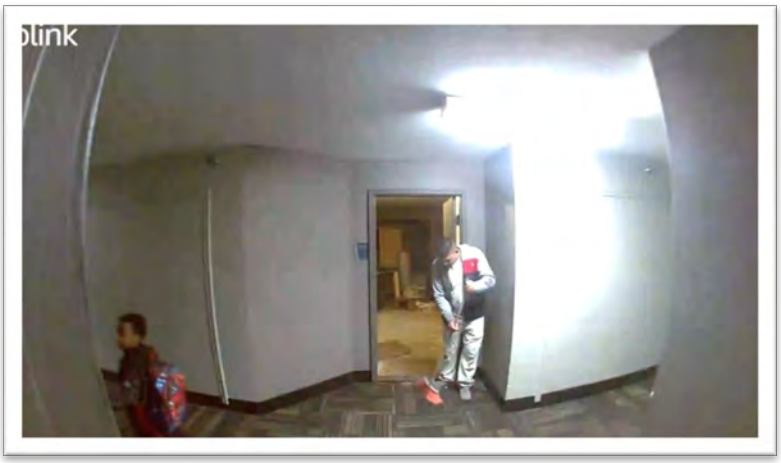
It was not until February and March of 2024, after continuous legal pressure from Housing Justice Center, that Marquette finally completed the identification and testing of asbestos hazards that is required under the Haven O&M Program and asbestos law. And, as reflected in a May 2024 stipulated preliminary injunction entered into by Marquette, the testing identified the presence of ceiling, flooring, and insulation materials that either contained asbestos, or are assumed to contain asbestos:

7. Within fourteen days, Defendants shall provide all units at Haven with the following notice in English and Somali:

> **Please take notice that this building contains confirmed and assumed asbestos material** in the following items: popcorn ceiling texture (less than 1%), residual black mastic, residual mastic/filler, 12" yellow floor tile and mastic, 4" square sheet vinyl flooring, green and gold mosaic sheet vinyl, black sink undercoating, 1' x 2' gray ceramic plank floor system, 1'x2' gray stone ceramic system, 1'x2' gray marble ceramic surround, 1'x2' tan ceramic plank system, 2"x2" ceramic floor system, blue tile pool ceramic, gray ceramic shower surround system, interior boiler gaskets/insulation, union/flange gaskets, mirror adhesive, and fire doors.
>
> Please note that there may be multiple layers of flooring and/or mastic underneath the top layer of flooring in your unit that may contain or are presumed to contain asbestos.
>
> **Please do not disturb these materials, or allow these materials to be disturbed, in any way. A copy of the full Asbestos Operation and Maintenance Program is available on request at the office.**

Because Marquette extensively renovated numerous units and multiple common area spaces prior to testing or identifying these materials, it put all Haven tenants at a very real risk of exposure to asbestos. Yet, it is these renovations—which exposed Haven tenants to an extreme risk of life-altering asbestos-related lung disease—for which Marquette has been awarded a 26.48% rent increase.

But beyond failing to identify or test for asbestos hazards prior to conducting it building-wide renovations, Marquette and its contractors disastrously failed to comply with the work practices prescribed by either asbestos safety law or its own Haven Asbestos O&M Program. The gravity of Marquette's nearly three years of violations is best symbolized by the following image of a young Haven tenant walking in front a worker dry-sweeping potentially asbestos-containing dust knocked loose as a result of Marquette's illegal renovations.



Marquette's disregard for asbestos safety laws during the period for which it was granted a 26.48% rent increase created a hazardous living environment for Haven tenants that constitutes serious violations of Minnesota's implied warranty of habitability. And, as previously argued in Ms. Mohamed's appeal, **violations of section 504B.161 <u>require</u> denial of Marquette's application for an exception to the 3% rent increase limitation** under the Mandatory Habitability Precondition.

Behind the scenes, the City itself seems to have agreed to these undisputed legal principles when Ms. Mohamed first raised them during the application process in early 2023. After receiving a report by Ms. Mohamed's asbestos expert Greg Myers, DSI Director Angie Weise immediately expressed concern as to whether "the contractor tested for lead or asbestos? Are they taking precautions as is required if there is lead and asbestos present?"[27]

From: Angie Wiese <angie.wiese@ci.stpaul.mn.us>
Sent: Thursday, March 2, 2023 9:41:30 AM
To: Stephen Ubl <stephen.ubl@ci.stpaul.mn.us>
Cc: David Hoban <David.Hoban@ci.stpaul.mn.us>; Nathan Bruhn <nathan.bruhn@ci.stpaul.mn.us>; Lynne Ferkinhoff <Lynne.Ferkinhoff@ci.stpaul.mn.us>; Demetrius Sass <Demetrius.Sass@ci.stpaul.mn.us>
Subject: 200 Winthrop - Greg Myers Expert Report.pdf

Steve,

This came to the Rent Stabilization team via an attorney who is trying to provide an argument for a habitability violation of the ordinance.

Imbedded in that correspondence was this report.

As the contractor tested for lead or asbestos? Are they taking precautions as is required if there is lead and asbestos present?

The building inspector assigned to this property should be aware but also, I would like to know for our file with Rent Stabilization.

And it also appears that DSI initially understood the importance of doing an "investigation into the expert report on Haven," admitting that "[s]ince there are habitability concerns, and habitability is the key to an approval, we need to get this sorted out to avoid being sued."[28]

From: Demetrius Sass <Demetrius.Sass@ci.stpaul.mn.us>
Sent: Friday, April 7, 2023 2:32 PM
To: Lynne Ferkinhoff <Lynne.Ferkinhoff@ci.stpaul.mn.us>
Subject: Angie Meeting

Good'ay,

Asha is wondering about the status of DSI's investigation into the expert report on Haven. Since there are habitability concerns, and habitability is key to an approval, we need to get this sorted out to avoid being sued. Angie moved our meeting to the morning so I figure we can ask her then.

Thanks

[27] HJC Supplemental Ltr Attached Exhibits.8-9-23, at Exhibit S6
[28] HJC Supplemental Ltr Attached Exhibits.8-9-23, at Exhibit S7

Inexplicably, however, DSI decided to terminate the lead and asbestos investigation without explanation:[29]

> 02/28/23: The Housing Justice Center submits an "Expert Report" and accompanying exhibits which suggest that lead-based paint removal and asbestos removal may not have been properly abated. It's unclear if lead-based paint removal and asbestos removal actually took place during the renovation. The City would not be the appropriate authority on this matter.

The LHO's delay and dismissal now sweep Marquette's dangerous asbestos law violations even further under the rug.

C. Marquette Violates Minnesota Utility Law, Mandating Denial of its Application for a Rent Increase.

As with the violations of asbestos law noted above, Ms. Mohamed has also provided undisputed evidence that Marquette is violating Minnesota's single-meter utility law, Minn. Stat. § 504B.215. This evidence requires the Council to deny Marquette's request for an exception to the rent cap.

Section 504B.215 provides protections for tenants living in buildings where utilities are measured by a single meter. In single-metered residential buildings, unlike buildings with meters for each unit, it is not possible to measure individual residents' use of a given utility. Only the entire building's usage (including common areas) can be measured. Landlords of single-metered residential buildings can choose to incorporate the cost of utilities into tenants' base rent or they can divide up the utility costs amongst their tenants and charge utilities separately from tenants' rent. However, landlords can only bill separately for utilities if they comply with the apportionment, reporting, and disclosure requirements required under the single-meter law. *See* Minn. Stat. § 504B.215, subd. 2a. **A landlord's failure to comply with these requirements is itself a violation of Minnesota's implied warranty of habitability.** *See* Minn. Stat. § 504B.215, subd. 2a(c) ("A failure by the landlord to comply with this subdivision [2a] is a violation of section[] 504B.161, subdivision 1, clause (1) . . . ."); *see also* Ex D-Motion for Summary Judgment. 62-HG-CV-23-3931.2-23-24, p. 5 (noting "Plaintiff's pleaded violation of Minn. Stat. § 504B.215, Subd. 2a is a violation of the general covenant of habitability").

The Ordinance recognizes the importance of Minnesota's single-meter utility law in protecting tenants from unknown or unfair fees. Under the Ordinance, a landlord's compliance with section 504B.215, must be considered when evaluating whether to grant an exception to the 3% rent cap. *See* SPLC § 193A.06(a)(2)(a), (c). **Importantly, because a violation of section 504B.215 is itself a violation of the implied warranty of habitability, failure to comply with section 504B.215 mandates denial of a landlord's application under the Mandatory Habitability Precondition.** SPLC § 193A.06(c).

[29] HJC Supplemental Ltr Attached Exhibits.8-9-23, at Exhibit S2, p. 3

Here, Haven is a single-metered residential building in which Marquette charges tenants for apportioned utilities (gas, water, sewer, and trash).[30] Yet the Ramsey County District Court has independently ruled that Marquette's lease violates section 504B.215 because it fails to contain an equitable method of utility apportionment.[31] As Judge Grewing concluded:

> Here, even if the Court were to disagree with the Hennepin County District Court and find that the language of Formula 8 qualified as a "method," nothing in Formula 8 identifies how the "method" is fair or equitable. Formula 8 only provides for an "[a]llocation based on a combination of square footage of [Plaintiff's] apartment and the number of persons residing in your apartment." (Am. Pet., p. 14.) Defendant argues this is clearly intended to be a "fair" apportionment, where "tenants with larger apartments and a larger number of tenants living in them will be apportioned a larger amount of the monthly utilities," but nothing in Formula 8 indicates as much. (Def. Br., p. 8; Am. Pet., p. 14.) Notably, Formula 8's plain language could just as easily be fulfilled by an inversion of Defendant's "fair" assumption, or any similarly arbitrary "combination of square footage … and the number of persons residing" in a given unit. (Am. Pet., p. 14.)
>
> This language is not ambiguous, and the Court does not need to look beyond the ordinary meaning of the words used by the legislature here. Accordingly, the Court agrees with the Hennepin County District Court, and finds that the language of the lease at issue in this case does not contain "an equitable method of apportionment."

The lease's vague formula that the judge found failed to meet the equitable standard is the **exact same** apportionment formula that is found in Ms. Mohamed's lease, as well as the leases of all Haven tenants who have lease agreements with Marquette.[32] As a result, **all Marquette leases containing this allocation formula violate Minnesota's single-meter utility law and disqualify it from an exception to the rent cap**. Consequently, Marquette failure to comply with section

[30] HJC Exhibits and Court Doc 62-CV-23-2694, at Exhibit 2, p. 15 (MNOI Worksheet) and p. 39, 49-51 (Ms. Mohamed's lease)

[31] Ex D-Motion for Summary Judgment. 62-HG-CV-23-3931.2-23-24

[32] In the appeal hearing, Mr. Wood indicated that upon taking over a property Marquette typically transitions all residents with a pre-existing lease to a National Apartment Association lease form, which is the lease form analyzed by Judge Grewing. *See* Minutes 8-10-23, p. 27; Ex D-Motion for Summary Judgment. 62-HG-CV-23-3931.2-23-24, p. 2; *see also* HJC Exhibits and Court Doc 62-CV-23-2694, at Exhibit 2, p. 49-50 (Ms. Mohamed's lease).

504B.215 means that it has failed to bring all units in which it requires tenant payment of single-meter utilities into compliance with the implied warranty of habitability and thus the Council cannot approve a rent increase above the 3% cap for those units. SPLC § 193A.06(c).

D. Marquette Has Failed to Control Pest Infestation at Haven, Mandating Denial of its Application for a Rent Increase.

In addition to dangerous renovation and unlawful utility billing, Ms. Mohamed provided ample evidence that Marquette allowed pest infestation problems to persist throughout Haven despite Saint Paul making the landlord of a residential property "responsible for the control and/or elimination of insects, rodents or other pests wherever infestation exists." SPLC § 34.10(6). By failing to eliminate, or even manage, the pest infestation, Marquette did not "maintain the premises in compliance with the applicable health and safety laws." Minn. Stat. § 504B.161, subd. 1(a)(4). Accordingly, the Ordinance's Mandatory Habitability Precondition requires that the Council deny Marquette's request for an exception to the rent cap. SPLC § 193A.06(c).

Throughout the appeal process, Ms. Mohamed submitted evidence detailing the pest infestation present at Haven. Beyond reporting that she had routinely seen cockroaches in her kitchen, in her mother's room, and in common areas,[33] Ms. Mohamed provided the below photograph, which shows the results of a cockroach trap she had set out behind her microwave.

Ms. Mohamed also provided extensive evidence that the pest infestation impacted units across the Haven complex. Six days before the appeal hearing—a time when DSI said that all habitability violations, including pest infestation, had been remedied[34]—Haven's property manager requested pest treatment for **almost half** of Haven's 216 units. In requesting this treatment, the manager informed the pest-control vendor that the "roaches and mice are getting out of control again," a statement that admitted to both a current pest infestation crisis at Haven and the fact that infestation is a reoccurring event.

[33] Minutes 8-10-23, p. 11; HJC 2nd Suppl Appeal Ltr.12-14-23, p. 3
[34] DSI Staff Report.8-10-23, p. 3

From: Kelly Delisle <kdelisle@marqnet.com>
Sent: Friday, August 4, 2023 1:07 PM
To: Angie BrothersMFG <angie@brothersmfg.com>
Subject: Re: Appointment

Please see attached list.

I think we need to do them all together as the roaches and mice are getting out of control again.

Thanks,

KELLY B DELISLE
Property Manager | Agent for Owner

MARQUETTE MANAGEMENT
EST. 1983

THE HAVEN OF BATTLE CREEK
661-447-5345
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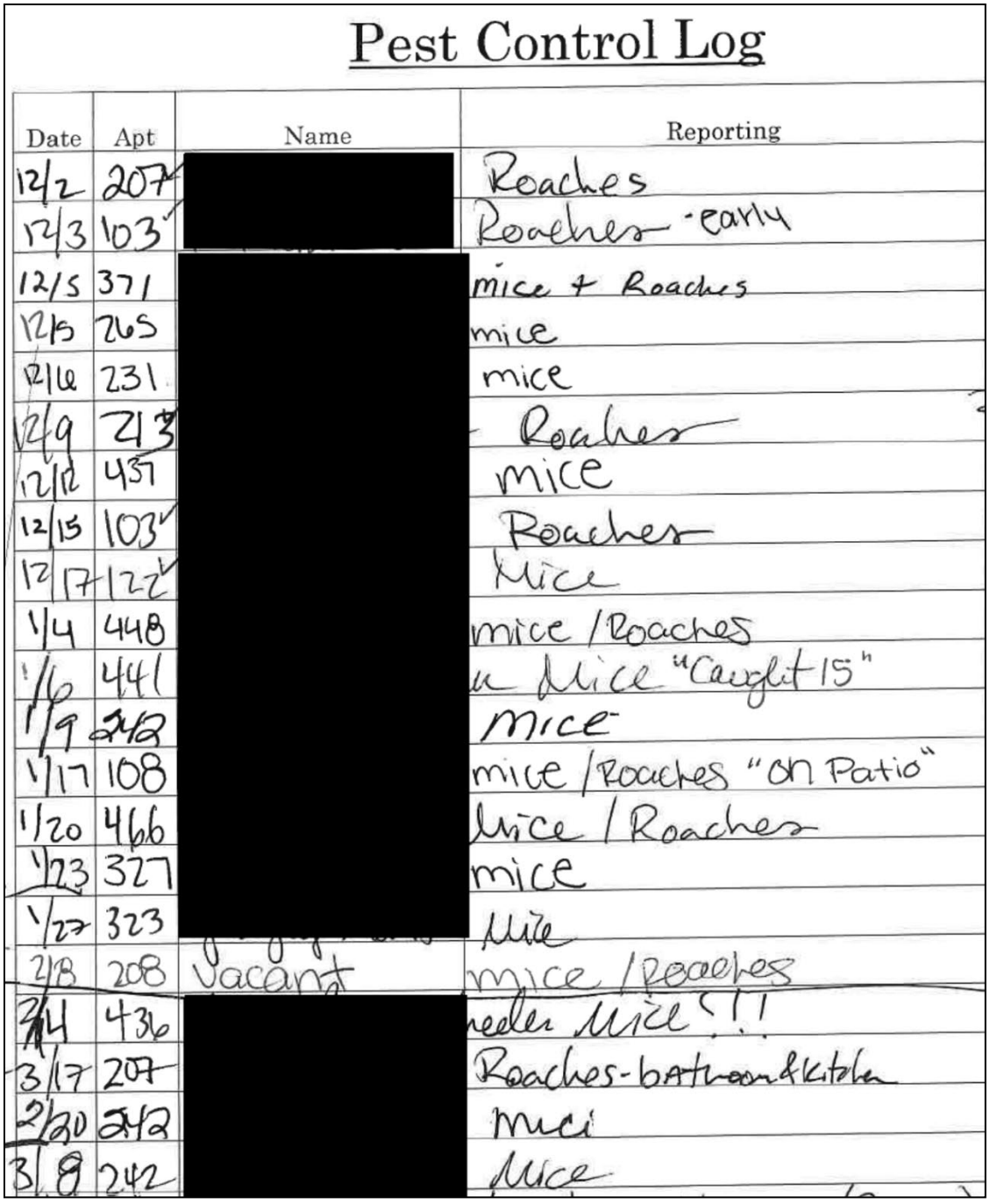
In addition, Ms. Mohamed submitted the following excerpt from a lengthy Pest Control Log maintained by Marquette, showing the widespread and pervasive nature of Haven's pest infestation. The log starts in December 2022—one month before Marquette submitted its application seeking a rent increase in excess of 25%—and includes infestation reports from units throughout the complex—including a note for one unit that reads "Mice 'Caught 15.'"



Pest Control Log

Date	Apt	Name	Reporting
12/2	207	[redacted]	Roaches
12/3	103	[redacted]	Roaches - early
12/5	371	[redacted]	mice + Roaches
12/5	265	[redacted]	mice
12/6	231	[redacted]	mice
12/9	213	[redacted]	Roaches
12/12	457	[redacted]	mice
12/15	103	[redacted]	Roaches
12/17	122	[redacted]	Mice
1/4	448	[redacted]	mice / Roaches
1/6	441	[redacted]	Mice "Caught 15"
1/9	242	[redacted]	mice
1/17	108	[redacted]	mice / Roaches "on Patio"
1/20	466	[redacted]	Mice / Roaches
1/23	327	[redacted]	mice
1/27	323	[redacted]	Mice
2/8	208	Vacant	mice / Roaches
2/14	436	[redacted]	needs Mice!!!
3/17	207	[redacted]	Roaches - bathroom & kitchen
2/20	242	[redacted]	mice
3/8	242	[redacted]	Mice

Evidence put into the record by the LHO herself demonstrates that Haven's pest infestation problem has continued, with one tenant reporting that "**The whole complex has issues with cockroaches and mice.**"[35]

[35] 2023 & 2024 Complaint Log.7-3-24, p. 4

DATE	NATURE OF COMPLAINT	ORDERS ON COMPLAINT ITEM	ORDERS ON OTHER	PHOTOS	INSPECTOR ACTION / NOTES	DISPOSITION
1/10/23	large mouse infestation	no	no	no	no answer on inspector visit. 2/24/23: logged pest control receipts	transferred complaint to Fire C of O file. closed
8/2/23	Reports of rodent infestation, flooding, broken glass and garbage on property	no	no	no	Took a look at all three floors spoke with mgr and maint no one is aware of flooding in the garage nor did I see flooding or standing water on the property. Knocked on 4 doors no one had mice roaches . The grounds people were still cleaning around the building	closed
9/21/23	mouse infestation in the unit-digging holes through the walls roaches in the garbage room	No	No	No	Exterminator report says no activity 9 22 23 . Spoke with tenant with manager .The report states that she has no activity. The trash room did get cleaned	closed
10/3/23	mice infestation	Yes	No	No	speaking to the tenant wants to know when the mice problem will disappear , I told her they will have to continue to treat until it is resolved, and that is not just her apartment. She has to ask to be put on the list for extermination if she continues to see mice	Closed/abated
10/17/23	hornets coming in through windows #326	Yes	No	No	10/18/23-RP states issue started in late August, have made numerous attempts to contain issue with hornets. They have a scheduled appointment today with an extermination company as well, RP will email current documents.-SB	Closed/in compliance (extermination report emailed by property owner)
11/9/23	mice infestation is getting worse	Yes	No	No	12/04/23-Documentation provided from RP.-SB Reports submitted via email from RP are sufficient to close RF per AN`	Closed/in compliance (extermination report emailed by property owner)
1/9/2024	mice infestation 215 Kipling	Yes	No	No	Pest report received. TA	Closed/abated
1/25/24	Roach infestation in unit, hallways and elevators.	No	No	No	Extermination reports received via email from RP.-SB	closed
3/26/24	trash in the stairwells, no maintenance in the hallway areas, stains from animal feces and vomit on the carpet of the elevators and the hallways, roaches in the trash room 215 Kipling	Yes	No	Yes	Inspected. Misc refuse in a few areas. TA	abated
5/30/24	reports of roaches not being treated at the property	No	No	No	No location given. Previous pest complaints have been treated. Building has a monthly pest control contract. TA	closed
7/2/24	common areas are not being cleaned, including Laundry rooms, hallways, stairwells all have trash and food on the floor. The whole complex has issues with cockroaches and mice. Doors in stairwells have gaps, underground garage door missing boards and has gaps. Elevator in building has not work since early June.	?	?	Yes	Photos uploaded 7/2, no orders as of 7/3/24	?

And although DSI inspectors have listed these problems as "closed" or "abated" simply because Marquette provided a pest-control invoice, that does not mean the problem has been made better for the tenants living at Haven. Far from it. The uncontested evidence shows that mice, cockroaches, and other pests have been a long-term, building-wide problem that Marquette has failed to "control" or "eliminate." *See* SPLC § 34.10(6). As a result, Marquette has not met the Mandatory Habitability Precondition and is not eligible for an exception to the rent cap.

CONCLUSION

For the foregoing reasons, Ms. Mohamed respectfully requests that the City Council reject the LHO's recommendation, reverse DSI's rent increase approval, and deny Marquette's request for an exception to the 3% rent increase limit. In the alternative, Ms. Mohamed respectfully requests that the City Council remand this appeal to a neutral and diligent decisionmaker and direct that the next recommendation be issued in compliance with constitutional due process and the Mandatory Habitability Precondition required by the Rent Stabilization Ordinance.

Date: August 9, 2024

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