

Date: May 25, 2010

Item No. 14 & 15  
File No. 10016

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Ray Hartz against the Rent Board**
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Completed by: Chris Rustom

Date: May 21, 2010

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



DENNIS J. HERRERA  
City Attorney

JERRY THREET  
Deputy City Attorney

DIRECT DIAL: (415) 554-3914  
E-MAIL: jerry.threet@sfgov.org

## MEMORANDUM

May 20, 2010

*RAY HARTZ VS. RENT BOARD (10016)*

### COMPLAINT

#### THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ray Hartz alleges that the Rent Board violated the Sunshine Ordinance by failing to fully respond to his Immediate Disclosure Request of January 21, 2010. Mr. Hartz's complaint identifies Administrative Code Section 67.24 as being violated.

#### COMPLAINANT FILES COMPLAINT:

On April 10, 2010, Mr. Hartz filed a complaint with the Task Force alleging a violation.

#### JURISDICTION

The Rent Board is clearly a "Department" under Section 67.20 the Sunshine Ordinance, and thus subject to the requirements of Article Three of the Ordinance, including Section 67.24. Mr. Hartz alleges that the Rent Board failed to fully respond to his IDR as required by Section 67.24. Therefore, the Task Force has jurisdiction to adjudicate the matter.

#### APPLICABLE STATUTORY SECTION(S):

Administrative Code Section 67.14 deals with audio recordings of meetings of policy bodies

Administrative Code Section 67.24 deals with information that must be disclosed

#### APPLICABLE CASE LAW:

None.

#### ISSUES TO BE DETERMINED

**Memorandum**

DATE: May 20, 2010  
 PAGE: 2  
 RE: Hartz v. Rent Board

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**Uncontested Facts:** Complainant made an IDR to the Rent Board on January 21, 2010, requesting multiple documents. The Rent Board responded to that request on January 22, 2010 by providing multiple documents that were responsive to the IDR and by redacting information from some of those documents. The Rent Board also responded to certain categories of documents requested that there were no documents responsive to those requests. In particular, the Rent Board responded to a request for any audio or video recording of its meeting of January 19, 2010 by stating that it has no such recordings and that, as a non-charter board, it is not required by the Sunshine Ordinance to keep them.

**Contested Facts:** It is unclear whether the facts are contested by the parties, as Mr. Hartz has not identified in his complaint how specifically the Rent Board's response to his IDR is deficient and in violation of Section 67.24.

**QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:**

- Are there responsive documents that Mr. Hartz believes exist and are in the Rent Board's possession that they did not provide to him?
- Are there documents that Mr. Hartz believes the Rent Board is required by the Ordinance to create and keep but have not been created and/or kept by the Rent Board?
- Are there redactions in documents that that the Rent Board provided to Mr. Hartz in response to his IDR that he believes are not allowed under the law?

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Does Section 67.24(c) allow redaction from a professional resume of a City employee certain listed private information about the employee?
- Does the Section 67.14(b) of the Ordinance require the Rent Board to keep audio or video recordings of its meetings?

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

**ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED**

**Memorandum**

DATE: May 20, 2010  
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RE: Hartz v. Rent Board

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**SEC. 67.14. TAPE RECORDING, FILMING AND STILL PHOTOGRAPHY.**

(b) Each board and commission *enumerated in the charter* shall audio record each regular and special meeting.

**SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED**

(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

(i) Sex, age and ethnic group;

(ii) Years of graduate and undergraduate study, degree(s) and major or discipline;

(iii) Years of employment in the private and/or public sector;

(iv) Whether currently employed in the same position for another public agency.

(v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee *shall be* redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

(5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

**SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.**

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular

**Memorandum**

DATE: May 20, 2010  
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RE: Hartz v. Rent Board

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work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

**SEC. 67.27. JUSTIFICATION OF WITHHOLDING.**

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.



SUNSHINE ORDINANCE TASK FORCE  
 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102  
 Tel. (415) 554-7724; Fax (415) 554-7854  
 http://www.sfgov.org/sunshine

**SUNSHINE ORDINANCE COMPLAINT**

Complaint against which Department or Commission RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD

Name of individual contacted at Department or Commission DELEDE WOLF

- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting \_\_\_\_\_

Sunshine Ordinance Section 67.24 PUBLIC INFORMATION THAT MUST BE DISCLOSED  
 (If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

IN RESPONSE TO AN IDR SUBMITTED TO THE RENT BOARD EXECUTIVE DIRECTOR, REPRESENTATIVES OF THAT BOARD FAILED TO RESPOND COMPLETELY INW THE ABOVE SECTION OF THE SUNSHINE ORDINANCE

Do you want a public hearing before the Sunshine Ordinance Task Force?  yes  no  
 Do you also want a pre-hearing conference before the Complaint Committee?  yes  no

(Optional)<sup>1</sup>  
 Name RAY W HARTZ TR Address 839 LONDONDOROTH ST #204

Telephone No. (415) 345-9144 E-Mail Address RWHARTZTR@SBCGLOBAL.NET

Date 4/10/10 Ray W Hartz  
 Signature

I request confidentiality of my personal information.  yes  no

<sup>1</sup> NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

## IMMEDIATE DISCLOSURE REQUEST

January 21, 2010.

To: San Francisco Rent Board, Sandy Gartzman and Tim Lee, Senior Administrative Law Judges

Re: Michael Berg, Administrative Law Judge

In accordance with the California Public Records Act and in accordance with the San Francisco Sunshine Ordinance of 1999, Public Information and Public Records, and San Francisco City & County Administrative Code(s), I submit this immediate disclosure request for the below listed information regarding the above listed Administrative Law Judge.

### **Section 67.24 PUBLIC INFORMATION THAT MUST BE DISCLOSED:**

**(c) PERSONNEL INFORMATION.** None of the following shall be exempt from disclosure under the government code section 6254, subdivision C., or any other provision of California law where disclosure is not forbidden:

1. The job pool characteristics and employment and education history of all successful job applicants, including at a minimum the following information as to each successful job applicant.
  - i. Sex, age and ethnic group.
  - ii. Years of graduate and undergraduate study, degrees and major or discipline;
  - iii. Years of employment in the private and/or public sector;
  - iv. Whether currently employed in the same position for another public agency.
  - v. Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.
2. The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, Social Security number, age, and marital status of the employee shall not be redacted.
3. The job description of every employment classification.
4. The exact gross salary and city paid benefits available to every employee.
5. Any memorandum of understanding between the city or department and a recognized employee organization.
6. The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is proved.
7. The record of any confirmed misconduct of an employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against and another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

**COPY**

I will plan on picking up the requested information by close of business on January 22, 2010. If such information is not available at that time, please have available a written notification of the expected delay time and reason for such delay, as required by San Francisco – Administrative Code Sec. 67.25 IMMEDIACY OF RESPONSE.

Sincerely,

Ray W. Hartz, Jr.

839 Leavenworth St, Apt 304

San Francisco CA 94109

(415) 345-9144

rwhartzjr@sbcglobal.net

IMMEDIATE DISCLOSURE REQUEST

COPY





April 28, 2010

Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place  
Room 244  
San Francisco, CA 94102-4689

RE: Sunshine Complaint Received: #10016 Ray Hartz v Rent Board and  
request for pre-hearing conference on May 11, 2010

This complaint alleges that the Rent Board did not provide a complete response to a disclosure request made by Ray Hartz on January 21, 2010. The Rent Board did timely and appropriately respond to the records request filed by Mr. Hartz, and is unable to ascertain from the Sunshine Ordinance Complaint what additional information is now sought by Mr. Hartz.

On August 26, 2008, the landlord of 839 Leavenworth Street filed a petition at the Rent Board (Case No. L081371) seeking rent increases for thirty-three units based on increased operating and maintenance expenses. Ray Hartz lives at 839 Leavenworth and was subject to the petition. On March 3, 2009, a hearing was held before Administrative Law Judge Michael Berg (hereafter "ALJ"). A Decision was issued by the ALJ on May 14, 2009 granting the landlord's petition to increase the rent of thirty-three tenants, including tenant Ray Hartz.

Mr. Hartz and other tenants appealed the ALJ's decision to the Rent Board Commission. On July 7, 2009, the Rent Board voted to "accept the joint appeal filed by the tenants in twelve units and remand the case for a supplemental hearing on the following issues: to consider the categories of elevator service and pest control that were not included in the original petition; to examine the terms of the interest-only loan; and to consider whether the landlord has met their burden of proof in not providing the aggregate of all expenses associated with the building. The appeal is denied as to the Notice of Violation issue. The hardship appeals will be held pending the outcome of the remand on the substantive issues."

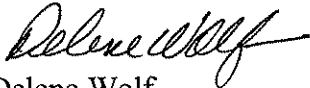
A remand hearing was held before ALJ Berg on September 1, 2009. The ALJ issued a remand decision on December 22, 2009, granting the landlord's petition. A copy of the remand decision is attached for the Task Force's reference. Mr. Hartz and other tenants appealed the remand decision, and the Rent Board Commissioners voted on January 19, 2010 to deny the tenants' appeals.

On January 21, 2010, Mr. Hartz submitted a disclosure request to the Rent Board asking for certain documents concerning ALJ Michael Berg, who is a Rent Board employee. On January 22, 2010, after consulting with the City Attorney's Office, the Rent Board responded in writing to the request, and provided the documents requested. Based on the employee's right to privacy, personal information such as the employee's home address, telephone number, personal e-mail address, social security number, age, and marital status was not supplied or was redacted. A copy of Mr. Hartz' request and the Rent Board's response is attached for the Task Force's reference.

In his Sunshine Ordinance Complaint filed on April 10, 2010, Mr. Hartz alleges that the Rent Board did not respond completely to his request, but he does not specifically state how the Rent Board's response is insufficient. If Mr. Hartz will specify what additional information he seeks, the Rent Board will be glad to further respond.

The Rent Board requests a prehearing conference in this matter on Tuesday May 11, 2010.

Sincerely,



Delene Wolf  
Executive Director

Enclosures

RECEIVED

**IMMEDIATE DISCLOSURE REQUEST**

2010 JAN 21 PM 1:21

January 21, 2010.

S.F. RESIDENTIAL RENT  
STABILIZATION AND  
ARBITRATION BOARD

To: San Francisco Rent Board, Sandy Gartzman and Tim Lee, Senior Administrative Law Judges

Re: Michael Berg, Administrative Law Judge

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  - i. Sex, age and ethnic group.
  - ii. Years of graduate and undergraduate study, degrees and major or discipline;
  - iii. Years of employment in the private and/or public sector;
  - iv. Whether currently employed in the same position for another public agency.
  - v. Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.
2. The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, Social Security number, age, and marital status of the employee shall not be redacted.
3. The job description of every employment classification.
4. The exact gross salary and city paid benefits available to every employee.
5. Any memorandum of understanding between the city or department and a recognized employee organization.
6. The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is proved.
7. The record of any confirmed misconduct of an employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against and another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

RECEIVED

2010 JAN 21 PM 1:21

I will plan on picking up the requested information by close of business on January 22, 2010. If such information is not available at that time, please have available a written notification of the expected delay time and reason for such delay, as required by San Francisco – Administrative Code Sec 67.25 IMMEDIACY OF RESPONSE.

Sincerely,



Ray W. Hartz, Jr.

839 Leavenworth St, Apt 304

San Francisco CA 94109

(415) 345-9144

rwhartzjr@sbcglobal.net

IMMEDIATE DISCLOSURE REQUEST

## City and County of San Francisco

Residential Rent Stabilization and  
Arbitration Board

January 22, 2010

Ray W. Hartz  
839 Leavenworth St., Apt. 304  
San Francisco, CA 94109

RE: California Public Records/San Francisco Sunshine Ordinance Requests

Dear Mr. Hartz,

This is in response to two California Public Records/San Francisco Sunshine Ordinance Requests from you received by our office on January 21, 2010, as well as the today's request audio recordings.

In response to your request for any "rules, regulations or administrative procedures delineating the handling of complaints against administrative law judges, including, but not limited to, such documents that may apply specifically to those ALJs working for the San Francisco Rent Board," the department has not adopted written procedures for complaints against ALJ's and therefore does not have any responsive documents.

In response to information regarding the department's employee, Michael Berg, please find attached a copy of the job description, compensation, resume (from approximately 1998), and memorandum of understanding between the city and the employee organization. Please note that because of the right to privacy, the City may not disclose and has redacted from the resume such personal information as the employee's home address, telephone number(s), personal e-mail address, social security number, age, date of birth, ethnicity and marital status. Please see the City's Good Government Guide, page 75, Govt. Code §§ 6250, 6254(c); Cal. Const., Art. I, §1; Admin. Code §§67.1(g), 67.24(c)(2); Admin. Code Chapter 12M.

Regarding the last two items concerning any performance-based increases in compensation and record of any confirmed misconduct, the department has no responsive documents.

Lastly, regarding your request for audio and/or video recording of the San Francisco Rent Board meeting held on January 19, 2010, no such recording exists. Non-charter policy bodies, (including board, commissions, committees and task forces created by ordinance or resolution, and committees of Charter boards and commissions) are not required to record open sessions (Pg. 173 the City's Good Government Guide).

Sincerely,

Robert Collins

Custodian of Records

Encl.



SAN FRANCISCO

## Department of Human Resources

### Classification, Compensation and Collective Bargaining Agreements 8177 Attorney (Civil/Criminal)

Description	8177 Attorney (Civil/Criminal)
Collective Bargaining Agreement	Municipal Attorney's Association
Pay Frequency	Biweekly
Note	Appointments to this job class are exempt from the FLSA and are designated with a "Z"
Schedule Number	8177E

#### Rates Effective: Jul 01, 2009 - Jun 30, 2010

Step	1	2	3	4	5
hourly	\$47.3625	\$49.7375	\$50.9500	\$52.2125	\$54.8375
bi-weekly	\$3,789	\$3,979	\$4,076	\$4,177	\$4,387
annual	\$98,514	\$103,454	\$105,976	\$108,602	\$114,062

Step	6	7	8	9	10
hourly	\$57.5625	\$58.9875	\$60.4375	\$61.9375	\$65.0250
bi-weekly	\$4,605	\$4,719	\$4,835	\$4,955	\$5,202
annual	\$119,730	\$122,694	\$125,710	\$128,830	\$135,252

Step	11	12	13	14	15
hourly	68.2750	\$71.6750	\$73.4375	\$75.2750	\$79.0500
bi-weekly	\$5,462	\$5,734	\$5,875	\$6,022	\$6,324
annual	\$142,012	\$149,084	\$152,750	\$156,572	\$164,424

Step	16
hourly	\$82.9750
bi-weekly	\$6,638
annual	\$172,588

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## Department of Human Resources

Attorney (Civil/Criminal) (#8177 )



**\$47.36-\$82.98 Hourly / \$8,210.00-\$14,382.00 Monthly / \$98,514.00-\$172,588.00 Yearly**



[Email Me when a Job Opens for the above position\(s\)](#)

### Definition

This specification defines and describes the full range of tasks included within the levels of the deep class of Attorney from beginning to advanced professional legal services in the City Attorney's Office, District Attorney's, Public Defender and other City departments in connection with the defense or prosecution of civil or criminal cases. Assignments within this class vary in degree of complexity, responsibility and amount of supervision received. Under varying levels of supervision, the incumbents of this class perform professional level attorney work in connection with the defense or prosecution of civil or criminal cases.

### Distinguishing Features

This class utilizes the deep class concept and encompasses multiple levels of responsibility from entry through the fully experienced advanced professional level. Incumbents are assigned to various levels at the department head's discretion according to the organization staffing, workload and difficulty of assignments and cases. This class is distinguished from 8182 Head Attorney in that the positions in 8182 Head Attorney perform the most difficult and responsible professional legal and managerial work.

### Supervision Exercised

Positions assigned to the advanced level may be given responsibility for supervising clerks, investigators and attorneys.

### Examples of Important and Essential Duties

According to Civil Service Commission Rule 109, the duties specified below are representative of the range of duties assigned to this job code (class) and are not intended to be an inclusive list.

### Civil

1. Prosecutes or defends civil actions in which the City is involved such as affirmative litigation, personal injury claims and property damage cases, family law and other litigation.
2. Prepares briefs on appeals, opinions or legal actions; assists in or handles preparation of other legal matters such as contracts, leases, deeds, insurance policies, bonds, charter amendments, ordinances and resolutions. May supervise and participate in all legal processes necessary to the enforcement of the reciprocal support act.
3. Provides advice and counsel to City departments, boards, commissions and others including drafting legal opinions and legislation.
4. Represents the City on regulatory matters before courts and administrative bodies on taxation matters; represents the city in eminent domain cases necessary to acquiring land for redevelopment purposes.
5. Represents the City on transaction matters including the negotiation and drafting of public works, professional services, purchase, real estate and other contracts.

6. Performs professional legal work in all phases of estate administration in Public Administrator's office; may also perform a wide variety of professional legal work in connection with child support civil cases.

7. Performs other related duties as required.

**Criminal**

1. Serves as a counsel to persons charged with the commission of crimes who are financially unable to employ counsel; represents such defendants in criminal court and jury trials.

2. Tries jury and non-jury criminal cases in the Superior Court; interviews witnesses; conducts and or supervises investigations and writes legal briefs in conjunction with assigned cases and trials.

3. Receives and investigates complaints from the general public and representatives of the police department to determine the necessity for issuing of citations or warrants; interviews witnesses and issues citations; conducts citation hearings and determines the necessity for issuing warrants.

4. Prepares daily court calendar and maintains various records of warrants and citations issued.

5. Performs other related duties as required.

**Knowledge, Skills and Abilities**

Knowledge of: Federal, state and local laws, regulations and ordinances as applied to civil or criminal law. Ability to: Speak and write in a clear and effective manner; and establish and maintain effective working relationships.

**Experience and Training**

Requires Juris Doctorate from an accredited law school

**License or Certificate**

Requires active membership in good standing of California State Bar

**Disaster Service Workers**

All City and County of San Francisco employees are designated Disaster Service Workers through state and local law (California Government Code Section 3100-3109). Employment with the City requires the affirmation of a loyalty oath to this effect. Employees are required to complete all Disaster Service Worker-related training as assigned, and to return to work as ordered in the event of an emergency.

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<b>CLASS: 8177</b>	<b>EST:</b>	<b>REV:</b>	<b>FORMERLY JOB TITLE:</b>	<b>REPLACES JOB TITLE:</b>
<b>EEOC: 2</b>		<b>MEDICAL:</b>		



Complaint # 100



## Department of Human Resources

Attorney (Civil/Criminal) (#8177 )

Close
Print

**\$47.36-\$82.98 Hourly / \$8,210.00-\$14,382.00 Monthly / \$98,514.00-\$172,588.00 Yearly**



[Email Me when a Job Opens for the above position\(s\)](#)

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### Civil

1. Prosecutes or defends civil actions in which the City is involved such as affirmative litigation, personal injury claims and property damage cases, family law and other litigation.
2. Prepares briefs on appeals, opinions or legal actions; assists in or handles preparation of other legal matters such as contracts, leases, deeds, insurance policies, bonds, charter amendments, ordinances and resolutions. May supervise and participate in all legal processes necessary to the enforcement of the reciprocal support act.
3. Provides advice and counsel to City departments, boards, commissions and others including drafting legal opinions and legislation.
4. Represents the City on regulatory matters before courts and administrative bodies on taxation matters; represents the city in eminent domain cases necessary to acquiring land for redevelopment purposes.
5. Represents the City on transaction matters including the negotiation and drafting of public works, professional services, purchase, real estate and other contracts.

6. Performs professional legal work in all phases of estate administration in Public Administrator's Office; may also perform a wide variety of professional legal work in connection with child support civil cases.

7. Performs other related duties as required.

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**Knowledge, Skills and Abilities**

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**Experience and Training**

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**CLASS: 8177**  
**EEOC: 2**

**EST:**

**REV:**  
**MEDICAL:**

**FORMERLY JOB TITLE:**

**REPLACES JOB TITLE:**

Michael Berg



---

**PROFESSIONAL EXPERIENCE**

**LAW OFFICE OF MICHAEL BERG**, San Francisco 1976-present

**Real Estate Litigation and Transactions.** Full responsibility for trial of breaches of contracts, commercial and residential leases, evictions and sales disputes, including law and motions, developing discovery plans, taking and defending depositions, preparing evidence and exhibits for trial and negotiating and drafting settlement agreements. Extensive experience in structuring, documenting and negotiating real estate transactions, with emphasis on commercial and residential (apartment) leases, including tenant improvement agreements, assignments, subleases and options. Experienced in defense of judicial and non-judicial foreclosures, title defects and boundary disputes.

**Construction Litigation.** Experienced in all aspects of construction litigation, including first chair trial experience with delay claims, defective construction and mechanics' liens.

**SETTLEMENT COMMITTEE.** San Francisco 1974-1975

**Director.** Managed and directed a Federal settlement committee for a land fraud class action; supervised a staff of 4 attorneys who counseled class actions members concerning their rights under the settlement agreement.

**EDUCATION**

Mediator/ Alternative Dispute Training, Jams-Endispute, 1994  
San Francisco Law School, San Francisco, CA  
Juris Doctor, 1973  
American Jurisprudence Award in Torts  
University of California, Irvine, CA  
Bachelor of Arts, History, 1969

**BAR ADMISSION**

State Bar of California  
Real Property Subsection  
Landlord/Tenant Subsection  
U.S. District Court, Northern District of California



**MEMORANDUM OF UNDERSTANDING**  
**between**  
**THE CITY AND COUNTY OF SAN FRANCISCO**  
**and**  
**MUNICIPAL ATTORNEYS ASSOCIATION**  
**FOR THE PERIOD**  
**JULY 1, 2006 to JUNE 30, 2010**

**Revised Per Amendment #3**

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**ARTICLE I - REPRESENTATION**

**PREAMBLE**

1. This Memorandum of Understanding (hereinafter "MOU") is entered into by and between the City and County of San Francisco (hereinafter "City") acting through its designated representatives and the Municipal Attorneys Association (hereinafter "MAA"). It is agreed that the delivery of municipal services in the most efficient, effective, ethical, professional and courteous manner is of paramount importance to the City and the represented attorneys. Such purpose is recognized to be a mutual obligation of the parties to this agreement within their respective roles and responsibilities. Nothing in this agreement shall be construed to require any represented attorney to violate the California Rules of Professional Conduct.

**ARTICLE I. REPRESENTATION**

**I.A. RECOGNITION**

2. The City acknowledges the MAA as the exclusive bargaining representative for all represented attorneys in the following job codes:

8177	Attorney	8-W
8181	Assistant Chief Attorney I	11-L
8182	Head Attorney, Civil and Criminal	11-L
8183	Assistant Chief Attorney II	11-L
8190	Attorney, Tax Collector	8-W
8193	Chief Attorney I (Civil and Criminal)	11-L

3. Recognition shall only be extended to individual classes accreted to existing bargaining units covered by this MOU. Application of this provision shall not extend to bargaining units acquired through affiliations or service agreements.
4. During the term of the MOU, the MOU shall become applicable to any job code accreted to any existing bargaining unit for which MAA has been appropriately recognized as the exclusive representative.

**I.B. INTENT**

5. It is the intent of the parties signatory hereto that the provisions of this agreement shall become binding upon adoption or acceptance by the City and ratification by the Board of Supervisors and the general membership of MAA or upon a final decision rendered by an arbitration panel pursuant to the interest arbitration procedure under Charter Section A8.409.
6. The provisions of this MOU shall supersede and control over contrary or contradictory Charter provisions, ordinances, resolutions, rules or regulations of the City to the extent permissible by Charter Section A8.409.

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*ARTICLE I - REPRESENTATION*

**I.C. MANAGEMENT RIGHTS**

7. Unless specifically in conflict with the MOU, all management rights shall remain vested exclusively with the City. City management rights include but are not limited to:
8. a. The right to determine the mission of its agencies, departments, institutions, boards and commissions;
9. b. The right of full and exclusive control of the management of the City; supervision of all operations; determinations of methods, means, location and assignments of performing all work; and the composition, assignment, direction, location and determination of the size and mission of the work force;
10. c. The right to determine the work to be done by employees, including establishment of service levels, appropriate staffing and the allocation of funds for any position(s) within the City;
11. d. The right to review and inspect, without notice, all City-owned facilities, including without limitation desktop computers, work areas and desks, email, computer storage drives, voicemail systems and filing cabinets and systems;
12. e. The right to change or introduce different, new or improved operations, technologies, methods or means regarding any City work, and to contract out for work consistent with the civil service rules and/or the Charter;
13. f. The right to establish and modify qualifications for employment, including the content of any job classification, job description or job announcement, and to determine whether minimum qualifications are met;
14. g. The right to establish and enforce employee performance standards;
15. h. The right to schedule and assign work, make reassignments and assign overtime work.
18. i. The right to hire, fire, promote, discipline, reassign, transfer, release, layoff, terminate, demote, suspend or reduce in step or grade, all employees;
19. j. The right to establish and modify bargaining units subject to applicable law;
20. k. The right to inquire and investigate regarding complaints or concerns about employee performance deficiencies or misconduct of any sort, including the right to require represented attorneys to appear, respond truthfully and cooperate in good faith regarding any City investigation; and

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**ARTICLE I - REPRESENTATION**

21. 1. The right to maintain order, effective and efficient operations.

**I.D. UNION SECURITY**

16. Dues Deductions. MAA shall provide the Human Resources Director or his/her designee and the City with a current statement of membership fees. Such statement of membership fees shall be amended as necessary. The Controller may take up to thirty (30) days to implement such changes.
17. Authorization for Deduction. The City shall deduct Union dues, initiations fees, premiums for insurance programs and political action fund contributions from a represented attorney's pay upon receipt by the Controller of a form authorizing such deductions by the represented attorney. The City shall pay over to the designated payee all sums so deducted. Upon request of MAA, the Controller agrees to meet with MAA to discuss and attempt to resolve issues pertaining to delivery of services relating to such deductions.
18. Dues Deductions. Dues deductions, once initiated, shall continue until the authorization is revoked, in writing, by the represented attorney. For the administrative convenience of the City and MAA, a represented attorney may only revoke a dues authorization by delivering the notice of revocation to the Controller during the two-week period prior to the expiration of this agreement. The revocation notice shall be delivered to the Controller either in person at the Controller's office or by depositing it in the U.S. Mail addressed to the Payroll/Personnel Services Division, Office of the Controller, 875 Stevenson St., San Francisco CA 94103; Attention: Dues Deduction. The City shall deliver a copy of the notices of revocation of dues deductions authorizations to MAA within two (2) weeks of receipt.

**I.E. AGENCY SHOP**

19. Application. Except as provided otherwise herein, the provisions of this section shall apply to all represented attorneys of the City in all job codes represented by MAA in represented units when on paid status. These provisions shall not apply to individual represented attorneys of the City in represented units who have been properly and finally determined to be management, confidential or supervisory employees pursuant to Section 16.208 of the Employee Relations Ordinance. Except when an individual represented attorney has filed a challenge to a management, confidential or supervisory designation, the Human Resources Director or his/her designee and MAA shall meet as necessary for the purpose of attempting to make such determinations by mutual agreement. The Human Resources Director or his/her designee shall give MAA no less than ten (10) working days prior notice of any such proposed designation. Disputes regarding such designations shall be promptly resolved pursuant to Section 16.208(B) of the Employee Relations Ordinance.
20. Service Fee. Represented attorneys of the City in the job codes listed in Section I.A. (and any individual classes accreted to the existing bargaining unit pursuant to this MOU), except as set forth below, shall, as a condition of continued employment, become and remain a member of MAA, or in lieu thereof, shall pay a service fee to MAA. The fair share service

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**ARTICLE I - REPRESENTATION**

fee payment shall be established annually by MAA, provided that such fair share agency shop service fee will be used by MAA only for the purposes permitted by law. Each pay period, service fees from non-members shall be collected by payroll deduction pursuant to Administrative Code § 16.90. Failure to comply with this section shall be grounds for termination. MAA, at its option, may elect to waive its rights to demand termination and instead utilize judicial process to compel payment.

21. Financial Reporting. The MAA will provide an annual explanation of the fee and sufficient financial information to enable the fair share service fee payer to gauge the appropriateness of the fee. MAA will provide a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker, not chosen by MAA, and will make provision for an escrow account to hold amounts reasonably in dispute while challenges are pending. MAA will provide to the City a copy of the notices required under this section (with postage paid) by October 15th of each year, and the City shall forward these notices to all fair share service fee payers within thirty (30) days of the City's receipt of the notices. As a condition of the City continuing to deduct the above-referenced service fee, MAA shall certify annually in writing to the City that MAA has complied with the requirements set forth in this section.
22. Religious Exemption. Any represented attorney of the City in a job code covered by this agreement, who is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting a public employee organization and is recognized by the National Labor Relations Board to hold such objections to Union membership shall, upon presentation of membership and historical objection, be relieved of any obligation to pay the required service fee. MAA shall be informed, in writing, of any such requests.
23. Payment of Sums Withheld. Nine (9) working days following payday the City will promptly pay over to MAA sums withheld for membership or service fees.
24. Employee Lists. The City shall also provide with each payment a list of represented attorneys paying the membership fees and a list of represented attorneys paying service fees. All such lists shall contain the represented attorney's name, employee number, job code, department number and amount deducted. A list of all represented attorneys in represented job codes shall be provided to MAA monthly.
25. Indemnification. MAA agrees to indemnify and hold the City harmless for any loss or damage arising from the MAA's actions or inactions under this section.

**I.F. OFFICIAL REPRESENTATIVES**

26. MAA may select official representatives for purposes of meeting and conferring, and consulting with the City on matters within the scope of representation. Such representatives shall have the privileges and duties set forth in the Employee Relations Ordinance (Administrative Code - §16.219). For purposes of this section, the number of represented

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attorneys permitted paid work release under §16.219 shall be at least one person from each of the three major departments covered by this MOU (Offices of the District Attorney, Public Defender and City Attorney) and two other bargaining unit employees.

27. Official representatives shall have reasonable access to all work locations to verify that the terms and conditions of this agreement are being carried out and for the purpose of conferring with represented attorneys provided that such access shall be subject to such rules and regulations as may be agreed upon by the department and MAA.
28. In scheduling meetings, due consideration shall be given to the operating needs and work schedules of the department, division, or section in which the represented attorneys are employed and to the work schedule, including scheduled court appearances, of such represented attorneys.

**I.G. USE OF CITY EMAIL**

29. The City departments covered by this agreement agree to post through their e-mail systems Association notices of Association meetings and professional activities. The Association shall submit its proposed notice to the designated department representatives by e-mail twenty-four (24) hours in advance or by other written means forty-eight (48) hours in advance. Any such notice through the e-mail system shall be accompanied by a statement that the information conveyed thereby is being provided by the Association and that only the transmission is authorized by the department. Except as set forth above, City email shall not be used to conduct Association business.

**I.H. GRIEVANCE PROCEDURE**

30. The following procedures are adopted by the parties to provide for the orderly and efficient disposition of grievances and are the sole and exclusive internal procedures for resolving grievances as defined herein.
31. A grievance shall be defined as any dispute which involves the interpretation or application of this agreement or relating to working conditions arising out of this agreement. A grievance may be filed by a represented attorney, a group of represented attorneys, or MAA.
32. Time Limits. The time limits set forth herein may be extended by agreement of the parties. Any such extension must be confirmed in writing. For purposes of calculation of time a "day" is defined as a "calendar day," including weekends and holidays. Failure by the represented attorney or MAA to follow the time limits, unless mutually extended, shall cause the grievance to be withdrawn. Failure of the City to follow the time limits, unless mutually extended, shall serve to move the grievance to the next step. Any time limit set forth in this section that expires on a weekend or a holiday shall expire instead on the following business day.

ARTICLE I - REPRESENTATION

Steps of the Procedure

33. 1. Except as set forth below, all grievances must be initiated at Step 1 of the grievance procedure.
34. A grievance affecting more than one represented attorney shall be filed with the Appointing Officer. Grievances affecting more than one department shall be filed with the Employee Relations Division. MAA may request the Appointing Officer to file other grievances initially at Step 2 (with the Appointing Officer or his/her designee), and such requests shall not be unreasonably denied.
35. In the event the City disagrees with the level at which the grievance is filed, it may submit the matter to the step it believes is appropriate for consideration of the dispute.
36. 2. A represented attorney having a grievance may first discuss it with the represented attorney's immediate supervisor and try to work out a satisfactory solution in an informal manner with the supervisor. The represented attorney may have a representative at this discussion.
37. 3. Step 1. If a solution to the grievance, satisfactory to the represented attorney and the immediate supervisor is not accomplished by informal discussion, the grievant may pursue the grievance further.
38. The represented attorney and/or his/her representative shall submit a written statement of the grievance to the immediate supervisor within thirty (30) days of the facts or event giving rise to the grievance or the date the represented attorney or MAA should have known of the occurrence thereof except for cases alleging sexual harassment, in which case the time limit herein shall be four (4) months.
39. The immediate supervisor will make every effort to arrive at a prompt resolution by investigating the issue. He/She shall respond within seven (7) days.
40. 4. Step 2. If the grievance is not satisfactorily resolved at Step 1, the grievance shall be submitted in writing, containing a specific description of the basis for the claim and the resolution desired, and submitted to the department head or his/her designee within fourteen (14) days. The parties may meet. In any event, the department head/designee shall, within fourteen (14) days of receipt of the written grievance, respond, in writing, to the grievant and MAA, specifying his/her reason(s) for concurring with or denying the grievance.
41. 5. Step 3. If the decision of the department head/designee is unsatisfactory, the grievant and/or MAA representative may, within fourteen (14) days after

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receipt of such decision, submit the grievance to the Employee Relations Director.

42. The Director shall have fourteen (14) days after receipt of the written grievance in which to review and seek resolution of the grievance and respond in writing.
43. 6. Step 4. Should there be no satisfactory resolution at Step 3, MAA has the right to submit the grievance to final and binding arbitration, by notifying the Director of Employee Relations, in writing, within twenty (20) days of receipt of the Step 3 response.

Selection of the Arbitrator

44. When a matter is appealed to arbitration, the parties shall first attempt to mutually agree upon an Arbitrator to hear the matter. In the event no agreement is reached within ten (10) working days, or any extension of time mutually agreed upon the parties shall request that the State Mediation and Conciliation Service ("SMCS") or the American Arbitration Association ("AAA") provide the parties with a list of seven (7) potential arbitrators. The parties, by lot, shall alternately strike names from the list, and the name that remains shall be the arbitrator designated to hear the particular matter.
45. The parties may, by mutual agreement, agree to an alternate method of arbitrator selection and appointment, including, the expedited appointment of an arbitrator from a list provided by the SMCS or AAA.
46. Authority and Duty of the Arbitrator. The arbitrator shall have no authority to add to, subtract from, or modify the terms of this agreement. The decision of the arbitrator shall be final and binding on all parties.
47. Fees and Expenses of the Arbitrator. The fees and expenses of the arbitrator and court reporter, if any, shall be shared equally by the parties. Each party shall bear its own expenses in connection with the arbitration.
48. Hearing Dates and Date of Award. Hearings shall be scheduled within forty-five (45) days of selection of an arbitrator. Awards shall be due within forty-five (45) days following the receipt of closing arguments or briefs. As a condition of appointment to the Standing Arbitration Panel, arbitrators shall be advised of this requirement and shall certify their willingness to abide by these limits.
49. Any award for monetary relief as a result of an arbitrator's decision shall not extend more than forty (40) days prior to the filing of a grievance, unless conditions of equity or bad faith justify a greater entitlement.

*ARTICLE I - REPRESENTATION*

50. Individuals who may have direct knowledge of the circumstances relating to the grievance may be called to testify at the request of either party at the hearing. In the case of employees of the City, they shall be compensated at an appropriate rate of pay.

**ARTICLE II - EMPLOYMENT CONDITIONS**

**II.A. NON-DISCRIMINATION**

51. The City and MAA agree that this agreement shall be administered in a non-discriminatory manner and that no person covered by this agreement shall in any way be discriminated against because of race, color, creed, religion, sex, sexual orientation, national origin, physical or mental disability, age, political affiliation or opinion, membership or activity, or non-membership, nor shall a person be subject to sexual harassment. Neither the City nor MAA shall interfere with, intimidate, retaliate, restrain, coerce or discriminate against any represented attorney because of the exercise of his/her rights granted pursuant to this agreement, the Employee Relations Ordinance (San Francisco Administrative Code Section 16.200) and the Meyers-Milias-Brown Act. The City shall process complaints of sexual harassment pursuant to civil service rules, the administrative code and federal and state laws.

**II.B. PERSONNEL FILES**

52. A represented attorney shall have the opportunity to review, sign and date any and all material to be included in the represented attorney's personnel file except routine matters chronicling job and pay changes.
53. A represented attorney may also attach a response to such materials within thirty (30) days of receipt. Any report or other document in a represented attorney's personnel file shall be signed and dated by the author. A represented attorney shall be provided a copy of any such report or other document at the time it is placed in his/her personnel file. The City may transmit documents to the represented attorney at the represented attorney's last known address by means of U.S. Mail or hand delivery, except disciplinary notification, which must be sent by certified mail when the represented attorney is on leave.
54. With the approval of his/her Appointing Officer or designees, the represented attorney may include material relevant to his/her performance of assigned duties in the file.
55. There shall be one (1) official personnel file. Supervisors' informal notes and records relating to their supervisory responsibilities shall not be maintained any longer than necessary for supervision and evaluation purposes. After such time, such notes and records shall either (1) be made a part of the official personnel file and subject to the above procedures, or (2) destroyed, subject to applicable law.

**II.C. NO LOCKOUT-NO STRIKE**

56. During the term of this agreement, the City will not lock out represented attorneys who are covered by this MOU. Members of the bargaining unit shall not engage in any strike, work stoppage, slowdown or sympathy strike during the term of this MOU, nor shall MAA encourage or condone any such activity by members of the bargaining unit.

**ARTICLE II – EMPLOYMENT CONDITIONS**

**II.D. FINGERPRINTING**

57. The City shall bear the full cost of fingerprinting whenever such is required of the represented attorney.

**II.E. AMERICANS WITH DISABILITIES ACT**

58. The parties agree that they are required to provide reasonable accommodations for persons with disabilities in order to comply with the provisions of federal, state and local disability anti-discrimination statutes and the Fair Employment and Housing Act. The parties further agree that this agreement shall be interpreted, administered and applied so as to respect the legal rights of the parties. The City reserves the right to take any action necessary to comply therewith.

**II.F. RIGHT TO PRIVACY**

59. The unique role and obligations of attorneys covered by this agreement includes the maintenance of appropriate confidential relationships and communications. Recognizing these elements, the City shall not access the private work areas of attorneys absent (a) reasonable cause, as defined by relevant case law, suggesting misconduct or unlawful activity, or (b) a legitimate business need. No other provision of this agreement shall modify or supersede this paragraph.

**II.G. REIMBURSEMENT OF MILEAGE AND OTHER EXPENSES**

60. Represented attorneys using their own vehicles for City business shall be reimbursed for mileage as fixed by the Controller in accordance with IRS rules and for all necessary parking and toll expenses within sixty (60) days from submission of expense receipts to the Controller.
61. A represented attorney who travels on a public carrier (including without limitation MUNI or BART) on City business shall be reimbursed for such travel within sixty (60) days from submission of expense receipts to the Controller.
62. Represented attorneys required by their respective department heads to attend any meeting (related to City business) at which a meal is served shall be reimbursed for the cost of the meal within sixty (60) days from submission of expense receipts to the Controller.
63. Represented attorneys required by their respective department heads to travel overnight on City business shall be reimbursed for reasonable and actual expenses incurred within sixty (60) days upon submission of expense receipts to the Controller.
64. Advances or partial advances for travel expenses may be provided to represented attorneys with the approval of a department head and the Controller. In order to receive advance approval of travel expenses, employees must submit estimates of travel expenses in advance of such travel. Employees who submit expense estimates in advance of such travel shall receive advance notification of whether the estimated expenses are approved.

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**ARTICLE II – EMPLOYMENT CONDITIONS**

65. Professional expenses covered by Section III.U. of this MOU are not covered by this Section (II.G.).

**II.H. INDEMNIFICATION AND DEFENSE OF CITY EMPLOYEES**

66. The City shall defend and indemnify a represented attorney against any claim or action against the represented attorney on account of an act or omission in the scope of the represented attorney's employment with the City, in accord with, and subject to, the provisions of California Government Code Sections 825 *et seq.* and 995 *et seq.* The City shall also indemnify a represented attorney for any monetary sanction imposed by any state or federal court in the course of employment, except as otherwise specifically ordered by the court, or due to the attorney's negligence, malfeasance or unprofessional conduct.

**II.I. SEVERANCE PAY**

67. The City agrees that when removing or releasing a represented attorney from employment, the Appointing Officer will endeavor to inform the attorney at least thirty (30) calendar days before his/her final day of work. Where the Appointing Officer fails or declines to inform the attorney a full thirty (30) days in advance, the attorney shall receive pay in lieu of the number of days less than thirty (30) upon which he/she was informed.
68. Due to the unique job responsibilities of the attorneys and the attorneys' status in the City as exempt from civil service selection, appointment and removal procedures (as provided by the Charter), the City and MAA agree to the following: In addition to the notice or pay in lieu thereof provided above, a represented attorney in an attorney job code who is removed or released from City service by his or her Appointing Officer shall receive the following severance benefit in exchange for a release signed by the represented attorney and MAA of any and all contractual claims that the attorney or MAA may have against the City, including any officer or employee thereof:

- 1 year completed: 1 week's pay severance
- 2 years completed: 2 weeks' pay severance
- 3 years completed: 3 weeks' pay severance
- 4 years completed: 4 weeks' pay severance
- 5 years completed: 5 weeks' pay severance
- 6 years completed: 6 weeks' pay severance
- 7 years completed: 7 weeks' pay severance
- 8 years completed: 8 weeks' pay severance
- 9 years completed: 9 weeks' pay severance
- 10 years completed: 10 weeks' pay severance
- 11 years completed: 11 weeks' pay severance
- 12 years completed: 12 weeks' pay severance
- 13 years completed: 13 weeks' pay severance
- 14 years completed: 14 weeks' pay severance
- 15 years completed: 15 weeks' pay severance

**ARTICLE II – EMPLOYMENT CONDITIONS**

16 years completed: 16 weeks' pay severance  
17 years completed: 17 weeks' pay severance  
18 years completed: 18 weeks' pay severance  
19 years completed: 19 weeks' pay severance

69. For attorneys with twenty or more years of City service, the severance benefit shall increase to two weeks' pay for each year of City service over ten years.

Example of calculation:

A represented attorney has 24 years of service at the time of separation.

1 to 10 years=10 weeks

10 to 24 years= 28 weeks

Total Severance= 38 weeks

70. For the purposes of this provision, service means paid service with a break of no more than three years in employment.

Example: An attorney has 16 years of service and leaves City employment for 4 years. When she returns she begins to accrue severance at year one level.

If a represented employee is separated and receives a severance payment and subsequently returns to service, his or her service prior to the first separation shall not be used to calculate any subsequent severance payments.

71. Severance payments shall be made within thirty (30) days of the City receiving a fully executed release pursuant to this MOU.
72. Assistant Chief Attorney I [8181]; Assistant Chief Attorney II [8183]; Chief Attorney I [8193]. Represented attorneys in job codes 8181, 8183, or 8193 may be reappointed to job code 8182. If the Appointing Officer proposes to reappoint an attorney in job code 8181, 8183, or 8193 to a job code below 8182, the attorney may either accept the reappointment or treat the proposal as a release from service and receive severance pay.
73. Head Attorney [8182]. Any represented attorney in job code 8182 for two or more years in that job code who is reappointed by the Appointing Officer to a lower job code shall retain his or her 8182 salary. If the attorney does not accept the new job code, the attorney may treat the proposal as a release from service and receive severance pay.
74. If a represented attorney began employment in job code 8182 and was subsequently promoted to job code 8181, 8183 or 8193, any time served in codes 8181, 8183 or 8193 shall be included in calculating the two years required in job code 8182 as referenced in paragraph 73 above.
75. Represented attorneys in job code 8182 may be reappointed to job code 8177. In such event, salary step placement shall be to the step in class 8177 closest to but not higher than the prior salary step placement in job code 8182. If the Appointing Officer reappoints an attorney currently in job code 8182 who has less than two years in that job code to the job code 8177,

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the attorney may either accept the reappointment or treat the proposal as a release from service and receive severance pay.

76. The City is not required to pay severance if it terminates the represented attorney under the following procedure:
77. The represented attorney may be removed or discharged at a hearing by the appointing officer for gross misconduct on a finding of just cause on that allegation after being provided with written notice of the charges, copies of all documentation upon which the charges are based and after an opportunity to respond to the charges before the appointing officer or his or her designee.
78. Pending investigation of gross misconduct, the appointing officer may place the accused person on paid administrative leave. If, after 60 days of paid administrative leave, the investigation is found to have been delayed by an act of the accused (as determined by the arbitrator), the accused may be placed on unpaid administrative leave until the conclusion of the hearing before the appointing officer otherwise the accused shall be continued on paid administrative leave until the conclusion of the hearing.
79. When the appointing officer imposes discharge or removal he or she shall, in writing, notify the person removed or discharged of the right to appeal the discharge or removal by mailing such statement to his or her last known address.
80. The employee shall have thirty days from the date of the mailing of the notice to file an appeal of the matter in writing with the appointing officer. Upon receipt of a timely appeal, the appeal shall be referred to a standing panel of arbitrators who will agree to hear and resolve such disputes within 60 days after submitting the matter to arbitration. If the parties cannot agree upon a standing panel, either side may request a list of 31 qualified arbitrators who are members of the National Academy of Arbitrators and who agree to the 60 day time limitation from the California State Mediation and Conciliation Service. If the parties are unable to agree mutually on the panel members, the parties shall alternately strike names until seven panel members remain on the list. The parties shall establish the order of first strike by lot.
81. If the employee is exonerated, the hearing officer shall order payment of salary to the employee for the period of discharge, removal or unpaid administrative leave, reinstate the employee's rights under the severance provisions of the MOU, and the report of such period of discharge, removal or unpaid administrative leave shall thereupon be expunged from the record of service of such employee.

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**III.A. WAGES**

82. 2.5% effective December 30, 2006
83. 2.0% effective April 5, 2008
84. 3.75% effective April 4, 2009
85. Effective July 1, 2006, represented employees shall receive a base wage increase of seven percent (7%) in exchange for their agreement to pay the seven and a half percent (7.5%) of the required employee retirement contribution amount to SFERS.
86. 8177 and 8182. Due to the high level of responsibility required of senior attorneys at the Trial Attorney (8177) and Head Attorney (8182) levels, attorneys who have five consecutive years of service at the sixteenth step of the 8177 job code or five consecutive years of service at the fifth step of the 8182 job code shall receive a two percent (2%) wage increase. For the purposes of this section only, a represented attorney will be deemed to have five consecutive years of service at the sixteenth step of the 8177 or the 8182 job code even if the represented attorney's service at the sixteenth or fifth step of such job code has been broken by a period of less than one year due to the represented attorney's service in another attorney job code in the City.
87. (1) Time served in another attorney job code resulting from the attorney's promotion shall not be counted towards the five years of service required at either step sixteen or step five in either the 8177 or 8182 job code.
88. (2) Time served in another attorney job code resulting from the attorney's demotion shall be counted towards the five years service required at step five in either the 8177 or 8182 job code; however, the wage increase referenced in this section shall not take effect unless and until the attorney is returned within the one year period to his or her former 8177 or 8182 job code at step sixteen (8177) or step 5 (8182).
89. All compensation adjustments in this MOU shall be rounded to the nearest salary grade and shall commence at the start of the payroll period closest to the specified date. Represented attorney base wage rates are attached hereto.
90. For Fiscal Year 2008-2009, "new plan" employees (i.e., employees who became members in SFERS on or after November 2, 1976) shall be required to contribute the value of five (5) unpaid furlough days, the implementation of which will occur through uniform payroll smoothing over the fiscal year. For purposes of Charter Section A8.409-8, the provisions of this paragraph shall expire at the close of business on June 29, 2009.
91. Effective June 30, 2009, through the end of Fiscal Year 2009-2010, "new plan" employees (i.e., employees who became members in SFERS on or after November 2, 1976) shall be required to contribute the value of five (5) unpaid furlough days each fiscal year, the

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implementation of which will occur through uniform payroll smoothing over the fiscal year. The furlough program described herein shall sunset at close-of-business June 30, 2010.

92. The furlough program described in paragraph 91, above, shall be suspended with respect to covered employees who are affected in the event that the City takes action either on a City-wide basis or within an individual department or departments that causes a decrease in pay equaling or exceeding the contributed value of the furlough concession (five (5) furlough days) during FY 2009-10. Likewise, should the City take action either on a City-wide basis or within an individual department or departments that causes a decrease in pay of less than the contributed value of the furlough concession, the contribution required under the furlough program shall be reduced proportionately from the date of the action until such time as no further reduction in the furlough program is necessary as a result of the City's action, but no later than the expiration of the furlough program. The City agrees to meet and consult with MAA in the event that City-wide or department-wide action occurs. By agreeing to this provision, the Association is not waiving any rights it may have regarding such action.

**III.B. SALARY STEP PLAN AND SALARY ADJUSTMENTS**

93. Appointments to positions in the City and County service shall be at the entrance rate established for the position except as otherwise provided herein.

Promotive Appointment in a Higher Class

94. A represented attorney following completion of six (6) months of continuous service, and who is appointed a position in a higher job code, deemed to be promotive shall have his/her salary adjusted to that step in the promotive job code as follows:

95. 1. If the represented attorney is receiving a salary in his/her present job code equal to or above the entrance step of the promotive job code, the represented attorney's salary in the promotive job code shall be adjusted two steps in the compensation schedule over the salary received in the lower job code but not above the maximum of the salary range of the promotive job code.

96. 2. If the represented attorney is receiving a salary in his/her present job code which is less than the entrance step of the salary range of the promotive job code, the represented attorney shall receive a salary step in the promotive job code which is closest to an adjustment of 7.5 % above the salary received in the job code from which promoted. The proper step shall be determined in the biweekly compensation schedule and shall not be above the maximum of the salary range of the promotive job code.

97. For the purpose of this section, appointment of a represented attorney as defined herein to a position in any job code the salary grade for which is higher than the salary grade of the represented attorney's permanent job code shall be deemed promotive.

Non-Promotive Appointment

98. When a represented attorney accepts a non-promotive appointment in a job code having the same salary grade, or a lower salary grade, the represented attorney shall enter the new

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position at that salary step which is the same as that received in the prior appointment, or if the salary steps do not match, then the salary step which is immediately in excess of that received in the prior appointment, provided that such salary shall not exceed the maximum of the salary grade.

**Appointment Above Entrance Rate**

99. Appointments may be made by an Appointing Officer at any step in the compensation schedule under the following conditions:
100. 1. A former City employee, following resignation with service satisfactory, is being reappointed to a permanent position in his/her former job code.
101. 2. Loss of compensation would result if appointee accepts position at the normal step.
102. 3. A severe, easily demonstrated and documented recruiting and retention problem exists, such that all City appointments in the particular job code should be above the normal step.

**III.C. SENIORITY INCREMENTS**

103. Entry at the First Step. Represented attorneys shall advance to the second step of a five-step advancement within job code no later than upon completion of one thousand forty (1,040) hours awarded to each successive step no later than upon completion of the one (1) year required service within the job code. Further increments shall accrue no later than following completion of the required service at this step and at each successive step.
104. Entry at Other than the First Step. Represented attorneys who enter a job code at a rate of pay at other than the first step shall advance one step no later than upon completion of two thousand eighty hours (2,080) paid service. Further increments shall accrue no later than following completion of the required service at this step and at each successive step.
105. Date Increment Due. Increments shall accrue and become due and payable on the next day following completion of required service as specified above.
106. Reduction of Salary Steps Within a Job Code. A represented attorney's placement on a salary grade within a job code may not be reduced.

**III.D. DEEP CLASS – TRIAL ATTORNEY**

107. Upon adoption of new job code 8177, Trial Attorney, existing job codes 8174 through 8180 will be consolidated into one single deep class consisting of sixteen (16) salary steps. The Trial Attorney deep class shall be fully implemented on July 1, 2004.
108. Any salary advancement shall only occur upon completion of 2,080 hours of paid service.
109. Beginning January 1, 2005. Represented attorneys in deep class Trial Attorney shall advance one salary step on their anniversary date, and cannot advance higher than step 16.

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110. Step increments shall accrue and become due and payable at the beginning of the pay period following completion of required paid service in the job code.
111. The implementation of this provision is subject to the approval of the Civil Service Commission, and all necessary Departments. The reclassification of employees into the Deep Class is a Civil Service Commission “carve-out” and may not be grieved or submitted to arbitration.

**III.E. WORK SCHEDULES**

112. Benefit Accrual. For purposes of accrual of benefits, a regular biweekly pay period consists of eighty (80) hours.
113. Alternative Work Schedule. By mutual agreement, the City and MAA may enter into cost-equivalent alternate work schedules for some or all represented attorneys. Such alternate work schedules may include, but are not limited to, core hours, flex-time, full-time workweek of less than five (5) days, or a combination of features mutually agreeable to the parties. Such changes in work schedule shall not alter the basis for, nor entitlement to, receiving the same rights and privileges as those provided to represented attorneys on a five (5) day, forty (40) hour week schedule.
114. Voluntary Reduced Workweek. Subject to the approval of the Appointing Officer, represented attorneys may voluntarily elect to work a reduced workweek for a specified period of time. Such reduced workweek shall not be less than twenty (20) hours per week. Pay, vacation, holidays and sick pay shall be reduced in accordance with such reduced workweek. Subject to the approval of the Appointing Officer, represented attorneys working a reduced workweek may also elect to job share. Appointing Officers may grant (at their discretion) requests for reduced workweeks due to parenting or other childcare reasons. At the request of MAA, an Appointing Officer shall meet to discuss the role of reduced work schedules in his or her department.
115. Mandatory Time Off. There shall be no mandatory unpaid administrative leave (furlough) of any duration for represented attorneys.

**III.F. HOLIDAYS**

116. The following days listed herein are declared to be holidays for bargaining unit members:

New Year’s Day (January 1st)  
Martin Luther King, Jr.’s Birthday (3rd Monday in January)  
President’s Day (3rd Monday in February)  
Memorial Day (last Monday in May)  
Independence Day (July 4th)  
Labor Day (1st Monday in September)  
Columbus Day (2nd Monday in October)  
Veteran’s Day (November 11th)  
Thanksgiving Day  
Day after Thanksgiving

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Christmas Day (December 25th)

117. Provided further, if January 1, July 4, November 11 or December 25 fall on a Sunday, the Monday following is a holiday.
118. The City shall accommodate religious belief or observance by allowing use of either a floating holiday, in-lieu holiday, vacation or personal leave.
119. Five (5) additional floating days off to be taken on days selected by the represented attorney subject to prior scheduling approval of the Appointing Officer. Represented attorneys (both full-time and part-time) must complete six (6) months continuous service to establish initial eligibility for the floating days off. Represented attorneys hired on an as-needed part-time of less than twenty (20) hours, intermittent or seasonal basis shall not receive the additional floating days off. Floating days off may not be carried forward from one fiscal year to the next. No compensation of any kind shall be earned or granted for floating days off not taken.
120. For Fiscal Year 2008-2009, “new plan” employees (i.e., employees who became members in SFERS on or after November 2, 1976) shall receive an additional five (5) floating holidays for a total of ten (10) floating holidays for that fiscal year. Notwithstanding the paragraph above, for Fiscal Years 2008-2009 and 2009-2010, any unused floating holidays for “new plan” employees may be carried over to the next succeeding year, but at no time shall an employee accumulate more than twenty (20) floating holidays (including floating holidays awarded in a particular year) during this period.
121. For Fiscal Year 2009-2010, “new plan” employees (i.e., employees who became members in SFERS on or after November 2, 1976) shall receive an additional five (5) floating holidays for a total of ten (10) floating holidays for that fiscal year. Notwithstanding paragraph 119, above, for Fiscal Years 2008-2009 through 2010-2011, any unused floating holidays for “new plan” employees may be carried over to the next succeeding year, but at no time shall an employee accumulate more than twenty (20) floating holidays (including floating holidays awarded in a particular year) during this period.
122. Represented attorneys who have established initial eligibility for floating days off and subsequently separate from City employment may, at the sole discretion of the appointing authority, be granted those floating day(s) off to which the separating represented attorney was eligible and had not yet taken off
123. Represented attorneys who have established initial eligibility for floating days off and subsequently separate from City employment may, at the sole discretion of the appointing authority, be granted those floating day(s) off to which the separating represented attorney was eligible and had not yet taken off.
124. In addition, any day declared to be a holiday by proclamation of the Mayor after such day has heretofore been declared a holiday by the Governor of the State of California or the President of the United States shall be a holiday.

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125. For those represented attorneys assigned to a workweek of Monday through Friday, and in the event a legal holiday falls on a Saturday, the preceding Friday shall be observed as a holiday; provided, however, that except where the Governor declares that such preceding Friday shall be a legal holiday, each department head shall make provision for the staffing of public offices under his/her jurisdiction on the preceding Friday so that said public offices may serve the public as provided in Section 16.4 of the Administrative Code. Those represented attorneys who work on a Friday which is observed as a holiday in lieu of a holiday falling on Saturday shall be allowed a day off in lieu thereof as scheduled by mutual agreement with the Appointing Officer in the current fiscal year. The City shall provide one week's advance notice to represented attorneys scheduled to work on the observed holiday, except in cases of unforeseen operational needs.

Part-time Represented Attorneys Eligible for Holidays

126. Part-time represented attorneys who regularly work a minimum of twenty (20) hours in a biweekly pay period shall be entitled to holiday pay on a proportionate basis.
127. Regular full-time represented attorneys are entitled to eight-eighths (8/8) or one-tenth (1/10) time off when a holiday falls in a biweekly pay period. Therefore, part-time represented attorneys, as defined in the immediately preceding paragraph, shall receive a holiday based upon the ration of one-tenth (1/10) of the total hours regular worked in a biweekly pay period. Holiday time off shall be determined by calculating one-tenth (1/10) of the hours worked by the part-time represented attorney in the biweekly pay period immediately preceding the pay period in which the holiday falls. The computation of holiday time off shall be rounded to the nearest hour.
128. The proportionate amount of holiday time shall be taken in the same fiscal year in which the holiday falls. Holiday time off shall be taken at a time mutually agreeable to the represented attorney and the appropriate employer representative.

Holidays for Represented Attorneys on Work Schedules Other Than Monday Through Friday

129. Represented attorneys assigned to seven (7) day operation departments or represented attorneys working a five (5) day workweek other than Monday through Friday shall be allowed another day off if a holiday falls on one of their regular scheduled days off.
130. Represented attorneys required to work on a holiday which falls on a Saturday or Sunday shall receive holiday compensation for work that day. Holiday compensation shall not then be additionally paid for work on the Friday preceding a Saturday holiday, nor on the Monday following a Sunday holiday. This section shall apply to eligible part-time represented attorneys on a pro-rata basis.
131. If the provisions of this section deprive a represented attorney of the same number of holidays that a represented attorney receives who works Monday through Friday, he/she shall be granted additional days off to equal such number of holidays. The designation of such days off shall be by mutual agreement of the represented attorney and the appropriate employer representative. Such days off must be taken within the fiscal year. In no event

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shall the provisions of this section result in such represented attorney receiving more or less holidays than a represented attorney on a Monday through Friday work schedule.

In-Lieu Holidays

132. Requests for in-lieu holidays shall be made to the appropriate management representative within thirty (30) days after the holiday is earned and must be taken within the fiscal year.
133. In-lieu days will be assigned by the Appointing Officer or designee if not scheduled in accordance with the procedures described herein.
134. An in-lieu holiday can be carried over into the next fiscal year only with the written approval of the Appointing Officer.

**III.G. SICK LEAVE**

135. Sick leave shall be administered in accordance with Civil Service Commission Rule 120, except as amended in this agreement. The definitional portions of CSC Rule 120 within the exclusive jurisdiction of the Civil Service Commission are not subject to grievance or arbitration under this MOU.
136. Verification of sick leave may be required on an individual basis only upon evaluation of the individual attendance record of the represented attorney. No verification shall be required unless the Appointing Officer has previously notified the represented attorney that verification would be required.
137. During the first six months of employment, all new full-time represented attorneys shall be advanced forty (40) hours of paid sick leave. Any paid sick leave used by such a represented attorney during that period shall be deducted from sick leave accrued by that represented attorney. If the represented attorney's employment with the City is terminated during his or her first six months of employment prior to the represented attorney's accrual of sick leave sufficient to replace the sick leave used by that represented attorney from his or her bank, the difference in sick leave hours used but not yet accrued shall be deducted from the represented attorney's final compensation check.
138. Payment of Vested Sick Leave Accrual. For a represented attorney who is otherwise entitled to vested sick leave, payment of such a represented attorney's vested but unused sick leave shall be provided to the represented attorney at the same time as the represented attorney's final pay check. This section shall not create a right to accrue or receive vested sick leave where a represented attorney is not otherwise entitled to payment of vested sick leave under applicable rules and laws.

**III.H. AUTHORIZATION OF TRANSFER OF SICK LEAVE AND/OR VACATION CREDITS**

139. Represented attorneys of the City and County of San Francisco may individually transfer their vested vacation allowance credits and sick leave credits to other represented attorneys of the City and County of San Francisco who have been determined to be catastrophically ill

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by their Department Head, in accord with the definition of catastrophic illness to be provided by the Health Commission, and who have exhausted their vacation allowance, sick leave and compensatory time off, provided that such transfer may be made only in compliance with the terms and conditions adopted by ordinance of the Board of Supervisors.

**III.I. ADMINISTRATIVE LEAVE**

140. Attorneys are generally required to work in excess of eighty (80) hours per pay period because of the nature of attorneys' work, including litigation deadlines, client needs and ethical and professional obligations. In light of this work requirement, each full-time bargaining unit member shall receive five (5) days administrative leave on an annual basis. The Appointing Officer may deny such leave in cases of a represented attorney who is not generally working in excess of eighty (80) hours during a pay period. Except where administrative leave has been denied, up to five (5) days of administrative leave may be carried over to the succeeding year by a represented attorney.

**III.J. FORMS OF LEAVE OTHER THAN SICK LEAVE**

141. Leaves of absence other than for sick leave will be administered in accordance with Civil Service Rule 120. The definitional portions of CSC Rule 120 within the exclusive jurisdiction of the Civil Service Commission are not subject to grievance or arbitration under this MOU.
142. In recognition of the stressful nature of the work of the members of this unit, a sabbatical program shall be established for the purpose of maintaining the physical and mental health of those individuals who have done this work for a substantial period of time. Bargaining unit employees may request unpaid sabbatical leave after seven years of employment and every three years thereafter. Approval of a request for sabbatical leave shall be in the discretion of the Appointing Officer. Such leave shall be designated as personal leave.

**III.K. VACATION**

143. Definitions. "Continuous service" for vacation purposes means paid service pursuant to a regular work schedule which is not interrupted by a breach in paid service.
144. Award and Accrual of Vacation. A represented attorney does not accrue vacation allowance in the first year of continuous service, however, at the end of one (1) year of continuous service, a represented attorney shall be awarded a vacation allowance computed at the rate of .0385 of an hour for each hour of paid service in the preceding year.
145. A represented attorney accrues a vacation allowance during the second through fifth year of continuous service at the rate of .0385 of an hour for each hour of paid service, however, at the end of five (5) years of continuous service, a represented attorney shall be awarded a one-time vacation allowance computed at the rate of .01924 of an hour for each hour of paid service in the preceding year.
146. A represented attorney accrues a vacation allowance during the sixth through fifteenth years of continuous service at the rate of .05774 of an hour for each hour of paid service, however,

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at the end of fifteen (15) years of continuous service, a represented attorney shall be awarded a one-time vacation allowance computed at the rate of .01924 of an hour for each hour of paid service in the preceding year.

147. A represented attorney with fifteen years or more of continuous service accrues a vacation allowance at the rate of .07698 of an hour for each hour of paid service.
148. The maximum number of vacation hours a represented attorney may accrue is as follows:

<u>Years of Continuous Service</u>	<u>Maximum Accrual</u>
1 through 5 years	320 hours
more than 5 through 15 years	360 hours
more than 15 years	400 hours

149. Holidays During Vacation. If a holiday occurs during a represented attorney's vacation and the represented attorney would have been entitled to said day as a regular day off, such holiday shall not be considered a day of vacation chargeable to the represented attorney's vacation allowance.
150. Payment of Vacation Accrual. Payment of a represented attorney's accrued but unused vacation hours to a represented attorney separating from City service shall be provided to the represented attorney at the same time as the represented attorney's final pay check.

**III.L. HEALTH CARE BENEFITS**

151. The level of the City's contribution to health benefits will be set annually in accordance with the requirements of Charter Sections A8.423 and A8.428.
152. Dental. The City shall continue to provide the current level of dental coverage for each member and family dependents through the term of this agreement.
153. The City will cease payment of any and all contributions for represented attorneys health and dental benefits for those represented attorneys who remain on unpaid status in excess of twelve (12) continuous weeks, with the exception of approved sick leave (paid or unpaid), workers' compensation, family care leave, Family Medical Leave Act leave, and/or California Family Rights Act leave.

**III.M. FLEXIBLE BENEFIT ALLOWANCE**

154. The City shall contribute, at the represented attorney's option, either \$225 per month to each covered represented attorney participating in the City's 125 Cafeteria Plan or \$210 per month to each covered represented attorney as a direct payment for individual benefit options.
155. The parties will meet no later than ninety (90) days after the effective date of this agreement to discuss additional qualifying selection options. The parties' intent is that the Cafeteria Plan should include as many qualifying options as possible without additional cost to the City.

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**III.N. RETIREMENT BOARD**

156. 1. The Retirement Board shall process and pay retirement claims, except in cases beyond the Board's control, in the following manner:
157. 2. Initial Month Retirement. Initial payment shall begin allowance within sixty (60) days after the first of the month following the date of requirement provided that the appropriate forms of the Retirement System have been submitted.
158. 3. Withdrawal of Contributions. A refund of contributions will be paid within six (6) weeks following submission of the appropriate forms of the Retirement System.
159. 4. Death Benefit. A death benefit will be paid within thirty (30) days from the filing of the appropriate forms of the Retirement System.

**III.O. RETIREMENT PICK-UP**

160. Effective July 1, 2006, represented employees agree to pay their own retirement contribution in an amount equal to seven and one-half percent (7.5%) of covered gross salary. For employees who became members of SFERS prior to November 2, 1976 (Charter Section A8.509 Miscellaneous Plan), the City shall pick up the remaining one-half percent (0.5%) of the total eight percent (8%) employee retirement contribution to SFERS.
161. A represented attorney's wage rate shall not be reduced by the aforesaid contributions when computing vacation, holiday, retirement and any other benefit which is a function, or percentage, of salary.
162. Any City pick-up of an employee's retirement contribution shall not be considered as part of a represented attorney's compensation for the purpose of computing straight time earnings, compensation for overtime worked, premium pay, or retirement benefits, nor shall such contributions be taken into account in determining the level of any other benefit which is a function of or percentage of salary.

**III.P. RETIREMENT RE-OPENER**

163. The City or the MAA may cause a reopener on contract negotiations regarding retirement benefits as concerned with the issues of AB 2023 (2002).
164. In the event one party requests a reopener on retirement benefits, the other party may cause a reopener on other economic items, and issues reasonably related to implementing retirement benefits under AB 2023.
165. The reopener discussions shall be subject to meet and confer requirements under the Meyers-Milias-Brown Act (MMBA), California Government Code section 3500, et seq., and shall not be subject to impasse resolution procedures under Charter section A8.409, et seq.

**III.Q. STATE DISABILITY INSURANCE (SDI)**

166. Upon certification by MAA to the Employee Relations Division that one or more representation units covered by this agreement desires to be enrolled in the State Disability

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Insurance Program, the Human Resources Director shall take any and all necessary action to enroll such representation units and all represented attorneys therein. Job codes accreted to existing bargaining units represented by MAA will not be enrolled in SDI unless MAA notifies ERD in writing. The cost of SDI will be paid by the represented attorney through payroll deduction at a rate established by the State of California Employment Development Department.

167. At the represented attorney's option, the represented attorney's accrued vacation and holiday will be integrated with SDI payments in the same manner as sick leave.

**III.R. LONG TERM DISABILITY INSURANCE**

168. The City, at its own cost, shall provide to represented attorneys a Long Term Disability (LTD) benefit that provides, after a ninety (90) day elimination period, sixty-six and two thirds percent salary (66 2/3%) (subject to integration) up to age sixty-five (65). The parties acknowledge that the City's ordinances – which establish and administer the City's Catastrophic Illness Program ("CIP") – specify and control the criteria under which persons can participate in the CIP.

**III.S. LIFE INSURANCE**

169. The City shall either provide life insurance in the amount of \$150,000 to each member or shall make purchase of such life insurance available to each member through the City's 125 Cafeteria Plan.

**III.T. DEPENDENT CARE FLEXIBLE SPENDING PROGRAM (DCAP)**

170. The City shall provide a DCAP program to MAA members. MAA and the City shall negotiate any beneficial changes to the program or any changes that may be necessary due to tax rule changes.

**III.U. PROFESSIONAL SERVICES REIMBURSEMENT**

171. In light of the unique nature of work performed by the professionals represented by the MAA, each attorney in paid status shall receive quarterly payments as allowance for professional services expenses, in the amount of \$312.50 per quarter, less all applicable federal, state and local withholding. These payments will be made at the end of each quarter.
172. In order to be eligible for the full amount, the represented attorney must be on the payroll during the quarter in which the payment is made.
173. This allowance is intended to cover all professional, job-related, expenditures, including but not limited to:
- a. State bar dues, including any professional section thereof;
  - b. Professional coursework where MCLE credits are obtained;

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- c. Professional codes, legal compilations and treatises;
  - d. Cellular phone use, but only for actual usage in the course of work;
  - e. Calendars and other professional items used in the course of work.
174. This provision satisfies all obligations relating to represented attorneys' professional business expenses, including without limitation, State Bar Dues, course tuition, etc. Departments may reimburse attorneys for additional professional expenses at the sole discretion of the appointing authority.
175. The City may require attorneys to show proof of State Bar licensing and MCLE requirements.
176. Attorneys who work a part time schedule shall only be entitled to funds on a pro-rated basis. For example, a represented attorney working a half time schedule shall only be entitled to \$156.25 per quarter under this provision
177. This allowance is considered covered gross pay and accordingly is an element of "compensation" counted toward an attorney's retirement under SFERS.

**III.V. PILOT WELLNESS PROGRAM**

178. The Pilot "Wellness Incentive Program" ("WIP") to promote workforce attendance shall continue for the duration of this agreement.
179. WIP shall apply to full time employees separating with service or disability retirement. The benefit is triggered upon and after separation.
180. Each represented attorney shall receive an amount of payment equal to 2.5% of accrued sick leave credits at time of separation times the number of whole years of continuous employment times an employee's salary rate, exclusive of premiums or supplements.
181. Vested sick leave credits under Civil Service Rules shall not be included in the computation.
182. Number of hours subject to cash out is 1040 hours maximum, including vested sick leave.

Example of calculation:

Employee A retires with 20 years of service.

Employee A has sick leave balance of 500 hours.

Employee A has a base salary rate of \$25.00 per hour at the time of separation.

Benefit = 2.5% x 20 = 50% x 500 = 250 hours.

250 hours x \$25.00 (base salary at time of separation) = \$6,250.00.

183. The Pilot Wellness Program will sunset on June 30, 2010.

**III.W. RETIREMENT RESTORATION PAYMENT**

184. For employees who retire during fiscal year 2009-10 and for whom their final compensation for retirement purposes is impacted by the contribution of the value of the unpaid furlough

2006 - 2010 MEMORANDUM OF UNDERSTANDING BETWEEN

CITY AND COUNTY OF SAN FRANCISCO  
AND MUNICIPAL ATTORNEYS ASSOCIATION

**ARTICLE III – PAY, HOURS AND BENEFITS**

days, the City will provide restoration pay in a lump sum equaling the pensionable value of the contribution for the period used by the San Francisco Employees' Retirement System to determine the employee's final compensation for retirement purposes.



**ARTICLE IV - WORKING CONDITIONS**

**IV.A. HEALTH AND SAFETY**

185. The City shall provide, at its cost, Hepatitis B vaccine immunization and tuberculosis screening for represented attorneys whose health plans do not provide the benefit.

**IV.B. RETURN TO WORK**

186. The City will make a good faith effort to return represented attorneys who have sustained an injury or illness to temporary modified duty within the represented attorney's medical restrictions. Duties of the modified assignment may differ from the represented attorney's regular job duties and/or job duties regularly assigned to represented attorneys in the injured represented attorney's job code. Decisions regarding temporary modified duty shall be subject to approval of the Appointing Officer or designee. The decision to provide modified duty and/or the impact of such decisions shall not be subject to grievance or arbitration. Modified duty assignments may not exceed three (3) months. A represented attorney assigned to modified duty assignment shall receive his or her regular rate of pay. The parties acknowledge that Section II.E. shall govern requests under this MOU for reasonable accommodation under the Americans with Disabilities Act.

**IV.C. WORKER'S COMPENSATION**

187. A represented attorney who is absent because of disability and who is receiving Temporary Disability, Vocational Rehabilitation Maintenance Allowance, or State Disability Insurance, may request that the amount of disability indemnity payment be supplemented with salary to be charged against the represented attorney's accumulated unused sick leave with pay credit balance at the time of disability, administrative time off, or vacation, so as to equal the normal salary the represented attorney would have earned for the regular work schedule. Such use of administrative time requires the represented attorney's Appointing Officer's approval.
188. A represented attorney who wishes to supplement with administrative time, vacation or sick pay credits must submit a written request to the Appointing Officer or designee within fourteen (14) calendar days following the election of disability.
189. Represented attorney supplementation of workers compensation payment to equal the full salary the represented attorney would have earned for the regular work schedule in effect at the commencement of the worker's compensation leave shall be drawn only from the represented attorney's paid leave credits including vacation, sick leave balance, or other paid leave as available. A represented attorney returning from disability leave will accrue sick leave at the regular rate and not an accelerated rate.
190. Salary may be paid on regular time-rolls and charged against the represented attorney's sick leave with pay during any period prior to the determination of eligibility for disability indemnity payment without requiring a signed option by the represented attorney.

**ARTICLE IV – WORKING CONDITIONS**

191. Sick leave with pay, vacation, or administrative time credits shall be used to supplement disability indemnity pay at the minimum rate of one (1) hour units.
192. The parties agree, therefore, that this provision clarifies and supersedes conflicting provisions of the Civil Service Commission Rules which are bargainable and arbitrable pursuant to Charter §A8.409 et seq.

2006 - 2010 MEMORANDUM OF UNDERSTANDING BETWEEN

CITY AND COUNTY OF SAN FRANCISCO  
AND MUNICIPAL ATTORNEYS ASSOCIATION

ARTICLE V - SCOPE

V.A. MEET AND CONFER RESPONSIBILITY DURING THE TERM OF THE MOU;  
FINALITY OF AGREEMENT

193. A. Except in cases of emergency as defined by Meyers-Milias-Brown Act or as otherwise provided in this MOU, the City shall give reasonable written notice to MAA of proposed changes directly relating to matters within the scope of representation as specified in Government Code Section 3504.5. MAA shall be provided with the opportunity to meet and confer with regard to any such proposed change should it desire to do so.
194. In cases of emergency as defined by MMBA, when the City determines that a proposed change as described herein must be adopted immediately without prior notice or meeting with MAA, the City shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such change.
195. Said notice shall state the proposed change, the date, if known, of the intended implementation of such proposed change, an explanation of the reason(s) for said change, as well as the anticipated effect on represented attorneys that would result.
196. B. If MAA does not respond within ten (10) working days from the date of receipt if hand-delivered or faxed, or in the event of mailing within fifteen (15) working days from the date of the mailing or written notification of a proposed change as described in paragraph A hereof, MAA shall be deemed to have waived its opportunity to meet and confer on the proposed change(s).
197. C. If MAA timely requests the opportunity to meet and confer as provided herein, the City agrees to meet and confer with MAA over such proposed change(s) within ten (10) days of receipt of such time request, unless a longer period of time is mutually agreed upon, in order to freely exchange information, opinions and proposals and to endeavor to reach agreement on the proposed change(s).
198. D. This memorandum sets forth the full and entire understanding of the parties regarding the matters set forth herein. This memorandum may be modified, but only in writing, upon the mutual consent of the parties and ratification by the Board of Supervisors.
199. E. In the event the parties do not reach agreement upon any proposed change(s) as directed in paragraph A of this provision, MAA may grieve to the extent allowed by the Charter and/or the grievance procedure. The parties may agree to expedited arbitration. Disputes about whether a change made by the City violates the contract are grievable.
200. F. The Employee Relations Ordinance, Section 16.200 of the Administrative Code, shall not apply to the application of this Section.

**ARTICLE V – SCOPE**

201. G. Failure by either party to engage in meeting and conferring in accordance with this provision will result in forfeiture of such party's rights under this section.
202. H. At least six months prior to the expiration of this MOU, the parties agree to meet and accomplish the following:
- (1) Establish ground rules for negotiations; and
  - (2) Establish a reasonable schedule to permit good faith bargaining in advance of the Charter deadlines.

**V.B. SAVINGS CLAUSE**

203. Should any part hereof or any provisions herein be declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this agreement shall not invalidate the remaining portions hereof and the remaining portions hereof shall remain in full force and effect for the duration of the agreement.

**V.C. DURATION OF AGREEMENT**

204. This Agreement shall be in effect from July 1, 2006 and shall remain in full force and effect through June 30, 2010.

2006 - 2010 MEMORANDUM OF UNDERSTANDING BETWEEN

CITY AND COUNTY OF SAN FRANCISCO  
AND MUNICIPAL ATTORNEYS ASSOCIATION



1 Law Construed:  
 2 Ordinance Sections: 37.2(a)&(r); 37.7(g)(6); 37.8(b)(1); 37.8(e)(4)(A); 37.8(e)(7); 37.8(f)(1)  
 3 Rules and Regulations Sections: 5.13(a); 6.10(a), (b), (c), (d)&(e); 6.12(a)  
 4 Index Codes: B8; B35

5 **RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**  
 6 **CITY AND COUNTY OF SAN FRANCISCO**

7 IN RE: 839 LEAVENWORTH STREET

CASE NO. L081371  
 APPEAL NOS. AT090132, AT090133,  
 AT090134, AT090135, AT090136, AT090137,  
 AT090138, AT090139, AT090140, AT090141,  
 AT090142 and AT090143

10 ABRAHAM & ODETTE PANOSSIAN,

HEARING: SEPTEMBER 1, 2009  
 RECORD CLOSED: SEPTEMBER 25, 2009

11 LANDLORD PETITIONERS/APPELLEES,

12 and

**DECISION ON REMAND PURSUANT TO  
 APPEAL**

13 JACINTA HIPPOLYTE (#106), et al., (See  
 Attached Proof of Service List),

14 TENANT RESPONDENTS/APPELLANTS.

15 **INTRODUCTION**

16 This case involves a landlord petition filed on August 26, 2008 seeking rent increases  
 17 based on increased operating and maintenance expenses for thirty-three of fifty residential units  
 18 in the building. At the March 3, 2009 hearing, the landlords withdrew units 302, 305, 310 and 406  
 19 from the petition, which left twenty-nine units subject to the petition.

20 The original decision in Case No. L081371, issued on May 14, 2009, granted the petition  
 21 and determined the tenants' base rents for twenty-nine units may be increased for increased  
 22 operating and maintenance expenses as set forth in the decision.

23 On May 28, 2009, twelve tenant petitioners filed a timely joint appeal as following  
 24 Appeals: Jacinta Hippolyte, unit 106, Appeal No. AT090132, Lou Rita Butler, unit 108, Appeal  
 25 No. AT090133, Ali Alburati, unit 109, Appeal No. AT090134, Abdullah Alburati, unit 204, Appeal  
 26 No. AT090135, Bionka Stevens, unit 301, Appeal No. AT090136, Ray Hartz, unit 304, Appeal  
 27 No. AT090137, Hashimyah Wallace, unit 307, Appeal No. AT090138, Jennifer Laughton, unit  
 28

1 308, Appeal No. AT090139, Rebecca Partridge, unit 402, Appeal No. AT090140, Paul Aker, unit  
2 407, Appeal No. AT090141, Yvonne Cheung, unit 508, Appeal No. AT090142 and Eugene  
3 Peterson, unit 510, Appeal No. AT090143. In their joint appeal, Appellants claimed, among other  
4 things, that the Administrative Law Judge granted the increase in reliance on an incomplete  
5 petition, which did not list the costs in the categories for repairs, pest control, other maintenance  
6 and elevator service, did not inquire about the interest rate of the landlords' mortgage nor  
7 determine if the mortgage was reasonable and dismissed a notice of violation, which was part of  
8 the tenants' claim that the landlords failed to perform ordinary repair and maintenance required  
9 by law as requested by the tenants.

10 On July 7, 2009, the Rent Board Commissioners voted: "To accept the joint appeal filed  
11 by the tenants in twelve units and remand the case for a supplemental hearing on the following  
12 issues: to consider the categories of elevator service and pest control that were not included in  
13 the original petition; to examine the terms of the interest-only loan; and to consider whether the  
14 landlord has met their burden of proof in not providing the aggregate of all expenses associated  
15 with the building. The appeal is denied as to the Notice of Violation issue. The hardship appeals  
16 will be held pending the outcome of the remand on the substantive issues."

17 A remand hearing was held on September 1, 2009. The following persons appeared at  
18 the hearing: Kim Boyd Birmingham, Aaron Sinel and Zach Cook, non-attorney representatives  
19 of the landlord petitioners/appellees; Paul Hogarth, attorney representative for the tenant  
20 respondents/appellants; and Ray Hartz, Jr. and Ali Alburati, tenant respondents/appellants. At  
21 the hearing, the parties had full opportunity to present relevant evidence and argument, and they  
22 did so under oath.

23 The record was held open until September 8, 2009 for submission of additional evidence  
24 from the landlords. On September 10, 2009, the landlords requested an extension of the open  
25 record to September 18, 2009, which was granted, and the tenants were granted until  
26 September 25, 2009 to file a response, if necessary. On September 17, 2009, the landlords  
27

1 submitted the additional evidence. No additional evidence was submitted by the tenants, and the  
2 record closed on September 25, 2009.

3 **FINDINGS OF FACT**

4 1-5. Paragraphs 1-5 of the Findings of Fact in the decision in Case No. L081371,  
5 issued on May 14, 2009, are incorporated by reference as if fully set forth below:

6 1. The property consists of a building located at 839 Leavenworth Street in San  
7 Francisco, and contains fifty residential units and one commercial artist studio in the basement.  
8 The landlords have owned the property since June 19, 2007. The landlords' representatives  
9 testified that there had not been a transfer of title to the building within the two years before the  
10 landlords purchased the building.

11 2. The landlords' representatives testified that there have been no prior operating  
12 and maintenance increase petition filed with the Rent Board for the subject units.

13 3. On October 20, 2008, after the instant petition was filed, the landlords mailed or  
14 served the tenant in unit 110 with a notice of rent increase increasing the tenant's base rent  
15 7.0% for the operating and maintenance increase subject to this petition and 2% for the annual  
16 allowable increase. (Landlord Exhibit 1) The rent increase was effective on December 1, 2008,  
17 the tenant's anniversary date. On November 9, 2008, after the instant petition was filed, the  
18 landlord mailed or served the tenants in units 204 and 206 with notices of rent increase  
19 increasing the tenants' base rents 7.0% for the operating and maintenance increase subject to  
20 this petition and 2% for the annual allowable increase. (Landlord Exhibit 1) The rent increases  
21 were effective on January 1, 2009, the tenants' anniversary dates.

22 4. Because complete rent histories for the subject units were not required and were  
23 not provided, no determination is made concerning the lawfulness of the tenants' base rents.  
24 For purposes of this decision, the base rents listed in the petition are used.

25 5. The landlords compare the operating expenses of January 1, 2006 through  
26 December 31, 2006 ("Year 1") to those of January 1, 2007 through December 31, 2007 ("Year  
27 2").

28 6. In this case, the expenses for garbage, water/sewer, property taxes, debt service,  
management, pest control and elevator service all increased for Year 2. The expenses for  
insurance decreased over the expenses from Year 1.

7. The landlords established the following operating and maintenance expenses:

(a) GARBAGE – The total amount paid for garbage service for Year 1 was  
\$17,597.58. The total amount paid for garbage service for Year 2 was \$22,843.44.

(b) WATER/SEWER - The total amount paid for water/sewer service for Year 1 was  
\$16,264.21. The total amount paid for water/sewer service for Year 2 was \$20,157.09.



1 (c) INSURANCE – The total amount paid for insurance for Year 1 was \$17,526.75  
2 and the total amount actually paid for insurance for Year 2 was \$17,186.82.

3 (d) PROPERTY TAXES - The total amount paid for property taxes for Year 1 was  
4 \$41,555.46. For Year 2, the property taxes in the amount of \$63,507.19 were paid. The property  
5 taxes stated above exclude the Rent Board fees.

6 (e) DEBT SERVICE - The debt service represents total mortgage payments,  
7 including amounts allocated to both principal and interest. The total amount paid for debt service  
8 for Year 1 was \$225,473.40. The total amount paid for debt service for Year 2 was \$265,109.89.

9 At the remand hearing, the landlords submitted a copy of the June 6, 2007 \$4,847,500.00  
10 promissory note secured by the deed for trust on the subject property that was used to purchase  
11 the subject property. (Landlord Exhibit 3) The landlords' representative testified credibly that the  
12 subject loan is due in ten years, has a five year fixed interest rate of 6.1%, has an adjustable  
13 interest rate for the second five years at a rate between 6.1% to 10.95% based on the London  
14 Interbank Offered Rate (LIBOR) index, is payable interest only for 36 months and for the  
15 remainder of the life of the loan is payable principal and interest. The terms of the promissory  
16 note support the representative's testimony.

17 The tenants submitted no evidence that the loan was unreasonable or imprudent at the  
18 time the landlords purchased the building. Tenant Hartz claimed that the landlords took out the  
19 loan for the subject property in an amount greater than they should have so that the proceeds  
20 could be used to pay off a line of credit. The tenants submitted a copy of deed of trust for a  
21 \$350,000.00 line of credit in the name of the landlords. (Tenant Exhibit B) The deed of trust for  
22 this line of credit is secured by property located at 15 Santa Ana Ave. in San Francisco and is  
23 not secured by the subject property. The tenants submitted no evidence that proceeds from the  
24 subject loan were used for any other purpose than to pay the purchase price of the subject  
25 building. Moreover, the landlords submitted a copy of First American Title's buyer's final  
26 settlement statement from the escrow to purchase the building that shows that the entire loan  
27

1 proceeds were used in escrow to purchase the building. At the conclusion of the remand  
2 testimony regarding the subject loan, the tenants withdrew their objections to the amounts set  
3 forth in this item.

4 (f) MANAGEMENT – The total amount paid for management costs for Year 1 was  
5 \$35,150.77. The total amount paid for management costs in Year 2 was \$35,479.08. The  
6 landlords' representative testified that the expenses paid for management costs do not include  
7 fees for vacant apartments or rental commissions.

8 (g) REPAIRS – The landlords' representatives testified that DeWolf Realty, the  
9 landlords' current property manager, managed the property prior to the sale of the building to the  
10 current owners, and that there has been a legal dispute between the previous owners' heirs and  
11 the current owners. The landlords' representatives testified that the current owners requested  
12 evidence of the repair costs in Year 1 and in the first half of Year 2 prior to their ownership, but  
13 the previous owners' heirs would not allow DeWolf Realty to release the repair costs or the  
14 records for those costs in either Year 1 or Year 2. Therefore, because the landlords were unable  
15 to establish the repair costs for Year 1, the repair costs for Year 2 are not considered.

16 (h) PEST CONTROL – The total amount paid for pest control service for Year 1 was  
17 \$506.20. The total amount paid for pest control service for Year 2 was \$535.00. The tenants did  
18 not object to the evidence of pest control charges submitted by the landlords.

19 (i) OTHER MAINTENANCE – The landlords' representatives testified that the current  
20 owners requested evidence of the other maintenance costs in Year 1 and in the first half of Year  
21 2 prior to their ownership, but the previous owners' heirs would not allow release of the other  
22 maintenance costs or the records for those costs in either Year 1 or Year 2. Therefore, because  
23 the landlords were unable to establish the other maintenance costs for Year 1, the other  
24 maintenance costs for Year 2 are not considered.

25 (k) ELEVATOR SERVICE – The landlords' representatives testified that the current  
26 owners requested evidence of the elevator service costs in Year 1 and in the first half of Year 2  
27

1 prior to their ownership, but the previous owners' heirs would not allow release of the elevator  
2 service or the records for those costs in either Year 1 or Year 2. However, the landlords were  
3 able to obtain copies of the monthly service bills from Paramount Elevator Company for the  
4 period April 19, 2006 through December 2007, and the representative testified that the bills had  
5 been paid. (Landlord Exhibit 1) The landlord's representative also testified the elevator's control  
6 system was rebuilt by Paramount before the current owners purchased the building and that as  
7 part of the contract with Paramount, there were no elevator service charges for January through  
8 March 2006 in Year 1. After the hearing, the landlords submitted a letter from Paramount, dated  
9 September 15, 2009, that stated that there were no monthly service charges for January through  
10 March 2006 because the elevator was still under warranty service from the elevator  
11 modernization in 2005. (Landlord Post-hearing Submission, recvd. 9/17/09, pg. 2) The total  
12 amount paid for elevator service for Year 1 was \$845.00. The total amount paid for elevator  
13 service for Year 2 was \$1,140.00.

14 The tenants claimed the landlords chose to provide only part of the operating and  
15 maintenance expense documents. However, there was no evidence that the previous owners  
16 released or authorized the release of the requested documents to the current landlords and the  
17 current landlords failed to provide the documents as part of their petition. The tenants submitted  
18 documents relating to a state elevator inspection and an order for repairs to be made in Year 1  
19 as a result of the inspection. (Tenant Exhibit A) The previous owner complied with the order.  
20 (Tenant Exhibit A, pg. 7) The monthly elevator service charges set forth above were unrelated to  
21 the order. The landlords' representative testified that the items from the annual elevator  
22 inspection and the documents submitted by the tenants also had nothing to do with the control  
23 system rebuild of the elevator by the previous owner.

24 8-11. Paragraphs 8-11 of the Findings of Fact in the decision in Case No. L081371,  
25 issued on May 14, 2009, are incorporated by reference as if fully set forth below:

26 8. No expenses for any other category were claimed or established for either Year 1  
27 or Year 2.

1  
2 9. All tenant respondents were in residence during Year 1 or were in residence  
before the change of ownership to the landlord on June 19, 2007.

3 10. Some of the tenants appeared for the hearing, and objected the water/sewer  
4 expenses and the management fees. The tenants testified that the resident manager has planted  
5 a potted plant garden on the side of the building that does not benefit the tenants even though  
6 they have access to the garden. The tenants testified that the manager spends time in the  
7 garden and the tenants indirectly pay some of the manager's costs as part of the operating and  
8 maintenance expense increase. The tenants further testified that the manager uses the  
9 building's water to water the plants in the garden, which the tenants claim, caused the water  
10 costs to increase. Another tenant submitted written objections to the resident manager's  
purchase of non-essential decorations for the common areas and raised several issues  
11 regarding the manager either not performing his duties or performing them in such a manner that  
12 caused the tenant to be uncomfortable about the manager having access to the tenant's unit.  
13 Another tenant submitted a copy of written letter to the landlords' property manager advising that  
commercial tenants/delivery persons were leaving the side door open, which created a safety  
14 risk in the building to the tenants and their belongings because anyone could enter the building  
15 through the open door. (Tenant Pre-hearing Submission, recvd. 9/15/08)

16 At the hearing, the tenants submitted a Notice of Violation (NOV), dated January 20,  
17 2009, issued by the Department of Building Inspection, which required the landlords to paint in  
18 the front of the building where paint was peeling from around the window frames. (Tenant  
19 Exhibits B & C; Landlord Exhibit 4) As of the date of the hearing on March 3, 2009, the landlords  
20 had not abated the NOV.

21 11. In rebuttal, the landlords' representatives testified that the time the manager  
22 spends working in the garden is on the weekends and during times that he is not required to  
23 perform building duties, which does not increase the management costs to the landlords. The  
24 representatives further testified that the garden existed in Year 1 and Year 2 so any small  
25 amounts of water use for the plants would have been approximately the same in both years, and  
26 would not have caused the large increase in the water bills. The representatives testified that the  
27 manager's decorative work in the common areas was not paid for by the building because the  
28 manager paid for those items out of his own money. The landlords' representatives also testified  
that the tenants had not requested the landlords to repair the exterior painting item in the NOV,  
and the NOV was the first notice to the landlords, who had been planning to paint the building in  
the spring.

29 12. The tenants objected to the approval of the landlords' operating maintenance and  
30 expense increase because all the documents evidencing the expenses for the building had not  
31 been provided. In rebuttal, the landlords' representatives testified that they provided all the  
32 documents that the landlords were able to obtain from the previous landlords. The tenants failed  
33 to refute this testimony.

1 CONCLUSIONS OF LAW

2 1-9. Paragraphs 1-9 of the Conclusions of Law in the decision in Case No. L081371,  
3 issued on May 14, 2009, are incorporated by reference as if fully set forth below:

4 1. At all times relevant to the petition, the subject rental units are within the  
5 jurisdiction of the Rent Board. [Ordinance Section 37.2(r)]

6 2. A rent increase may be considered justified if it is found that the aggregate cost  
7 of operating and maintenance expenses has increased over either the two previous calendar  
8 years or a 12-month period preceding the date of filing the petition ("Year 2") compared to the  
9 operating and maintenance expenses incurred in the 12 months prior to Year 2 ("Year 1").  
[Ordinance Section 37.8(e)(4)(A); Rules and Regulations Section 6.10(a)] In this case, the  
landlords properly compared operating and maintenance costs for the periods from January 1,  
2006 to December 31, 2006 and January 1, 2007 to December 31, 2007.

10 3. Rent increases for operating and maintenance expense increases shall be  
11 based on actual costs incurred by the landlord, prorated on a monthly basis where appropriate,  
12 allocated over the period of time the services were substantially rendered and/or the costs were  
13 substantially incurred. [Rules and Regulations Section 6.10(b)] The burden of proof is on the  
landlord. [Ordinance Section 37.8(b)(1)] In this case, the landlords have met their burden of  
proving an increase in operating and maintenance costs from Year 1 to Year 2 as shown in  
Table 1, attached and incorporated herein.

14 4. If a building is refinanced or there is a change in ownership resulting in increased  
15 debt service and/or property taxes, only the landlord who incurred such expenses may file a  
16 petition under this Section, and only one rent increase per unit based upon increases in debt  
17 service and/or property taxes shall be allowed for each such refinance or transfer, except in  
18 extraordinary circumstances or in the interest of justice. [Rules and Regulations Section  
6.10(e). In this case, the landlords may not impose a second operating and maintenance  
increase on the subject units based upon increased debt service or increase property taxes  
caused by the purchase of the building by the landlords.

19 5. To determine the per unit increase, the total operating and maintenance  
20 expenses for Year 1 and Year 2 are calculated. The operating and maintenance cost increase  
21 from Year 1 to Year 2 is divided by 12 months, and then divided by the number of units in the  
22 building. If the monthly cost increase per unit exceeds the 2.0% allowable annual rent increase  
that was in effect when the petition was filed, an additional increase of no more than 7% of the  
tenants' base rent may be allowed. [Rules and Regulations Sections 6.10(a)(c)&(d)] The  
allowable rent increases based on increased operating and maintenance expenses are shown  
in Table 2, attached and incorporated.

23 6. Only those tenants in residence during Year 1 may be assessed an operating  
24 and maintenance increase, except in cases of change of ownership following commencement  
25 of tenancy, in which case those tenants may also be assessed an operating and maintenance  
26 increase. [Rules and Regulations Section 6.10(a)] All tenant respondents were either in  
residence during Year 1, or their tenancy had commenced before the change of ownership on  
June 19, 2007, and therefore, all the tenant respondents are subject to the operating and  
maintenance rent increase.

27 7. Rent increases based on increased operating and maintenance expenses may

1 be imposed only on the tenant's anniversary date. [Rules and Regulations Section 5.13(a)] The  
2 operating and maintenance increase becomes part of the tenant's base rent. [Ordinance  
3 Section 37.2(a)] In this case, the landlords gave notices of the proposed increase for operating  
4 and maintenance expenses to the tenant in unit 110, on or about October 20, 2008, to be  
5 effective on December 1, 2008, and to the tenants in units 204 and 206, on or about November  
6 9, 2008, to be effective on January 1, 2009, which is on or after the tenants' anniversary dates.  
7 For the remaining units subject to this petition, the operating and maintenance expense  
8 increase is effective on or after the tenants' anniversary dates, subject to service of a notice or  
9 rent increase pursuant to Civil Code Section 827. Section 827 requires service of a thirty (30)  
10 day notice of rent increase if the increase, either by itself or combined with any other rent  
11 increase in the one year period before the effective date, is no more than 10%. Section 827  
12 requires service of a sixty (60) day notice of rent increase if the increase, either by itself or  
13 combined with any other rent increase in the one year period before the effective date, is more  
14 than 10%. If the rent increase notice is served by mail, the required notice period must be  
15 extended by an additional five days.

16 8. An operating and maintenance rent increase is not justified if a tenant has  
17 requested the landlord to perform ordinary repair, replacement, and maintenance in compliance  
18 with applicable state and local law, and the landlord has failed to perform such work. [Rules and  
19 Regulations Section 6.12(a)] In this case, the landlords' representative credibly testified that no  
20 tenants had requested repairs to the building that were required by state or local law, and that  
21 the January 20, 2009 NOV for the city was the first notice to the landlord that painting was  
22 required around the window frames on the front exterior of the building. The tenants did not  
23 submit any evidence that they requested the landlord to paint around the window frames in the  
24 front of the building or to do any other repairs or maintenance required by law. Therefore, the  
25 undersigned Administrative Law Judge finds that the tenants did not meet their burden of proving  
26 that the tenants requested painting of the exterior front of the building in compliance with  
27 applicable state and local law and that the landlord failed to perform such work.

28 9. The tenants' claim that the water/sewer costs should not be considered because  
the manager uses water for the potted plant garden on the side of the building is rejected  
because the tenants failed to prove that the water use for the garden was unreasonable or  
increased between Year 1 and Year 2. Moreover, individual variations in water use from tenant  
to tenant or from unit to unit is not a basis to deny an operating and maintenance expense  
petition. The tenants' claims that the manager is not properly performing his duties, incurred  
building expense for non-essential decorations, and was gardening on time other than his free  
time are also rejected because such claims are not a valid objection. The landlords'  
representatives also testified credibly that the manager was performing the duties that the  
landlords required and was gardening on the weekends or on times when he was off duty in the  
building. The tenants may file a decreased housing service petition with the Rent Board if the  
tenants believe that they have suffered a substantial decrease in housing services.

10. The tenants claimed in their appeal that the debt service to fund the purchase of  
the building was excessive. At the remand hearing, the tenants withdrew their objections to the  
debt service amounts paid by the landlords and offered no evidence that the amounts incurred  
for debt service were unreasonable under the circumstances. Based on the evidence, the  
undersigned Administrative Law Judge finds the amounts paid by the landlords for debt service

1 in Years 1 and 2 where not unreasonable or excessive under the circumstances required by the  
2 purchase money promissory note, which was an interest only note for only the first five years of  
3 the loan.

4 11. The tenants further claimed that the landlords failed to meet their burden of  
5 proving the aggregate of all expenses associated with the building. This claim is rejected  
6 because the landlords attempted to obtain evidence of all the expenses incurred by the previous  
7 owner, but the previous owner's representatives refused to provide the expense records. The  
8 landlords were able to obtain some of the expense evidence from third parties, including the pest  
9 control company and elevator company. Based on the evidence, the undersigned Administrative  
10 Law Judge finds that the landlords met their burden of providing the aggregate of all the  
11 expenses associated with the building.

12 **ORDER**

13 1. Petition L081371 is granted on remand pursuant to Appeal Nos. AT090132-  
14 AT090143.

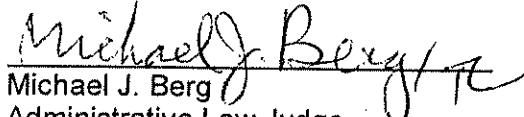
15 2. The tenants' base rents may be increased for increased operating and  
16 maintenance expenses by the amounts shown in Table 2, attached and incorporated. These rent  
17 increases ("O&M Increase") are effective for unit 204 as of January 1, 2009, pursuant to the  
18 November 9, 2008 notice of rent increase. For the remaining units, the operating and  
19 maintenance expense increase is effective on or after the tenants' anniversary dates, subject to  
20 service of a notice of rent increase pursuant to Civil Code Section 827. Section 827 requires  
21 service of a thirty (30) day notice of rent increase if the increase, either by itself or combined with  
22 any other rent increase in the one year period before the effective date, is no more than 10%.  
23 Section 827 requires service of a sixty (60) day notice of rent increase if the increase, either by  
24 itself or combined with any other rent increase in the one year period before the effective date, is  
25 more than 10%. If the rent increase notice is served by mail, the required notice period must be  
26 extended by an additional five days.

1           3.       If they have not already done so, the tenants shall include any sums they owe to  
2 the landlords as a result of this remand decision in the next rental payment following receipt of  
3 this remand decision. [Ordinance Sections 37.7(g)(6) and 37.8(e)(7)] However, if a tenant files a  
4 timely appeal of this remand decision, then that tenant need not pay the rent increase until after  
5 the Rent Board takes final action on that tenant's appeal which results in sums owed. [Ordinance  
6 Section 37.8(f)(1)]

7           4.       This remand decision is final unless specifically vacated by the Rent Board  
8 following appeal to the Board. Appeals must be filed no later than 15 calendar days from date of  
9 the mailing of this remand decision, on a form available from the Rent Board. [Ordinance Section  
10 37.8(f)(1), emphasis added] If the fifteenth day falls on Saturday, Sunday or legal holiday, then  
11 the appeal may be filed with the Rent Board on the next business day.

12           5.       Each party who wishes to appeal must file a separate appeal, on a form available  
13 from the Rent Board; however, in cases involving co-petitioner or co-respondents, a joint appeal  
14 may be filed provided that the form is signed by each of the appealing parties or by their  
15 authorized representative.

16  
17  
18 Dated: December 22, 2009

  
Michael J. Berg  
Administrative Law Judge



1 839 Leavenworth Street  
2 San Francisco  
3 Appeal Nos. AT090132-143

4 **TABLE 1**  
5 **OPERATING EXPENSES**

	YEAR 1	YEAR 2
	<u>1/1/06 – 12/31/06</u>	<u>1/1/07 – 12/31/07</u>
6 Garbage	\$17,597.58	\$22,843.44
7 Water/Sewer	\$16,264.21	\$20,157.09
8 Insurance	\$17,526.75	\$17,186.82
9 Property Taxes	\$41,555.46	\$63,507.19
10 Debt Service	\$225,473.40	\$265,109.89
11 Management	\$35,150.77	\$35,479.08
12 Repairs	Not established	Not considered
13 Pest Control	\$506.20	\$535.00
14 Other Maintenance	Not established	Not considered
15 Elevator Service	<u>\$845.00</u>	<u>\$1,140.00</u>
16 Total	\$354,919.37	\$425,958.51
17 Difference		\$71,039.14
18 Divided by 12 months		\$5,919.93
19 Divided by 51 units*		\$116.08**

20 \* Includes the 50 residential units and 1 commercial unit in the basement.

21 \*\* This amount exceeds 7% plus the 2.0% annual increase in effect on 8/26/08, when the petition  
22 was filed for all units except units 309 and 509. Accordingly, the landlord is entitled to impose 7%  
23 operating and maintenance increases for the units subject to the petition, except for units 309  
24 and 509, effective on or after the tenants' anniversary dates, and subject to service of a notice of  
25 rent increase pursuant to Civil Code Section 827. For unit 309, the landlords are entitled to  
26 impose an increase of \$86.99 (the \$115.55 increase in operating and maintenance expenses  
27 minus the 2% annual increase [\$28.56] on or after the tenant's anniversary date. For unit 509,  
28 the landlords are entitled to impose an increase of \$85.04 (the \$115.55 increase in operating and  
maintenance expenses minus the 2% annual increase [\$30.90] on or after the tenant's  
anniversary date.

1 839 Leavenworth Street  
2 San Francisco  
3 Appeal Nos. AT090132-143

4 **TABLE 2**  
5 **ALLOWABLE RENT INCREASES**

6	7	8	9	10	11
	<u>UNIT</u>	<u>8/26/08 PETITION BASE RENT*</u>	<u>2.0% ANN. ALLOW. INCREASE**</u>	<u>O&amp;M INCR.**</u>	<u>NEW BASE RENT**</u>
12	#102	\$684.39	\$13.68	\$47.91	\$745.98
13	#105	\$739.50	\$14.79	\$51.77	\$806.06
14	#106	\$880.01	\$17.60	\$61.60	\$959.21
15	#107	\$1,014.90	\$20.29	\$71.04	\$1,106.23
16	#108	\$926.14	\$18.52	\$64.83	\$1,009.49
17	#109	\$593.01	\$11.86	\$41.51	\$646.38
18	#110	\$553.20	\$11.06	\$38.72	\$602.98
19	#201	\$942.12	\$18.84	\$65.95	\$1,026.91
20	#202	\$965.92	\$19.31	\$67.61	\$1,052.84
21	#204	\$640.47	\$12.80	\$44.83	\$698.10
22	#206	\$903.23	\$18.06	\$63.23	\$984.52
23	#208	\$893.27	\$17.86	\$62.53	\$973.66
24	#301	\$939.56	\$18.79	\$65.77	\$1,024.12
25	#304	\$940.56	\$18.81	\$65.84	\$1,025.21
26	#306	\$972.50	\$19.45	\$68.08	\$1,060.03
27	#307	\$892.32	\$17.84	\$62.46	\$972.62
28	#308	\$877.42	\$17.54	\$61.42	\$956.38
	#309	\$1,428.00	\$28.56	\$86.99	\$1,543.55

\* No determination is made concerning the lawfulness of the tenants' base rents.

\*\* Effective for unit 110 on 12/1/08, and effective for units 204 and 306 on 1/1/09. For the remaining units effective on or after the tenants' anniversary dates, subject to service of a notice of rent increase pursuant to Civil Code Section 827.

1 839 Leavenworth Street  
San Francisco  
2 Appeal Nos. AT090132-143

3  
4 **TABLE 2 (CONTINUED)**  
**ALLOWABLE RENT INCREASES**

5

6		8/26/08	2.0%		
7	<u>UNIT</u>	<u>PETITION</u> <u>BASE</u> <u>RENT*</u>	<u>ANN.</u> <u>ALLOW.</u> <u>INCREASE**</u>	<u>O&amp;M</u> <u>INCR.**</u>	<u>NEW</u> <u>BASE</u> <u>RENT**</u>
8	#401	\$942.35	\$18.84	\$65.96	\$1,027.15
9	#402	\$1,124.79	\$22.49	\$78.74	\$1,226.02
10	#403	\$926.60	\$18.53	\$64.86	\$945.13
11	#407	\$1,000.25	\$20.00	\$70.02	\$1,090.27
12	#410	\$696.76	\$13.93	\$48.77	\$759.46
13	#502	\$923.87	\$18.47	\$64.67	\$1,007.01
14	#505	\$841.50	\$16.83	\$58.91	\$917.24
15	#507	\$894.97	\$17.86	\$62.65	\$975.51
16	#508	\$955.19	\$19.10	\$66.86	\$1,041.15
17	#509	\$1,545.30	\$30.90	\$84.65	\$1,660.85
18	#510	\$696.76	\$13.93	\$48.77	\$759.46

19 \* No determination is made concerning the lawfulness of the tenants' base rents.

20 \*\* Effective for unit 110 on 12/1/08, and effective for units 204 and 306 on 1/1/09. For the remaining  
21 units effective on or after the tenants' anniversary dates, subject to service of a notice of rent  
22 increase pursuant to Civil Code Section 827.



May 18, 2010

Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place  
Room 244  
San Francisco, CA 94102-4689

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2010 MAY 18 PM 3:03  
BY [signature]

RE: Rent Board Supplemental Response to Complaint Filed by Ray Hartz,  
SOTF #10016

In addition to other requests for which documents were provided, the Requestor's January 21, 2010 Immediate Disclosure Request #2 sought:

"The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, Social Security number, age, and marital status of the employee shall not be redacted." (emphasis added)

However, Section 67.24(c)(2) of the Sunshine Ordinance states just the opposite and provides as follows:

"The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, Social Security number, age, and marital status of the employee shall be redacted." (emphasis added)

The Frequently Asked Questions on the SOTF website also states that "some records are exempt from disclosure", including "Personnel records, Medical records, Home telephone numbers, Social Security numbers", and "Documents protected from disclosure by the State Constitutional Right to Privacy".

On January 22, 2010 the Rent Board provided responsive documents to all of the Requestor's requests with the exception of the employee's confidential personal information. The Rent Board also requested clarification at the SOTF Committee as to what additional information the Requestor seeks, and the Requestor did not respond



so the Rent Board does not know what other records the Requestor seeks. Since the complainant is seeking records that are specifically exempted from disclosure under Section 67.24(c)(2), the Rent Board respectfully requests that the complaint be dismissed.

Sincerely,

A handwritten signature in black ink, appearing to read "Delene Wolf", with a long horizontal flourish extending to the right.

Delene Wolf  
Executive Director

# FaxTools



839 Leavenworth St  
Apt 304  
San Francisco California  
94109  
UNITED STATES

Phone: 415 345-9144

Fax: 415 345-9144

## Message :

May 19, 2010  
Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place, Rm 244  
San Francisco, CA 94102-4689

RE: Rent Board Supplemental Response to Complaint filed by Ray Hartz, SOTF #10016

The following is a time-line for this request/response/complaint:

January 21, 2010 IDR  
January 22, 2010 Response to IDR  
April 10, 2010 Sunshine Complaint #10013 filed  
April 20, 2010 Conversation with Delene Wolf prior to Rent Board meeting in which I specifically informed her of the two area of concern re: IDR response: Section 67.24 (4) The exact gross salary and city paid benefits available to every employee and Section 67.24 (1) and (2)  
April 28, 2010 Rent Board response: "he does not specifically state how the Rent Board's response is insufficient."  
May 11, 2010 SOTF Complaint Committee hearing.  
May 18, 2010 Rent Board Supplemental Response: "...the Rent Board does not know what other records the Requestor seeks."  
May 18, 2010 Rent Board hearing attended by both Delene Wolf and Ray Hartz

Ms Wolf, Executive Director, San Francisco Residential Rent Stabilization and Arbitration Board, has had since January 21, 2010 to respond. She has known since approximately April 10, 2010 that I considered the response less than responsive. She has known since April 20, 2010 the two specific areas I considered less than responsive. She then claimed on May 11 and May 18, 2010 to "not know what other records the Requestor seeks."

I believe that the Complaint Committee hearing on May 11 was not the forum to address the specifics of my complaint. Ms. Wolf, on behalf of the Rent Board, had from approximately April 10, 2010 to May 18, 2010 to simply respond to one or both of the areas of concern. She failed to even attempt to do so. This failure is the proximate cause of the necessity for the Sunshine Ordinance Task Force hearing.

Sincerely,  
Ray W. Hartz, Jr.

**From:**  
Ray W Hartz Jr

**To:** SOTF  
Chris Rustom

**Date:** 5/19/2010

**Page(s):** 1