

INTRODUCTION

1
2 1. Petitioners and Plaintiffs own and operate rental property in East Palo Alto. Some of
3 Petitioners' units are subject to the City's Rent Stabilization Ordinance. Over the past year, the
4 City and Petitioners have been engaged in ongoing disputes over some of the key provisions of
5 the Rent Stabilization Ordinance and are actively involved in litigation over those disputes.

6 2. As tensions have risen between the two parties, Petitioners and the City have
7 repeatedly clashed over the availability of public records and information and the nature and
8 conduct of City proceedings.

9 3. Petitioners' interests in the proceedings are well known to City staff and officials and
10 Petitioners have requested to be notified of all public meetings.

11 4. Since mid-2007, Petitioners have actively participated in virtually every City
12 proceeding of which they were aware relating in any way to rent control, including Rent
13 Stabilization Board and City Council meetings. Petitioners have attended public meetings,
14 spoken at public meetings and submitted written comments.

15 5. Despite Petitioners' requests for notice and information, the City has repeatedly failed
16 to give proper notice of its actions.

17 6. The City has cloaked its proceedings in generalities, and now hidden its deliberations
18 behind closed sessions to avoid the public eye.

19 7. Petitioners herein challenge the City's consideration and adoption of the Rent
20 Stabilization and Just Cause for Eviction Ordinance of the City of East Palo Alto ("Revised
21 RSO") and resolutions calling for a general municipal election on November 3, 2009 and
22 submitting to the voters a City Council-sponsored measure repealing and replacing the City's
23 Rent Stabilization Ordinance and requesting consolidation of the municipal election with the
24 Countywide general election to be held on November 3, 2009 ("Revised RSO") because the
25 legislative process violated the Brown Act. Petitioners also challenge the City's pattern and
26 practice of violating the Brown Act resulting in Petitioners as well as other members of the public
27 being excluded from public participation. The City has repeatedly failed to provide adequate
28 legal notice of public meetings as required by the Brown Act and had conducted improper closed

1 sessions of the City Council to consider legislative decisions.

2 8. Petitioners have been harmed by the City's failure to comply with the Brown Act by
3 being excluded from full public participation. Petitioners herein seek an order of the court
4 prohibiting the City from further violation of, and requiring compliance with, the Brown Act.

5 9. Petitioners also herein challenge the City's failure to conduct any environmental
6 review under the California Environmental Quality Act ("CEQA", Pub. Res. Code §21000 *et*.
7 *seq.*) of its decision to adopt the Revised RSO, despite being presented with substantial evidence
8 that the revised RSO may affect the environment.

9 **FACTS AND BACKGROUND**

10 10. Petitioners and Plaintiffs Woodland Park Management, LLC, 5 Newell, LLC, and 15
11 Newell, LLC ("Housing Providers") own and/or manage rental housing in East Palo Alto. Some
12 of these rental housing units are subject to the existing City of East Palo Alto Rent Stabilization
13 Ordinance (1988) ("Existing RSO"). On information and belief, Respondents sometimes
14 incorrectly refer to one or more of Petitioners as "Page Mill Properties."

15 11. The Existing RSO was adopted by the voters in 1988 and has remained unchanged
16 since then, notwithstanding intervening state law that preempted significant portions of the
17 Existing RSO.

18 12. The structure and substance of that voter-adopted initiative have raised serious
19 questions in recent years, in light of its preemption by state law and its irregular implementation
20 by the City's Rent Stabilization Board. The Existing RSO may not be amended without a vote of
21 the voters of the city of East Palo Alto at a duly called election. The City Council must in
22 advance of such a vote adopt an ordinance amending the Existing RSO, and present said
23 ordinance to the voters for approval at the election. The adoption of the ordinance by the City
24 Council must be done in compliance with the provisions of the Government Code, the Brown
25 Act, and CEQA.

26 13. The serious questions about the structure and substance of the Existing RSO gave rise
27 to a series of lawsuits against the City regarding the City's unlawful implementation and
28 administration of, and amendments to, the Existing RSO. The numerosity and severity of the

1 lawsuits regarding the Existing RSO evidence the importance of the voter-adopted initiative to
2 the City. It affects the substantive rights of landlords, tenants, and the City itself. By way of
3 example:

- 4 a. In January 2008, Respondent City Council adopted an Urgency Ordinance
5 freezing rents in the City and mandating that future rent increases be calculated
6 based on prior actual rents, rather than the City-certified maximum legal rents.
7 Housing Providers filed suit and this Court, the Honorable Beth Labson Freeman
8 presiding, ordered the issuance of a Writ of Mandate in March 2008 commanding
9 the City to set aside the Urgency Ordinance. (Case No. CIV 469315.) The Court
10 found that the Urgency Ordinance unlawfully amended the voter-adopted Existing
11 RSO and was in violation several state laws including specifically Elections Code
12 Section 9217, the Petris Act (Civil Code Section 1947.8), and the Costa Hawkins
13 Rental Housing Act (Civil Code Section 1954.50 *et seq.*). The question is now
14 before the Court of Appeal.
- 15 b. A few months later, the Rent Board attempted to make many of the same policy
16 changes this Court rejected in its order vacating the Urgency Ordinance. On July
17 9, 2008, the Rent Board purported to amend the Rules and Regulations that
18 implement the RSO. Again, Housing Providers filed suit and again, Judge
19 Freeman of this Court granted a Writ of Mandate in November 2008 commanding
20 the Rent Board to set aside its amended rules. (Case No. CIV 474682,
21 consolidated with Case No. CIV 469315.) The Court found that the amended
22 rules violated the Existing RSO and several state laws. The question is now
23 before the Court of Appeal.
- 24 c. Also in the summer of 2008, the Rent Board through its staff refused to accept and
25 process Housing Providers' annual registration statements and fees. Housing
26 Providers filed suit, and this Court, the Honorable Quentin Kopp presiding,
27 granted a Writ of Mandate in September 2008 commanding the Rent Board to
28 accept Housing Providers' registration materials. (Case No. CIV 474521.)

1 d. In August 2008, the Rent Board upheld the decision of a hearing examiner whose
2 interpretation of the Existing RSO matched the interpretation rejected twice by the
3 Superior Court as described more fully above. Housing Providers and other
4 landlords filed suit in November 2008 challenging that quasi-adjudicative decision
5 in violation of the Superior Court's interpretation of the Existing RSO.

6 14. During the same period, the City has also instigated litigation against Housing
7 Providers, unsuccessfully alleging violations of the Existing RSO. After losing its motions for a
8 temporary restraining order and a preliminary injunction (San Mateo County Superior Court Case
9 No. CIV 475139), the City dismissed its case with prejudice in November 2008.

10 15. In response to these disputes about the Existing RSO, the City has undertaken to
11 conduct business related to rent control under a veil of secrecy. A series of disputes has arisen
12 regarding the City's practices of withholding information from the public, notwithstanding the
13 Public Records Act (Government Code Section 6250 *et seq.*) and Brown Act (Government Code
14 Section 54950 *et seq.*). For example,

15 a. City has recently fought and lost a suit under the California Public Records Act
16 (Government Code Section 6250 *et seq.*) filed by an individual in which this
17 Court, the Honorable John Grandsaert presiding, granted a writ of mandate in
18 November 2008 ordering the City and its component Rent Board to produce to
19 Housing Providers a series of rent control documents for inspection and copying
20 (Case No. CIV 476233).

21 b. Housing Providers have initiated numerous Public Records Act requests regarding
22 the operation of the Rent Stabilization Program. The City regularly responds late
23 and incompletely, if at all, to such requests.

24 c. Housing Providers filed suit in January 2009 challenging the City Council's
25 purported appointment, on December 16, 2008, of landlord representatives to the
26 Rent Board without adequate notice to the public before that meeting. That suit
27 also challenged the City's pattern and practice, through its City Council and Rent
28 Board, of failing to give proper notice of its meetings, meeting in the wrong

1 location, and convening meetings of an advisory commission without proper
2 notice.

3 d. In July 2009, Housing Providers again filed a complaint alleging Brown Act
4 violations. Specifically the suit alleged that the City was on the verge of adopting
5 amendments to the Rent Stabilization Program as a result of a decision-making
6 process conducted without complying with Brown Act requirements. Housing
7 Providers won a temporary restraining order but upon its expiration, the City
8 resumed its actions.

9 16. The City has also violated the Brown Act with regard to other matters. For example,
10 the East Palo Alto Merchants' Association filed suit in San Mateo Superior Court (Case No. CIV
11 485355) challenging the City's pattern and practice of improper public meetings. After the court
12 issued a temporary restraining order preventing certain actions, the City Attorney nonetheless
13 refused to comply with that order.

14 **Proceedings to Revise the Existing RSO**

15 17. Against the backdrop of the above-described litigation, which shined a spotlight on
16 the Existing RSO and activities within East Palo Alto, the City undertook the following actions,
17 proposing to revise the Existing RSO and submit it to the voters without the requisite public
18 participation. The City's pervasive Brown Act violations deny Housing Providers and the
19 general public the ability to participate in and shape the amendment of the RSO.

20 18. Starting in January 2009, Mayor Abrica charged City Council Member Carlos
21 Romero with convening an advisory committee to consider revisions to the RSO and to report
22 back to the City Council.

23 19. The City refused to provide Brown Act notice of the meetings of the advisory
24 committee in January and February 2009.

25 20. On information and belief, the City failed to notify the majority of landlords in the
26 City that it was considering revisions of the Existing RSO. The City has contact information for
27 all of the landlords subject to rent control, and could have contact them regarding the RSO
28 revision process.

1 21. The City Council adopted the Revised RSO on August 4, 2009 and adopted a
2 resolution requesting that the Revised RSO be placed on the ballot for the November 2009
3 election.

4 22. On information and belief, the City submitted the Revised RSO to the San Mateo
5 County Elections Official to be placed on the ballot for the November 2009 election.

6 **Insufficient Notice of City Council Meetings on July 15, 2009**

7 23. On July 10, 2009, the City Council posted and disseminated an agenda for its July 15,
8 2009 City Council meeting. This "Original Agenda" listed as agenda item III, "Draft Rent
9 Stabilization Ordinance." The staff recommended, "that Council *Discuss, Deliberate, and, By*
10 *Motion give Appropriate direction to staff.*" (Emphasis in Original.)

11 24. On July 13, 2009 in the afternoon, much too late to comply with the 72-hour window
12 of notice required by the Brown Act (section 54954.2), the City Council amended its agenda for
13 the July 15, 2009 meeting three times.

14 25. The first revision ("First Revised Agenda"), posted at 3:00 p.m., added agenda item II
15 (A)(3) to the agenda, requesting as a consent item a fee waiver from the Born Again Christian
16 Center.

17 26. The second revision ("Second Revised Agenda"), posted at 5:45 p.m., changed
18 agenda item III to be titled, "Proposed Revisions to the Rent Stabilization Ordinance for the
19 November 2009 Ballot." The recommendation was changed to "That Council *l.* [emphasis in
20 original] Discuss and provide guidance on key features in order [sic] to finalize the language
21 revising the City of East Palo alto Rent Stabilization Ordinance; and, 2). [sic] Consider a
22 Resolution submitting the Ordinance to a vote of the People at the November 3, 2009 Municipal
23 Election." The Second Revised Agenda also deleted Agenda Item II(A)(3), which had been
24 added to the First Revised Agenda.

25 27. The third revision ("Third Revised Agenda"), faxed at 6:41 p.m. to the press, was
26 purportedly also posted at 5:45 p.m., at exactly the same time as the second revision. The faxed
27 third revision included a fax cover that said, "Please discrad [sic] previous agenda sent out as
28 "amended", sent in error. The following is correct amended agenda posted in the City of East

1 Palo Alto.” The Third Revised Agenda re-added agenda item II(A)(3) added by the First Revised
2 Agenda and removed by the Second Revised Agenda.

3 28. These revisions comprise substantive changes to the notice. The public lacked
4 adequate notice that the City Council intended to take any action on the proposed changes.

5 29. On information and belief, the agendas also include inaccuracies as to the time of
6 posting. Third Revised Agenda states that it was posted at exactly the same time as the Second
7 Revised Agenda, but the Third Revised Agenda was faxed to interested parties at 6:41 p.m.
8 whereas the Second Revised Agenda was faxed at 6:10 p.m. It is improbable that the two revised
9 agendas were posted at exactly the same time, 5:45 p.m., that they both state on their faces. If
10 they were, the City presumably would not have faxed the Second Revised Agenda twenty-five
11 minutes after posting the Third Revised Agenda. It is not clear what other information on the
12 agendas may be inaccurate.

13 30. The four different versions of the agenda for the July 15, 2009 City Council meeting
14 created confusion among the public and the City Council itself as to what would occur at the City
15 Council meeting.

16 31. Council member Evans could not determine what was on the agenda. He said, “If I
17 don’t know what the item is, how is the public going to know? The Brown Act provides that the
18 public know what’s on the agenda. If a council member don’t know it, how can the public know
19 it?”

20 32. On information and belief, the multiple changes in the agenda, long after the deadline
21 for notice under the Brown Act, affected the way that members of the public, including Housing
22 Providers, planned for the meeting and on information and belief, affected whether members of
23 the public decided to attend the meeting.

24 33. Concurrent with the four revisions to the July 15, 2009 City Council meeting agenda,
25 the City provided insufficient notice of two other City Council meetings, both scheduled for
26 Monday, July 13, 2009.

27 34. On Saturday, July 11, 2009, an agenda was faxed at 8:47 a.m. for a meeting on at 6:00
28 p.m. the following Monday. That agenda said on its face that it was posted at 4:00 p.m. on

1 Friday, July 10, 2009. It was not faxed with the notice of the July 15, 2009 City Council
2 meeting, which was faxed on Friday evening, July 10, 2009. This casts doubt on the claim that
3 the agenda was actually posted on Friday evening.

4 35. Also on Saturday, July 11, 2009, an agenda was faxed at 9:06 a.m. for a meeting on
5 Monday morning at 8:30 a.m. The agenda was purportedly posted at 7:00 a.m. on Saturday
6 morning.

7 36. The City has a pattern and practice of erratic posting and distribution of agendas, with
8 multiple revisions, well within the 72-hour notice period required by the Brown Act.

9 **Unlawful Closed Sessions**

10 37. All four versions of the agenda for the July 15, 2009 City Council meeting announced
11 that there would be a closed session.

12 38. The closed session agenda description, on all four versions, read as follows, "A.
13 Potential/Pending Litigation Pursuant to Government Code Section 54986.9.

- 14 1. Rent Stabilization (Vincent C. Ewing, City Attorney)
15 2. Page Mill Properties (Vincent C. Ewing, City Attorney)..."

16 39. The agendas listed as justification for the closed session "Government Code section
17 54986.9. There is no such Government Code section.

18 40. The agenda did not announce any subdivision that authorized the closed session.

19 41. The agenda is silent as to whether the particular items for discussion related to
20 pending litigation, potential litigation, or any other topic permitted to be considered in closed
21 session.

22 42. The City Council did not state the title of any pending litigation, nor did the City
23 Council state that to so specify would jeopardize its position in any way.

24 43. "Page Mill Properties," specified on the agenda at item A.2., is not party to any
25 pending litigation and has never been party to any litigation against the City.

26 44. The City Council did not specify any existing facts or circumstances that justified
27 closed session based on pending litigation.

28 45. The agendas for July 15, 2009 do not conform with the following example of correct

1 notice for pending litigation, codified in the Brown Act itself, "CONFERENCE WITH LEGAL
2 COUNSEL—EXISTING LITIGATION (Subdivision (a) of Section 54956.9) Name of Case:
3 (Specify by reference to claimant's name, names of parties, case or claim numbers) or Case name
4 unspecified: (Specify whether disclosure would jeopardize service of process or existing
5 settlement negotiations)." Gov't Code section 54954.5(c).

6 46. Nor do the agendas for July 15, 2009 conform with the following example of correct
7 notice of potential litigation, codified in the Brown Act itself, "CONFERENCE WITH LEGAL
8 COUNSEL—ANTICIPATED LITIGATION Significant exposure to litigation pursuant to
9 subdivision (b) of Section 54956.9: (Specify number of potential cases) (In addition to the
10 information noticed above, the agency may be required to provide additional information on the
11 agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E),
12 inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.) Initiation of litigation pursuant
13 to subdivision (c) of Section 54956.9: (Specify number of potential cases)."

14 47. The agendas list "Vincent C. Ewing" as the City's counsel during the closed session.

15 48. Andrew Schwartz and Kenneth Baar attended and participated in the City Council's
16 closed session discussions, although neither Mr. Schwartz nor Mr. Baar was listed as a
17 participant on the closed session agenda.

18 49. Mr. Schwartz's law firm, Shute Mihaly and Weinberger, was retained by the City to
19 draft the Revised RSO.

20 50. On information and belief, Mr. Baar assisted with drafting the Revised RSO.

21 51. On information and belief, the City Council discussed the draft RSO in closed session
22 on July 15, 2009. Revisions to the RSO may have a direct, substantive, prejudicial effect on
23 Housing Providers and improper, secret council discussion of revisions to the RSO prevent
24 Housing Providers from effectively participating in what is required to be a public process to
25 craft potential RSO revisions.

26 52. On information and belief, the City Council deliberated upon the definition of
27 Maximum Allowable Rent in Section 4 of the Revised RSO, considering the decision between
28 Alternative A and Alternative B.

1 53. On information and belief, the City Council took action and gave direction to staff,
2 Mr. Baar, and Mr. Schwartz to revise Alternative B with regard to “valid certificates.”

3 54. Neither the staff reports nor the transcripts of the public meetings contain the
4 deliberations of the City Council with regard to Alternatives A and B, or the revision of
5 Alternative B after the July 15 meeting to refer to “valid certificates.”

6 55. There was no pending litigation regarding the Revised RSO or other justification to
7 consider the draft RSO revisions in closed session.

8 56. On information and belief, Mr. Baar is not a member of Shute Mihaly and
9 Weinberger.

10 57. Housing Providers requested, via the Public Records Act, notice of the City Council’s
11 decision to retain Mr. Baar as a consultant.

12 58. The City responded to that request by providing agendas and minutes of City Council
13 meetings, none of which mention Mr. Baar.

14 59. On information and belief, the City did not provide public notice of its decision to
15 retain Mr. Baar.

16 60. On July 28, 2009, the City Council convened a closed session to discuss *East Palo*
17 *Alto Merchants Association v. City of East Palo Alto* and the SEIU Local 521 contract.

18 61. On information and belief, the City Council discussed the issuance of a Temporary
19 Restraining Order (“TRO”) in this case, even though that was not on the closed session agenda,
20 which the City Council never revised.

21 62. On information and belief, the City Council decided to defend against this case in
22 closed session on July 28, 2009.

23 63. The City Council did not report this decision out of closed session.

24 **Insufficient Notice for City Council Meeting Possibly Scheduled for July 28, 2009**

25 64. On Friday, July 24, 2009, Rafael Alvarado, Assistant City Attorney sent an email to
26 “interested parties” announcing that the “City Council for the City of East Palo Alto will consider
27 changes to its Rent Stabilization Ordinance at a special meeting, scheduled for Wednesday, July
28 28, 2009 at 6:30pm.”

1 65. July 28, 2009 was a Tuesday, not a Wednesday.

2 66. Housing Providers attempted to access an agenda for the July 28, 2009 (or July 29,
3 2009) meeting on the City's website. The City's website lists two links for an agenda for a July
4 28, 2009 meeting, neither of which link functioned

5 67. After the close of business on Friday, July 24, 2009, the City faxed an agenda to some
6 of the public who had requested notice of public meetings.

7 68. The agenda notices a regular meeting of the City Council for July 28, 2009.

8 69. The City Council's regular meetings are held on the first and third Tuesdays of the
9 month, except for the month of August when there are no regular meetings.

10 70. July 28, 2009 was neither the first nor the third Tuesday of July.

11 71. The agenda states, "Discuss and provide guidance on key features in order to finalize
12 the language..." and then states, "Consider a Resolution submitting the Ordinance to a vote of the
13 People..."

14 72. There is no description of whether a first or second reading will occur, or whether the
15 City Council will simply discuss still-uncertain aspects of the proposed RSO.

16 73. It was impossible for the public to know what the City intended to do at the meeting.
17 Housing Providers requested clarification of the July 28, 2009 agenda via letter dated July 27,
18 2009. The City did not respond.

19 74. The notice for the July 28, 2009 meeting was insufficient.

20 **August 3 and 4 City Council Meetings**

21 75. After the close of business on Friday, July 31, the City noticed two City Council
22 meetings for the following week.

23 76. The August 3 agenda included a closed session, but did not specify which lawsuit(s)
24 would be discussed and improperly included a proposed contract.

25 77. The City Council met in closed session. The City Council reported out of closed
26 session that no action was taken.

27 78. On August 4, the City Council met and discussed revisions to the Existing RSO.

28 79. On information and belief, during that meeting, Mr. Baar was consulted

1 telephonically, outside of the public meeting, with regard to the City Council's deliberations.

2 **Pattern and Practice of Brown Act Violations**

3 80. The City's proceedings in July and August 2009 demonstrate a pattern and practice of
4 Brown Act Violations.

5 81. Given the litigation history described previously, and the volume of activity at the
6 City related to the RSO (as evidenced by the facts described above), it is critical that Housing
7 Providers and other members of the public have adequate notice of pending City actions
8 regarding the RSO. Only with adequate notice can the public and Housing Providers participate
9 in and influence City's actions.

10 82. Without adequate notice, Housing Providers are prevented from (i) fully participating
11 in the consideration of critical legislation; (ii) commenting on the legality of City actions as is
12 required to exhaust remedies in some circumstances and (iii) establishing a record upon which
13 the public and/or Housing Providers later can rely if a legal challenge becomes necessary.
14 Without adequate notice, the City puts itself in a better position – vis a vis defending against
15 future challenges to future illegal acts the City may take – to argue that Housing Providers or
16 other litigants failed to exhaust administrative remedies, waived rights, are estopped, are barred
17 by statutes of limitations (if the City's actions go unnoticed for the limitations period), etc.

18 83. Many of the actions complained of herein do not directly or individually lend
19 themselves to separate legal challenges because taken independently, they may be without
20 adequate remedy or of relatively minor impact. For example, once the City has met without
21 proper notice or deliberated in private, it cannot "unmeet." The City, however, should not be
22 permitted to avoid compliance simply because enforcement is not practical and remedies are
23 limited. Moreover, collective momentum can build over a series of improperly noticed meetings,
24 culminating in a formal action that by that time was preordained.

25 84. Without a court order enjoining the City from meeting unless Brown Act requirements
26 are met, future violations of the Brown Act similar to the examples in the preceding paragraphs
27 will continue. Housing Providers thus seek declaratory relief that the City's pattern and practice
28 is in violation of the Brown Act and an injunction and/or writ of mandate directing the City to

1 comply with the Brown Act in all future actions, including in specified ways as detailed in our
2 Prayer for relief.

3 85. Furthermore, Housing Providers seek a writ of mandate commanding City of East
4 Palo Alto and City Council of the City of East Palo Alto to set aside the legislative decisions to
5 adopt a revised Rent Stabilization Ordinance (“Revised RSO”) and send that Revised RSO to the
6 ballot in November 2009 because that legislation was adopted in violation of the Brown Act.
7 The City’s actions to adopt the Revised RSO were repeatedly obscured from public view and
8 participation. This secrecy so tainted the revision process that the Revised RSO must be set
9 aside.

10 **City Conducted No CEQA Review of Potential Impacts of Proposed RSO**

11 86. The Revised RSO significantly changes the Existing Rent Stabilization Program.

12 87. The Revised RSO would result in severely limited rental incomes as compared to the
13 Existing RSO by rolling back maximum allowable rents to the actual rents to 2006 levels. It
14 would, as a result of this rollback, reduce current rents. It would limit future rent increases to only
15 65% of inflation (as measured by the CPI difference) resulting in ever-declining real rental income
16 dollars. It would also limit banking of rent increases to three years and 10%. The reduction in
17 rental income will reduce values of rental property, therefore reducing property tax revenue
18 available to the City. The proposed RSO would also eliminate a current exemptions for units that
19 have been “substantial rehabilitated” and for four-unit buildings.

20 88. Regarding review of the proposed RSO’s potential environmental effects under the
21 California Environmental Quality Act (“CEQA”) (Pub. Res. Code §21000 *et. seq.*), the entirety
22 of the City’s consideration and evidence consisted of the following three paragraphs:

- 23 a. “In terms of CEQA compliance, the initiative ordinance repeals the existing RSO
24 and adopts a new RSO in its place. The new RSO carries forward most of the
25 provisions of the existing RSO. The changes to the existing RSO involve
26 allowable rent increases, registration and certification of rents, the selection of
27 Rent Board members, and other minor changes in the administration of the rent
28 stabilization scheme that could not have physical impacts on the environment.

1 Accordingly, the ‘common sense’ exemption from CEQA applies.”

2 b. “Whereas, the City Council finds that this resolution is exempt from...CEQA
3 pursuant to State CEQA Guidelines section 15061(b)(3) in that it can be seen with
4 certainty that there is no possibility that this ordinance or its implementation
5 would have a significant effect on the environment. See *Muzzy Ranch vs. Solano*
6 *County ACLU* (2007) 41 Cal.4th 372.”

7 c. “The City Council hereby finds and determines submission of the proposed
8 measure regarding amendment of the Rent Stabilization Ordinance is exempt from
9 review under the CEQA. The City Council finds and determines said submission
10 is statutorily exempt from the CEQA review process because submission of this
11 measure to the voters is not a “project,” as defined at Public Resources Code
12 §21065, in that it does not involve an activity undertaken by a public agency or a
13 private activity which must receive some discretionary approval from a
14 government agency which may cause either a direct physical change in the
15 environment or a reasonably foreseeable indirect change in the environment.”

16 89. These statements by the City regarding CEQA were issued on July 28th and were not
17 changed, amended or augmented before the Council adopted its Resolution on August 4th. As of
18 July 28th, the text of the proposed RSO was still far from final. It contained alternatives with
19 regard to key provisions, including establishment of maximum allowable rent (*i.e.*, how far below
20 current rents will the new maximum rents be set; which will have a direct impact to rental income
21 streams, property values and therefore property tax revenue). Before it finalized the proposed
22 RSO on August 4th, the City said nothing regarding whether the final changes might impact its
23 prior reliance on the common sense exemption.

24 90. During the City Council’s proceedings, Housing Providers spoke in opposition to the
25 adoption of the proposed changes to the RSO on the grounds that the City had failed to analyze
26 environmental impacts of its action. Housing Providers submitted a letter to the City Council
27 explaining in detail why the City’s reliance on the “common sense” exemption under CEQA
28 Guidelines section 15061(b)(3), and its claim that submittal of the proposed RSO to the voters is

1 not a “project” subject to CEQA at all, are incorrect. The letter enclosed a supporting report
2 entitled: “Analysis: Economic and Environmental Impacts Of Proposed Changes to East Palo
3 Alto’s Rent Stabilization Ordinance” prepared by Michael St. John, Ph.D, as well as numerous
4 other academic articles that conclude that rent control causes various systemic problems that lead
5 to physical environmental deterioration and urban decay.

6 91. Housing Providers’ letter, citing to the supporting reports and materials, discussed in
7 detail potential physical environmental effects that may result from the proposed RSO and its
8 implementation. These include:

- 9 a. Urban Decay. Rent control in general and, in particular, a program that so
10 severely restricts rents, is known to result in physical deterioration of properties
11 and neighborhoods subject to rent control to the point of creating physical urban
12 decay or blight. It is now well settled that CEQA requires public agencies to
13 analyze the urban decay or blight effects associated with their decisions.
14 *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124
15 Cal.App.4th 1184, 1204 (“if the forecasted economic or social effects of a
16 proposed project directly or indirectly will lead to adverse physical changes in the
17 environment, then CEQA requires disclosure and analysis of these resulting
18 physical impacts”); *American Canyon Community United for Responsible Growth*
19 *v. City of American Canyon* (2006) 145 Cal.App.4th 1062; *Bakersfield Citizens for*
20 *Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184. “[W]hen there
21 is evidence...that economic and social effects caused by a project...could result in
22 a reasonably foreseeable indirect environmental impact, such as urban decay or
23 deterioration, then the CEQA lead agency is obligated to assess this indirect
24 environmental impact.” *Anderson First Coalition v. City of Anderson* (2005) 130
25 Cal.App.4th 1173, 1182. In residential areas particularly, rent control’s reduced
26 rents often results in buildings with unfit, unsuitable or dangerous conditions,
27 including shoddy state, derelict conditions, and weakened foundations. These
28 blighted areas, in turn, are known to attract drug and gang activity. These effects

1 of rent control are more severe when, as here, the majority of the buildings in one
2 concentrated neighborhood are under rent control; newer structures are not
3 interspersed with the older rent controlled buildings. The City evaluated none of
4 this.

5 b. Reduced Housing. Numerous studies show that rent control actually results in
6 reduction of available housing and in particular housing for those of limited
7 income. CEQA requires that an EIR cover a project's effects on "cumulative
8 housing stock loss." *Concerned Citizens of South Central Los Angeles v. Los*
9 *Angeles Unified School District* (1994) 24 Cal.App.4th 826, 836. Housing stock
10 loss can result in overcrowding in the housing stock that is not lost and/or growth
11 elsewhere to accommodate those displaced by the lost housing. Further
12 restrictions included in this proposed ordinance will, as compared to the existing
13 program, exacerbate this impact.

14 c. Growth Inducing Impacts. Studies of rent control also show that it can produce
15 growth inducing impacts as a result of the lack of turn over in rent controlled
16 housing. Individuals with rent controlled housing tend to stay in the housing even
17 when outside circumstances would induce them to move. This results in increased
18 congestion and other growth related impacts. CEQA clearly requires that a lead
19 agency examine the growth inducing impacts of a proposed project. Public
20 Resources Code §21100(b)(5); CEQA Guidelines §15126.2(d).

21 d. Reduction in Services. Rent control results in a reduction in property values and a
22 concomitant reduction in property tax income to the City. This proposal, which
23 further reduces income as compared to the existing program, will further reduce
24 property tax income. In turn, this places additional stress on the City's limited
25 budget for essential services including police services and road maintenance.
26 Courts have found "a substantial reduction of the level of governmental services"
27 to be evidence of an environmental impact warranting preparation of an EIR.
28 *People v. Local Agency Formation Comm'n of San Diego County* (1978) 81

1 Cal.App.3d 464, 480.

- 2 e. Health and Safety Concerns. Deferred maintenance on housing structures often
3 leads to health and safety concerns. As a result of the more severe restrictions on
4 rental income, there is the potential for impacts to the health and safety of
5 residents and the public.
- 6 f. Traffic Impacts. The neighboring City of Menlo Park is considering street
7 closures in the neighborhood known as Woodland Park, where 91% of the housing
8 is rental housing and it thus contains a large proportion of rent controlled housing.
9 The adoption of even stricter rent controls in East Palo Alto, resulting in
10 deterioration of East Palo Alto's rental housing adjacent to this area of Menlo
11 Park, may affect the City of Menlo Park's decision on this topic. The City should
12 have, but did not, at least consider the potential traffic impacts associated with this
13 proposal.

14 92. Neither City staff nor any City Council member said anything in response to Housing
15 Providers' letter to defend the claim of CEQA exemptions, other than to summarily reiterate their
16 position that CEQA review was unnecessary.

17 **GENERAL ALLEGATIONS**

18 93. Petitioner and Plaintiff Woodland Park Management, LLC is, and at all relevant times
19 was, a Delaware limited liability company duly registered to do business in California and whose
20 principal place of business is California. It is engaged in the business of operating and managing
21 residential rental properties, including rental properties in East Palo Alto subject to the Existing
22 RSO.

23 94. 5 Newell, LLC is and at all relevant times was, a Delaware limited liability company
24 duly registered to do business in California and whose principal place of business is California.
25 It is engaged in the business of owning residential rental property, including rental property
26 located at 5 Newell Rd., East Palo Alto.

27 95. 15 Newell, LLC is and at all relevant times was, a Delaware limited liability company
28 duly registered to do business in California and whose principal place of business is California.

1 It is engaged in the business of owning residential rental property, including rental property
2 located at 15 Newell Rd., East Palo Alto.

3 96. Respondent, Defendant and Real Party in Interest City of East Palo Alto is, and at all
4 relevant times was, a general law city located in San Mateo County, California.

5 97. Respondent, Defendant and Real Party in Interest City of East Palo Alto City Council
6 is the governing, elected body of the City of East Palo Alto. As the decision-making body for the
7 Revised RSO, the City Council is charged with mandatory responsibilities under CEQA.

8 98. Respondent Warren Slocum is, and at all relevant times, was the Chief Elections
9 Officer for San Mateo County, California.

10 99. The San Mateo County Superior Court has initial jurisdiction over the matters alleged
11 herein pursuant to Code of Civil Procedure Sections 1085, 1087 1094.5, 1094.6 and 1095-1097,
12 Civil Code Section 3420, Government Code Sections 54960 and 54960.1, and Public Resources
13 Code Sections 21168 and 21168.5.

14 100. Venue is proper within Superior Court for the San Mateo County pursuant to Code of
15 Civil Procedure Sections 392, 394, and 395 because the actions complained of occurred in the
16 County of San Mateo, California, the Respondent and Real Party in Interest City as well as
17 Respondent Warren Slocum are located there.

18 101. Housing Providers have standing to assert the claims raised in this Petition and
19 Complaint. Pursuant to Code of Civil Procedure Section 1086 and Government Code Section
20 54960, Housing Providers are beneficially interested in this matter as owners and operators of
21 rental housing affected by the City's decisions. Housing Providers have a strong interest in
22 protecting the environmental health of the City and to protect the City's important public
23 resources. Housing Providers have a substantial, direct, and immediate interest in assuring that
24 the City fulfills its duties to comply with the Brown Act and CEQA.

25 102. Housing Providers have performed any and all conditions precedent to filing of this
26 Petition and Complaint, including demanding via written letter that the City cure or correct its
27 Brown Act violations, and have participated in the public phases of the legislative process, and
28 have thus fully exhausted any and all administrative remedies to the extent required by law.

1 Housing Providers attended public meetings, raised oral objections and submitted written
2 comments and objections at various stages of the proceedings to revise the RSO. Housing
3 Providers raised each and every significant substantive and procedural issue known to them in
4 compliance with Public Resources Code section 21177 during the proceedings to revise the RSO.

5 103. The City Council has taken final action with respect to the adoption of the Revised
6 RSO. The City and City Council have a mandatory duty to comply with applicable state, federal
7 and local laws, including but not limited to CEQA and the Brown Act prior to undertaking the
8 discretionary actions at issue in this lawsuit.

9 104. Housing Providers possess no effective remedy to challenge the decisions at issue in
10 this action other than by means of this lawsuit.

11 105. Housing Providers have no plain, speedy, or adequate remedy in the ordinary course
12 of law to challenge the past and future actions by the City complained of herein unless this Court
13 grants the requested writ of mandate and injunctive and declaratory relief to require the City to
14 set aside the Revised RSO, remove the Revised RSO from the ballot, conduct environmental
15 review pursuant to CEQA, and comply with the Brown Act, and a writ of mandate requiring
16 Respondent Warren Slocum to remove the Revised RSO from the ballot.

17 106. There is a current controversy regarding the City's past practices in violation of the
18 Brown Act that demonstrates that such practices will continue.

19 107. This lawsuit is timely filed.

20 108. On August 12, 2009, Housing Providers served the City with notice of this action in
21 compliance with Public Resources Code section 21167.5. A copy of this letter, and its proof of
22 service, is attached hereto as Exhibit A.

23 109. In compliance with Public Resources Code section 21167.5, Housing Providers
24 mailed notice of the original Petition and Complaint to the California Attorney General's office
25 on August 12, 2009. A copy of this notice is attached hereto as Exhibit B.

26 110. Housing Providers have complied with Public Resources Code section 21167.6 by
27 filing a request for preparation of the record of administrative proceedings relating to this action.

28 111. Housing Providers bring this action pursuant to Public Resources Code sections

1 21168 and 21168.5 and Code of Civil Procedure sections 1085 and 1094.5 which require an
2 agency's actions be set aside if that agency has prejudicially abused its discretion. Prejudicial
3 abuse of discretion occurs either where an agency has failed to proceed in the manner required by
4 law or where its determination or decision is not supported by substantial evidence in the record.
5 City has prejudicially abused its discretion because it has failed to proceed in the manner required
6 by law and its decisions are not supported by substantial evidence.

7 112. Housing Providers seek alternative and peremptory writs of mandate pursuant to Code
8 of Civil Procedure sections 1085, 1087 and 1094.5 and Public Resources Code sections 21168,
9 21168.5 and 21168.9.

10 113. Housing Providers request injunctive relief pursuant to Code of Civil Procedure
11 sections 526, 527 and 3422. City's actions will result in irreparable harm to Housing Providers
12 and the public at large in that the challenged actions will cause significant environmental impacts
13 that were not adequately addressed under CEQA and denied public participation required by the
14 Brown Act.

15 114. This litigation involves the enforcement of an important public right affecting the
16 public interest. Accordingly, if Housing Providers are successful in prosecuting this action,
17 Housing Providers will confer a substantial benefit on the citizens of the City of East Palo Alto
18 and the Bay Area, and therefore will be entitled to an award of reasonable attorneys' fees
19 pursuant to Code of Civil Procedure section 1021.5.

20 115. Housing Providers also bring this action pursuant to Government Code section 800,
21 which awards petitioners up to \$7,500.00 in attorneys fees in actions to overturn agency
22 decisions, such as those at issue herein, that are arbitrary and capricious.

23 116. Additionally, Housing Providers request reimbursement for costs pursuant to Code of
24 Civil Procedure section 1032, subdivision b.

25 **FIRST CAUSE OF ACTION**
26 (Brown Act)
(City of East Palo Alto and City Council of East Palo Alto)

27 117. Housing Providers reallege and incorporate herein by reference each and every
28

1 allegation set forth above in Paragraphs 1 through 116.

2 118. Government Code Section 54960(a) provides, "The district attorney or any interested
3 person may commence an action by mandamus, injunction or declaratory relief for the purpose of
4 stopping or preventing violations or threatened violations of this chapter by members of the
5 legislative body of a local agency or to determine the applicability of this chapter to actions or
6 threatened future action of the legislative body, or to determine whether any rule or action by the
7 legislative body to penalize or otherwise discourage the expression of one or more of its members
8 is valid or invalid under the laws of this state or of the United States, or to compel the legislative
9 body to tape record its closed sessions as hereinafter provided."

10 119. Under the Brown Act, a legislative body must provide at least 72 hours of notice of its
11 scheduled meetings. Gov't Code section 54954.

12 120. The City Council has repeatedly failed to give adequate notice of its intended actions
13 under the Brown Act as described herein.

14 121. The City's erratic posting and distribution of agendas, with multiple revisions, well
15 within the 72-hour notice period violates the clear mandates of the Brown Act.

16 122. The Brown Act prohibits any closed session not expressly authorized by state law.
17 Gov't Code § 54962.

18 123. When a legislative body meets to discuss litigation, "prior to holding a closed session
19 pursuant to this section, the legislative body of the local agency shall state on the agenda or
20 publicly announce the subdivision of this section that authorizes the closed session." Gov't Code
21 section 59456.9.

22 124. The City's closed session agendas have repeatedly failed to cite any authority under
23 the Brown Act for meeting.

24 125. If the closed session relates to pending litigation, then "the body shall state the title of
25 or otherwise specifically identify the litigation to be discussed, unless the body states that to do
26 so would jeopardize the agency's ability to effectuate service of process upon one or more
27 unserved parties, or that to do so would jeopardize its ability to conclude existing settlement
28 negotiations to its advantage." Gov't Code section 59456.9.

1 126. The City Council has repeatedly failed to state the title of any pending litigation, or to
2 state that to so specify would jeopardize its position in any way.

3 127. If the City Council discussed pending litigation without proper notice, it did so in
4 violation of the Brown Act.

5 128. If the City Council intended to discuss potential litigation, then the Brown Act
6 requires that such potential litigation be based on “existing facts and circumstances” (Gov’t Code
7 section 54956.9(b)(1)) that fall into one of five categories (Gov’t Code section 54956.9(b)(3))

8 129. The City Council has repeatedly failed to specify any existing facts or circumstances
9 that justified closed session based on pending litigation.

10 130. On information and belief, the City Council deliberated on proposed legislation in
11 closed session in violation of the Brown Act.

12 131. In addition, “the mere possibility of judicial review does not constitute significant
13 exposure to litigation based on existing facts and circumstances.” 71 Ops.Cal.Atty.Gen 96, 105
14 (1988).

15 132. The Brown Act lists examples of appropriate descriptions of closed session items
16 regarding pending and potential litigation. Gov’t Code section 54954.5.

17 133. For pending litigation, the agenda is sufficient when it says, “CONFERENCE WITH
18 LEGAL COUNSEL—EXISTING LITIGATION (Subdivision (a) of Section 54956.9) Name of
19 Case: (Specify by reference to claimant’s name, names of parties, case or claim numbers) or Case
20 name unspecified: (Specify whether disclosure would jeopardize service of process or existing
21 settlement negotiations).” Gov’t Code section 54954.5(c).

22 134. For potential litigation, the agenda is sufficient when it says, “CONFERENCE WITH
23 LEGAL COUNSEL—ANTICIPATED LITIGATION Significant exposure to litigation pursuant
24 to subdivision (b) of Section 54956.9: (Specify number of potential cases) (In addition to the
25 information noticed above, the agency may be required to provide additional information on the
26 agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E),
27 inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.) Initiation of litigation pursuant
28 to subdivision (c) of Section 54956.9: (Specify number of potential cases).”

1 135. The Brown Act does not allow “semi-closed” meetings to which certain members of
2 the public are admitted while others are excluded. 46 Ops.Cal.Atty.Gen. 34, 35 (1965).

3 136. The City Council admitted some members of the public, including Mr. Schwartz and
4 Mr. Baar, and excluded all others, like Housing Providers, from the closed session.

5 137. A body cannot use the presence of counsel per se as a pretext for “secret
6 consultations.” *Stockton Newspapers, Inc. v. Redevelopment Agency of the City of Stockton*
7 (1985) 171 Cal.App.3d 95, 104-05.

8 138. By including Mr. Schwartz and Mr. Baar, the City Council used attorneys, neither of
9 whom was retained, if at all, for litigation, as a pretext for holding a closed session.

10 139. Such pretextual closed sessions violate the Brown Act.

11 140. Moreover, the participation of Mr. Schwartz and Mr. Baar, without notice to the
12 public that they would participate, as members of the public, or as agents of the City Council
13 violates the Brown Act.

14 141. “The public has the right to be present and to be heard during all phases of legislative
15 enactment by any governmental agency.” *Sacramento Newspaper Guild, Local 92 v. Sacramento*
16 *County Board of Supervisors* (1968) 263 Cal.App.2d 41, 50

17 142. When the City Council discussed the Revised RSO in closed session, it prevented the
18 public including Housing Providers from being present and being heard during the legislative
19 process, in violation of the Brown Act.

20 143. Government Code Section 54960(b) provides, “The court in its discretion may, upon a
21 judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6,
22 order the legislative body to tape record its closed sessions and preserve the tape recordings for
23 the period and under the terms of security and confidentiality the court deems appropriate.”

24 144. The City Council has never taken public action to retain Mr. Baar as a consultant.

25 145. Failing to make that decision in public, with adequate notice to the public, violates the
26 Brown Act.

27 146. Government Code Section 54960.1(a) provides, “The district attorney or any
28 interested person may commence an action by mandamus or injunction for the purpose of

1 obtaining a judicial determination that an action taken by a legislative body of a local agency in
2 violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under
3 this section. Nothing in this chapter shall be construed to prevent a legislative body from curing
4 or correcting an action challenged pursuant to this section.”

5 147. Housing Providers demanded that the City cure or correct its Brown Act violations
6 alleged herein.

7 148. Housing Providers were prejudiced by the City’s failure to comply with the Brown
8 Act by being prevented from fully participating in the public decision making process.

9 149. The City’s violations demonstrate a pattern and practice of Brown Act violations that
10 are likely to continue absent court intervention in the form of a writ of mandate and/or injunctive
11 relief, which is authorized under Government Code Section 54960(a) and Civil Code Section
12 3420.

13 150. The City’s denial of wrong-doing further demonstrate that violations will continue in
14 the absence of court intervention.

15 151. Wherefore, Housing Providers pray for relief as hereinafter set forth.

16 **SECOND CAUSE OF ACTION**
17 (California Environmental Quality Act)
(City of East Palo Alto and City Council of East Palo Alto)

18 152. Housing Providers reallege and incorporate herein by reference each and every
19 allegation set forth above in Paragraphs 1 through 151.

20 153. The City Council’s final action on August 4, 2009, adopting resolutions submitting
21 the Revised RSO to the voters violated CEQA. The City claimed submittal of the Revised RSO
22 to the voters is exempt from CEQA under two theories, neither of which applies.

23 154. First, the City claims that “submission is statutorily exempt from the CEQA review
24 process because submission of this measure to the voters is not a ‘project,’ as defined at Public
25 Resources Code §21065, in that it does not involve an activity undertaken by a public agency or a
26 private activity which must receive some discretionary approval from a government agency
27 which may cause either a direct physical change in the environment or a reasonably foreseeable
28 indirect change in the environment.” The City’s exact exemption theory from this language is

1 difficult to deduce.

2 155. To the extent the City means by the language that its act of adopting the Resolutions
3 to submit the proposed RSO to the voters was not a discretionary activity subject to CEQA, the
4 City is wrong. The case of *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th
5 165, conclusively holds that city council submittal of ballot measures to the voters is a
6 discretionary act subject to CEQA.

7 156. To the extent the City means that the Revised RSO will not cause a direct or
8 reasonably foreseeable indirect change in the environment, Housing Providers submitted
9 extensive evidence of such possible changes to the environment, including urban decay, reduced
10 housing, induced growth, reduction in public services, health and safety concerns and traffic
11 impacts. The City provided no response to this evidence. For a discretionary act to fall outside
12 CEQA's purview at the "project" or "no project" stage, the hurdle for the government is very
13 high: any activity that may have a significant effect is subject to CEQA. "CEQA does not speak
14 of projects which will have a significant effect, but those which may have such effect." *Muzzy*
15 *Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 383. Something
16 even as amorphous and indirect as potential growth displacement impacts in one area of a city
17 caused by banning growth in another area is enough of an impact to place the growth ban within
18 CEQA's purview. *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th
19 372, 383.

20 157. Second, the City claims that the Revised RSO is exempt from CEQA under the
21 "common sense" exemption under CEQA Guidelines section 15061(b)(3) "in that it can be seen
22 with certainty that there is no possibility that this ordinance or its implementation would have a
23 significant effect on the environment." Specifically, the City claims that the differences between
24 the existing RSO and the proposed RSO "could not have physical impacts on the environment."

25 158. Nothing in the record supports the City's claim. "[T]he agency invoking the
26 exemption has the burden of demonstrating it applies. Any agency's duty to provide such factual
27 support 'is all the more important where the record shows, as it does here, that opponents of the
28 project have raised arguments regarding possible significant environmental impacts.'" *Muzzy*

1 *Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386 (quoting
2 *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 114). “An agency obviously
3 cannot declare ‘with certainty that there is no possibility that the activity in question may have a
4 significant effect on the environment’ (CEQA Guidelines §15061(b)(3)) if it has not considered
5 the facts of the matter.” *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41
6 Cal.4th 372, 387.

7 159. In the present case, Housing Providers raised numerous arguments (supported by
8 reports) that the proposed RSO may create possible significant environmental impacts, including
9 urban decay, reduced housing, induced growth, reduction in public services, health and safety
10 concerns and traffic impacts. The City provided no response. Without considering these
11 arguments, therefore, it is impossible that the City could have “seen with certainty that there is no
12 possibility that this [proposed RSO] ordinance or its implementation would have a significant
13 effect on the environment” as the City claimed in its adopted Resolution.

14 **THIRD CAUSE OF ACTION**

15 (Writ of Mandate)

16 (City of East Palo Alto, City Council of East Palo Alto and Warren Slocum)

17 160. Housing Providers reallege and incorporate herein by reference each and every
18 allegation set forth above in Paragraphs 1 through 159.

19 161. The City has a mandatory duty to comply with all requirements of the Brown Act,
20 including posting meeting agendas that adequately inform the public of items to be discussed and
21 business to be transacted at public meetings.

22 162. The City also has a mandatory duty to conduct closed sessions with proper notice and
23 otherwise in accordance with the Brown Act.

24 163. The City has repeatedly failed to give proper notice under the Brown Act.

25 164. The City Council’s notice of and participation in a closed session regarding legislation
26 with members of the public breached the City’s mandatory duty to comply with the Brown Act.

27 165. The City has a mandatory duty to comply with CEQA.

28 166. The City conducted no environmental review of its final action on August 4, 2009. Its

1 action was subject to CEQA and not covered by any exemption

2 167. The City's failure to conduct environmental review violated CEQA.

3 168. Because the City has abused its discretion and failed to act in the manner required by
4 law in taking final action to submit the Rent Stabilization and Just Cause for Eviction Ordinance
5 of the City of East Palo Alto to the voters for consideration in the November 3, 2009 General
6 Municipal Election, the San Mateo County Chief Elections Official cannot lawfully comply with
7 the City's request to place this proposed ordinance on the ballot and hold a consolidated election.

8 169. Wherefore, Housing Providers pray for relief as hereinafter set forth.

9 **FOURTH CAUSE OF ACTION**

(Declaratory Judgment)

10 (City of East Palo Alto, City Council of East Palo Alto and Warren Slocum)

11 170. Housing Providers reallege and incorporate herein by reference each and every
12 allegation set forth above in Paragraphs 1 through 169.

13 171. An actual controversy has arisen and now exists between Housing Providers and the
14 City concerning the City's violation of the Brown Act. Housing Providers contend that City has
15 violated the Brown Act; the City contends the contrary.

16 172. Housing Providers seek a judicial determination that the City's final actions on
17 August 4, 2009 to adopt resolutions placing revisions to the Rent Stabilization and Just Cause for
18 Eviction Ordinance of the City of East Palo Alto on the November 3, 2009 ballot violate the
19 Brown Act.

20 173. An actual controversy has arisen and now exists between Housing Providers and the
21 City concerning the City's violation of CEQA. Housing Providers contend that City violated
22 CEQA; the City contends the contrary.

23 174. Housing Providers seek a judicial determination that the City's final actions on
24 August 4, 2009 to adopt resolutions placing revisions to the Rent Stabilization and Just Cause for
25 Eviction Ordinance of the City of East Palo Alto on the November 3, 2009 ballot violate CEQA.

26 175. Housing Providers seek a judicial determination that the County Elections Official
27 may not place the Rent Stabilization and Just Cause for Eviction Ordinance of the City of East
28

1 Palo Alto on the November 3, 2009 ballot for consideration by the voters.

2 176. A judicial declaration is necessary and appropriate at this time.

3 177. Wherefore, Housing Providers pray for relief as hereinafter set forth.

4

FIFTH CAUSE OF ACTION

(Injunctive Relief)

(City of East Palo Alto, City Council of East Palo Alto and Warren Slocum)

6

7 178. Housing Providers reallege and incorporate herein by reference each and every
8 allegation set forth above in Paragraphs 1 through 177.

9 179. As relates to the City's violations of the Brown Act, injunctive relief pursuant to Code
10 of Civil Procedure Section 526, Civil Code Section 3420 and Government Code Section 54960(a)
11 is necessary and proper to prevent continued violations.

12 180. As relates to the City's violation of CEQA, injunctive relief pursuant to Civil Code
13 Section 3420 and Code of Civil Procedure Section 526, is necessary and proper to prevent further
14 violation.

15 181. As relates to the Elections Officer, injunctive relief is necessary and appropriate to
16 prevent the ordinance from being put to the voters.

17 182. Pecuniary compensation will not afford adequate relief. There is no adequate remedy
18 to undo violations that deny the public an opportunity to know about and participate in the
19 conduct of the people's business.

20 183. Wherefore, Housing Providers pray for relief as hereinafter set forth.

21

PRAYER

22 WHEREFORE, Housing Providers pray for relief as set forth below:

23 1. An alternative writ of mandate (i) commanding Respondents and Real Parties in
24 Interest City of East Palo Alto and City Council of the City of East Palo Alto to set aside the
25 legislative decisions to adopt the Rent Stabilization and Just Cause for Eviction Ordinance of the
26 City of East Palo Alto ("Revised RSO") and resolutions calling for a general municipal election
27 on November 3, 2009 and submitting to the voters a City Council-sponsored measure repealing
28 and replacing the City's Rent Stabilization Ordinance and requesting consolidation of the

1 municipal election with the Countywide general election to be held on November 3, 2009 or in
2 the alternative to show cause in this Court why they have not done so, and (ii) commanding
3 Respondent Warren Slocum, Chief Elections Official for San Mateo County to refrain from
4 placing the Revised RSO on, or to remove the Revised RSO from, the November 3, 2009 San
5 Mateo County ballot; or in the alternative to show cause in this Court why he has not done so.

6 2. A writ of mandate ordering the City to rescind, set aside, annul, and/or void any
7 and all action it has taken to place revisions of the RSO on the ballot for consideration by the
8 voters, including its final actions of August 4, 2009 to adopt the Rent Stabilization and Just Cause
9 for Eviction Ordinance of the City of East Palo Alto ("Revised RSO") and resolutions calling for
10 a general municipal election on November 3, 2009 and submitting to the voters a City Council-
11 sponsored measure repealing and replacing the City's Rent Stabilization Ordinance and
12 requesting consolidation of the municipal election with the Countywide general election to be
13 held on November 3, 2009, and to refrain from re-submitting the Revised RSO to the voters until
14 it complies with CEQA..

15 3. A writ of mandate ordering the San Mateo County Chief Elections Officer,
16 Warren Slocum, to remove the Rent Stabilization and Just Cause for Eviction Ordinance of the
17 City of East Palo Alto from the November 3, 2009 ballot for San Mateo County, or to refrain
18 from placing it on the ballots.

19 4. A judicial declaration that the City's actions violated the Brown Act.

20 5. A judicial declaration that the City's action violated CEQA.

21 6. A mandatory injunction commanding that the City comply with all Brown Act
22 requirements in the future in all activities and all respects, including but not limited to the
23 following:

24 a. Creating and posting final agendas 72 hours prior to all meetings of the City
25 Council – unless the Brown Act specifically authorizes a shorter agenda/notice
26 period.

27 b. Describing all City Council agenda items, including closed session items, in
28 conformity with the clear requirements of the Brown Act.

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- c. Refrain from holding semi-closed sessions that include some members of the public but exclude others.
- d. Refrain from holding closed sessions to discuss legislative decisions or any other actions required to be discussed in public.
- e. Refrain from holding closed sessions in which secret ballots, preliminary or final, may be tallied.
- f. Provide notice of all regular meetings of legislative bodies upon written request.
- g. Make available for public review agendas and all other writings distributed at public meetings pursuant to Government Code Section 54957.5.
- h. Requiring the City to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the Court deems appropriate pursuant to Government Code Sections 54960(b) and (c).

7. An injunction prohibiting the City from placing the Revised RSO on the ballot without first complying with CEQA.

8. An injunction prohibiting the Elections Officer from putting the Revised RSO to the voters on November 3, 2009.

9. Reasonable costs, disbursements and attorneys fees (authorized by Government Code Section 54960.5 and Code of Civil Procedures Section 1021.5), together with interest thereon at the legal rate until the date judgment is satisfied.

10. For such further relief as the Court deems proper.

DATED: August 12, 2009

ELLMAN, BURKE, HOFFMAN & JOHNSON
A Professional Corporation



Christine W. Griffith
Attorneys For Petitioners and Plaintiffs
Woodland Park Management, LLC, 5 Newell, LLC,
and 15 Newell, LLC

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VERIFICATION

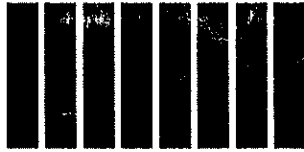
I, JAMES SHORE, declare that I have read the foregoing PETITION AND COMPLAINT and know its contents. I am the General Counsel for Woodland Park Management, LLC, a Delaware Limited Liability Company and a party to this action. I am authorized to make this verification for and on its behalf. The matters stated in the Petition and Complaint are true of my own knowledge except those matters stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 12, 2009 at Palo Alto, California.



James Shore



EXHIBIT

A



EXHIBIT *A*

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August 12, 2009

VIA U.S. MAIL AND FACSIMILE (650.853.3115)

City Council
City of East Palo Alto
2415 University Avenue
East Palo Alto, CA 94303


City Clerk
City of East Palo Alto
2415 University Avenue
East Palo Alto, CA 94303

Re: Notice of Intent to File CEQA Petition – Changes to Rent Ordinance

Dear Mayor Abrica and Members of the City Council:

PLEASE TAKE NOTICE, under California Public Resources Code section 21167.5, that petitioners Woodland Park Management, LLC, 5 Newell, LLC, and 15 Newell, LLC (collectively, "Petitioners") intend to file a petition and complaint under the provisions of the California Environmental Quality Act ("CEQA") against respondents, the City of East Palo Alto and the East Palo Alto City Council (collectively, "City"), challenging that the City violated CEQA when the City Council voted on August 4, 2009, to submit to the voters proposed changes to the City's existing Rent Stabilization and Just Cause for Eviction Ordinance of the City of East Palo Alto. Specifically, Petitioners will contest the City's claim that the proposed changes are not subject to CEQA or otherwise exempt from CEQA.

ELLMAN BURKE HOFFMAN & JOHNSON PC

By: 
Christine W. Griffith
Attorneys for Petitioners

cc: Vincent Ewing, City Attorney (via facsimile)

EXHIBIT A

1 CHRISTINE W. GRIFFITH (Bar No. 193602)
IVO KELLER (Bar No. 245909)
2 CORINNE I. CALFEE (Bar No. 252974)
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10 Attorneys for Petitioners and Plaintiffs
Woodland Park Management, LLC, 5 Newell,
LLC and 15 Newell, LLC
11
12

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF SAN MATEO
15

16 Woodland Park Management, LLC, 5
17 Newell, LLC, and 15 Newell, LLC

18 Petitioners and Plaintiffs,

19 v.

20 City of East Palo Alto, City Council of the
City of East Palo Alto, and Warren Slocum,
21 Chief Elections Officer, San Mateo County

22 Respondents and Defendants,

23 City of East Palo Alto and City Council of the
City of East Palo Alto,

24 Real Parties in Interest.
25

26 ///

27 ///

28 ///

Case No. CIV

**PROOF OF SERVICE BY MAIL OF
NOTICE TO ATTORNEY GENERAL
(PER PUBLIC RESOURCES CODE
SECTION 21167.7 AND CODE OF
CIVIL PROCEDURE SECTION 388)**

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PROOF OF SERVICE

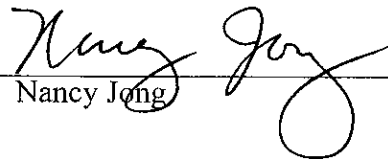
I hereby declare: On the date below written, I served a true copy of the attached:
NOTICE TO ATTORNEY GENERAL (PER PUBLIC RESOURCES CODE SECTION 21167.7
AND CODE OF CIVIL PROCEDURE SECTION 388)

by the means marked below on the following person(s):

Office of the Attorney General
1300 "I" Street
P.O. Box 944255
Sacramento, CA
94244-2550

X BY FIRST CLASS MAIL – By placing a true copy of each document listed above in (an) envelope(s) addressed as shown above, sealing the envelope(s) and placing them for collection and mailing, following ordinary business practices, at my employer's office on the date below written. I am over the age of eighteen years and not a party to the within cause. I am employed at the law firm of Ellman Burke Hoffman & Johnson, A Professional Corporation, at 601 California Street, Nineteenth Floor, San Francisco, California 94108, Telephone (415) 777-2727, Fax (415) 495-7587. I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business such correspondence is deposited with the United States Postal Service at San Francisco, California, with first-class postage fully prepaid thereon, on the same day as I place it for collection and mailing

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 12, 2009, at San Francisco, California.



Nancy Jong



EXHIBIT

B



EXHIBIT

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18 Petitioners and Plaintiffs,
19 v.
20 City of East Palo Alto, City Council of the
City of East Palo Alto, and Warren Slocum,
21 Chief Elections Officer, San Mateo County
22 Respondents and Defendants,
23 City of East Palo Alto and City Council of the
City of East Palo Alto,
24 Real Parties in Interest.

Case No.
**NOTICE TO ATTORNEY GENERAL
(PER PUBLIC RESOURCES CODE
SECTION 21167.7 AND CODE OF
CIVIL PROCEDURE SECTION 388)**

26 **To the Attorney General of the State of California:**
27 PLEASE TAKE NOTICE, under Public Resources Code Section 21167.7 and Code of
28 Civil Procedure Section 388, that on August 12, 2009, Petitioners/Plaintiffs Woodland Park

1 Management, LLC, 5 Newell, LLC, and 15 Newell, LLC (collectively, "Petitioners") filed in San
2 Mateo County Superior Court a petition for writ of mandate against Respondents/Defendants the
3 City of East Palo Alto and the City Council of the City of East Palo Alto (collectively, the
4 "City"), and San Mateo County Chief Elections Officer Warren Slocum.

5 The petition alleges that the City violated the California Environmental Quality Act, Pub.
6 Res. Code §21000 *et seq.* ("CEQA"), by failing to conduct any review under CEQA of the
7 potential environmental impacts associated with the City's revisions to its rent
8 stabilization/control ordinance (called the Rent Stabilization and Just Cause for Eviction
9 Ordinance of the City of East Palo Alto), which the City adopted on August 4, 2009 and
10 submitted to the voters for approval.

11 The revisions substantially rollback the rental income revenue stream that landlords will
12 receive on rent-controlled units. First, it would roll back permitted maximum rents to 2006
13 levels, thereby reducing current rents. Second, it would limit future rent increases to only 65% of
14 inflation (as measured by the CPI difference) resulting in ever-declining real rental income
15 dollars. Third, it would limit banking of rent increases to three years and 10%. This reduced
16 income stream, in turn, substantially reduces the financial ability of landlords to maintain the
17 rental units. This is almost certain to cause physical decay of the units, and associated buildings
18 and grounds. The revisions also would eliminate current exemptions for units that have been
19 "substantial rehabilitated." This directly removes a primary incentive of landlords to rehabilitate
20 units, thereby guaranteeing increased decay of units. Lastly, the revisions remove an exemption
21 for four-unit buildings, thus bringing approximately 200 more units under rent control which
22 likely will lead to deterioration of these units.

23 By lowering rental income landlords can receive, the revisions will lower the assessed
24 value of the rental properties. This, in turn, will lower property tax revenue to the City, which
25 will reduce the City's ability to provide basic public services such as police and fire services. By
26 tightening rent control, the revisions also likely will lead to some units being taken off the market
27 (*i.e.*, a loss of housing stock) – a well-known result of rent control. The revisions also could
28 cause traffic impacts in the form of increased commute times of renters not wanting to leave their

1 units, even though a job change may place their work far away. The neighboring City of Menlo
2 Park also is considering closing streets abutting an East Palo Alto neighborhood that contains
3 many rent-controlled units. Decay and deterioration in this neighborhood caused by these tighter
4 rent control restrictions, could hasten Menlo Park's decision to close these streets, thereby
5 substantially impacting traffic patterns and congestion.

6 The proposed revisions to the rent control ordinance, therefore, are likely to have
7 environmental impacts in the form of urban decay, traffic, public services, health and safety, and
8 housing stock loss. Petitioners submitted extensive evidence of all these potential impacts to the
9 City before the City adopted the revisions.

10 In violation of CEQA, the City conducted no environmental review whatsoever of the
11 potential impacts of the proposed revisions. The City summarily claimed that the revisions were
12 not subject to CEQA at all because the revisions have no probability of creating any impacts, so
13 therefore was not a "project". The City also summarily claimed that the revisions are nonetheless
14 exempt from CEQA under the "common sense" exemption in that the City saw with certainty
15 that there was no possibility that the revisions could have any environmental impact. The City
16 provided no factual basis whatsoever for its positions.

17 In addition, Petitioners challenge that the City's process and actions leading up to and
18 including the City's August 4, 2009, vote to adopt the proposed revisions and submit them to the
19 voters violated the Ralph M. Brown Act.

20 A copy of the petition is attached to this notice.

21 DATED: August 12, 2009

22 ELLMAN, BURKE, HOFFMAN & JOHNSON
23 A Professional Corporation

24 

25 Christine W. Griffith

26 Attorneys For Petitioners and Plaintiffs
27 Woodland Park Management, LLC, 5 Newell, LLC,
28 and 15 Newell, LLC