

CITY OF EMERYVILLE

MEMORANDUM

To: Mayor Nora Davis and City Council

cc: Patrick O’Keeffe, City Manager

From: Michael G. Biddle, City Attorney
Margaret O’Brien, Revenue Division Manager

Subject: Woodfin Suites Hotel’s Appeal of the City Manager’s Issuance of a Conditional Annual Measure C Hotel Permit Expiring June 30, 2008 and Orders Regarding Seventeen (17) Administrative Complaints Seeking Back Wages

Date: August 27, 2007

INTRODUCTION

On June 12, 2007 the City Manager issued an Annual Measure C Hotel Permit to Woodfin subject to several conditions. Additionally, the City Manager issued orders requiring payment of back wages to seventeen (17) housekeeping employees. On June 27, 2007, Woodfin filed a timely appeal of the permit and wage orders issued by the City Manager.

After a June 1, 2007 deadline to submit documentation, Woodfin submitted for the first time records for the period of January 1, 2006 through July 31, 2006. At the July 17, 2007 regular meeting, with respect to Woodfin’s appeal, the City Council made various determinations and provided Woodfin a further opportunity until August 6, 2007 to supplement the record with documentation. The City Council set a hearing date for a special meeting of the City Council at 7:00 p.m., Monday, August 27, 2007 and at such hearing the City Council would consider the results of the audit of the documentation submitted after the June 1, 2007 deadline and reserve to itself the issue of whether Woodfin should have discovered and produced all relevant records to the City with reasonable diligence in a timelier manner.

On Monday, August 6, 2007, Woodfin submitted additional records in response to the City Council’s direction. A copy of Woodfin’s cover letter is attached in Exhibit E of Volume 16S. Thereafter, additional documentation was submitted on Wednesday, August 8, 2007. An e-mail dated August 9, 2007 was sent by Woodfin to City staff to confirm delivery of the documentation provided on August 8, 2007 (see Exhibit E of Vol. 16S). City staff was able to conduct an initial assessment of the information provided as discussed above and noted that all appropriate time card data information still had not been provided. Thus, on Friday, August 10, 2007, City staff sent Woodfin representatives

an e-mail reiterating the City's request of Woodfin to submit all appropriate time card data and room assignment logs for housekeeping employees for the period of December 16, 2005 through December 31, 2006, by the morning of Wednesday, August 15, 2007 (see Exhibit E of Volume 16S). On August 15, 2007, Woodfin submitted additional time card data under cover letter dated August 14, 2007 (see Exhibit E of Volume 16S).

Once again the information submitted by Woodfin after June 1, 2007 (time card data and housekeeping logs) were sorted by employee name/employee identification number/PIN (see Exhibits A and B of Volumes 1S through 14S, 17S and 18S) and input to a spreadsheet (see Exhibits C of Volumes 1S through 14S, 17S and 18S). The spreadsheets found at Exhibits C, D, E and F of Volumes 1S through 14S, 17S and 18S contain the findings derived from the time card data and housekeeping logs found in Exhibits A and B of Volumes 1 through 14, **and** Exhibits A and B of Volumes 1S through 14S, 17S and 18S. Accordingly, to the extent there is a spreadsheet in Exhibits C, D, E or F of Volumes 1S through 14S, 17S and 18S, the corresponding spreadsheet found in Exhibits C, D, E or F of Volumes 1 through 14 are not relevant for purposes of this report on the findings for the Audit Period described below. Thus, the conditions to the proposed Amended Woodfin Annual Measure C Hotel Permit attached to this report as Exhibit A, reflect the results of the audit of all information produced to the City by Woodfin through August 15, 2007.

AUDIT PERIOD

The audit of the Woodfin Suites Hotel in Emeryville presented in this report covers data produced to the City by Woodfin for the months of January 2006 through December 2006. For the period of December 16, 2005 through December 31, 2005, Woodfin maintains that they do not have time card data or housekeeping logs for this time period and also that they should not have to produce it because the City only first asked for records for this time period on July 17, 2007.

BACKGROUND

On November 8, 2005, the electorate of the City of Emeryville ("City") adopted Measure C: Workplace Justice Standards At Large Hotels ("Measure C"), which regulates workplace standards at hotels with more than 50 hotel rooms within the City. The City Council certified the election results pursuant to Resolution No. 05-206, adopted December 6, 2005. In accordance with California Elections Code Section 9217, the effective date of Measure C is December 16, 2005. For administrative purposes, Measure C has been codified in the Emeryville Municipal Code ("Code") at Article 1 of Chapter 32 of Title 5. On September 15, 2006, the City Council adopted Resolution No. 06-179 establishing an Annual Permit Fee and an Annual Enforcement Fee to cover the City's costs of enforcing Measure C. On February 6, 2007, the City Council adopted Resolution No. 07-31 establishing Regulations and Procedures Implementing Measure C ("Measure C Regulations").

There are four (4) hotels in the City of Emeryville that are subject to the requirements of Measure C (the "Hotels"). On August 11, 2006, the City Attorney sent a letter to the Hotels requesting documentation showing compliance with Measure C as follows (see Exhibit E, Volume 16)¹:

- (1) Minimum compensation for each Employee (as that term is defined in Measure C) to be at least \$9 per hour, which shall increase on March 1, 2006, per the region's CPI published by the U.S. Bureau of Labor Statistics for the preceding year. The CPI increased 2% during the calendar year of 2005; therefore the minimum compensation for each Employee is \$9.18 per hour effective as of March 1, 2006.
- (2) Minimum average compensation for all Employees to be at least \$11 per hour, which shall increase on March 1, 2006, per the region's CPI published by the U.S. Bureau of Labor Statistics. The CPI increased 2% during the calendar year of 2005; therefore the minimum compensation for all Employees is \$11.22 per hour effective as of March 1, 2006.
- (3) If there has been a sale of the Hotel or other change resulting in a new person or entity taking over as employer at the Hotel (such as subcontracting, subleasing, or replacement of subcontractor, lessee or sublessee), that
 - (a) No Employees be discharged (absent reasonable and substantiated cause) during the 90 days which follow the change, and
 - (b) if there were any Employees discharged, they be offered the opportunity to be reinstated in any open position.
- (4) Employees working as room cleaners be paid at least time-and-a-half the minimum average compensation for all time worked in a day if required to clean rooms amounting to more than 5,000 square feet of floor space in any eight-hour workday. If the room cleaner's workday is less than eight hours, the square footage threshold shall be prorated according to actual hours worked. Further, if the room cleaner cleans seven or more rooms with additional beds such as cots or rollaways, the floorspace threshold shall be reduced by 500 square feet for each such room over six.
- (5) Employees be paid jury duty leave.

Further, the request directed the Hotels to provide documentation to the City by September 11, 2006 and that the documentation provided be for the period of January 1, 2006 through the date of submission.

The audit associated with the Annual Measure C Hotel Permits for the Hotels was thereafter assigned to the Finance Department. Woodfin provided an initial response to the City's request on September 11, 2006 (see Exhibit E, Volume 16). The response provided insufficient evidence of compliance with Measure C. Accordingly, a follow-up

¹ Correspondence and e-mails between the City of Emeryville and representatives of the Woodfin Suites Hotel regarding implementation and enforcement of Measure C for the period of December 2005 through August 2007 are set forth in ascending chronological order in Exhibit E of binder labeled "Woodfin Suites Hotel Annual Measure C Hotel Permit Expiring June 30, 2008 Volume 16" and Exhibit E of binder labeled "Woodfin Suites Hotel Annual Measure C Hotel Permit Expiring June 30, 2008 Volume 16S."

letter dated September 25, 2006 was sent by the Finance Department to Woodfin and the other Hotels providing a checklist of information needed that would assist the City to address the audit (see Exhibit E, Volume 16). In particular, the City's checklist requested (i) the daily work schedule or hours worked for each room cleaner, (ii) the specific rooms cleaned each day for each room cleaner, (iii) the square footage of each room, and (iv) an indication of whether the room cleaned had any roll-away beds or cots. As before, the request directed the Hotels to provide documentation to the City for the period of January 1, 2006 through the date of the most recent pay period. The request asked that the documentation be provided by October 30, 2006.

Woodfin responded by letter dated November 8, 2006 from their new General Manager, Hugh MacIntosh (see Exhibit E, Volume 16). However, no documentation was provided as the letter repeatedly claimed that the specific documents the City is requesting do not exist. Subsequently, Mr. MacIntosh appeared before the City Council on December 19, 2006 and indicated that documentation requested by the City does exist and would be forthcoming. The City Attorney sent letters to Woodfin on December 19, 2006 and December 27, 2006 requesting its compliance with the City's records request (see Exhibit E, Volume 16). Then, in an email exchange with the City Attorney on December 28, 2006, Mr. MacIntosh indicated that Woodfin would soon provide documents to the City dating back to October 1, 2006, and that documents going back to May 1, 2006 should be delivered within a month (i.e. by the end of January, 2007) (see Exhibit E, Volume 16).

On January 4, 2007, Woodfin produced documentation for the period of October 1, 2006 through December 31, 2006. However, the documentation provided was incomplete and inadequate to complete the audit. Thereafter, during the months of January through March 2007, there were various exchanges of e-mail and phone calls with Woodfin representatives to try and clarify issues with the information provided (i.e. the October – December 2006 documentation) and obtain additional information to make the documentation for that time period as complete as possible (see Exhibit E, Volume 16).

In late March and early April 2007, Woodfin communicated to the City that documentation demonstrating compliance with Measure C relative to housekeeping employees may not exist prior to October 2006. Accordingly, the City Attorney advised Woodfin to produce all available documentation to the City by April 9, 2007 (see Exhibit E, Volume 16; e-mail string of April 4, 2007). Thereafter, on April 7, 2007, Mr. MacIntosh advised the City that Woodfin had located some room assignment records for September and October 2006, and that these records along with payroll information would be produced to the City the week of April 16, 2007 (see Exhibit E, Volume 16; e-mail of April 7, 2007). No records were produced by Woodfin as promised. On Wednesday April 25, 2007, Mr. MacIntosh advised that records would be produced on Friday April 27, 2007 (see Exhibit E, Volume 16; e-mail of April 25, 2007). Again, no records were produced by Woodfin as promised. On Friday April 27, 2007, Mr. MacIntosh advised that the records would be produced on Monday, April 29, 2007 (see Exhibit E, Volume 16; e-mail of April 27, 2007). Thus, on April 27, 2007, the City

Attorney sent a letter to Woodfin advising that the City would finalize its efforts based on whatever documentation it has in its possession by the close of business on Tuesday, May 1, 2007 (see Exhibit E, Volume 16).

On May 1st, 18th and 25th 2007, Woodfin produced additional documentation for the period of August and September 2006 for housekeeping employees and security guards only (see Exhibit E, Volume 16). Again, as with prior submittals, the documentation provided was incomplete (see Exhibit E, Volume 16; e-mail string of April 30, 2007 through May 3, 2007; e-mail of May 29, 2007).

As the City finalized its audit during the month of May 2007, the City learned that room assignment logs dating back to December 2005 did in fact exist. Accordingly, on May 25, 2007, the City Attorney advised Woodfin of this newly learned information and established one last deadline of June 1, 2007 to produce all relevant records (see Exhibit E, Volume 16). In accordance with the City Attorney's letter of May 25, 2007, the Finance Department finalized the audit based on information in its possession as of June 1, 2007. Additionally, directly related to the issue of compliance with item (4) of the City Attorney's August 11, 2006 demand letter set forth above, the City received seventeen (17) administrative complaints from housekeeping/room cleaner employees of Woodfin alleging non-payment of appropriate wages as prescribed by Measure C. Accordingly, the findings of the audit relative to item (4) will address the merits of these wage complaints as well.

Thereafter, on June 12, 2007 the City Manager issued an Annual Measure C Hotel Permit to Woodfin subject to several conditions. Additionally, the City Manager issued orders requiring payment of back wages to the seventeen (17) housekeeping employees. On June 27, 2007, Woodfin filed a timely appeal of the permit and wage orders issued by the City Manager.

After the June 1, 2007 deadline, Woodfin submitted for the first time records for the period of January 1, 2006 through July 31, 2006. City staff has maintained that Woodfin should have discovered and produced all relevant records for 2005 and 2006 to the City with reasonable diligence no later than September 11, 2006 and April 10, 2007 respectively. City staff even postponed these deadlines on more than one occasion to provide Woodfin an opportunity to produce all relevant records. However, as noted above, Woodfin failed to produce such records until after the June 1, 2007 deadline.

At the July 17, 2007 regular meeting, with respect to Woodfin's appeal, the City Council made various determinations and provided Woodfin a further opportunity to supplement the record as follows:

- that the facts stated in the notice of appeal constitute a matter of sufficient substantiality to warrant a hearing in the public interest
- set a hearing date for a special meeting of the City Council at 7:00 p.m., Monday, August 27, 2007 and at such hearing the City Council will consider the results of the audit of the documentation submitted after the

June 1, 2007 deadline and reserve to itself the issue of whether Woodfin should have discovered and produced all relevant records to the City with reasonable diligence in a timelier manner

- The record on appeal should reflect the following corrections:
 1. Condition #3 of Woodfin Suites Hotel Annual Measure C Hotel Permit, top of page 4, the name “Patricia Hernandez” should be replaced with “Beatriz Hernandez”.
 2. Condition #3 of Woodfin Suites Hotel Annual Measure C Permit, bottom of page 6, “Enkhtuya Batsukh,” back wage of “\$2,149.59” for audited period should be replaced with sum of “\$1,750.87.”
 3. Exhibits C, D and F for “Enkhtuya Batsukh- #3290” in binder Volume 11, should be replaced with Exhibits provided at the meeting.
 4. California Elections Code Section 9217 provides that the effective date of an ordinance adopted by the voters goes into effect 10 days after the results of the vote is declared by the City Council. The City Council of the City of Emeryville declared the election results pertaining to Measure C on December 6, 2005. Accordingly, the effective date of Measure C is December 16, 2005. References in Woodfin Suites Hotel Annual Measure C Hotel Permit Expiring June 30, 2008 and the Orders Regarding Seventeen (17) Administrative Complaints Seeking Back Wages should be updated to reflect Measure C’s effective date of December 16, 2005. Additionally, all back wage calculations should be updated to reflect Measure C’s correct effective date.
 5. In accordance with condition #5 of Woodfin Suites Hotel Annual Measure C Hotel Permit, Woodfin submitted “as built” floorplans of guest rooms to the City on June 29, 2007. Accordingly, condition #5 should be removed or acknowledged as satisfied.
- Woodfin be given a further opportunity to supplement the record for the City Council’s consideration with information as follows:

Audited Period: August 1, 2006 through December 31, 2006

1. Exhibit A and B of Volume 16 contains room assignment logs with no identifying employee identification number or PIN. Woodfin should resubmit to the City these room assignment logs, together with the appropriate employee identification number or PIN, by the end of business Monday, August 6, 2007.
2. As set forth on page 8 of the June 12, 2007 report to the City Manager (see footnote 4), the pay rate of \$9.73 per hour was assigned to all housekeepers whose actual pay rate was unknown. A list identifying 30 such employees by name and/or PIN whose actual pay rate is unknown was provided to Woodfin representatives at the July 17, 2007 City Council meeting. Woodfin should submit to the City the actual hourly pay rate, by month, for the employees identified by name and/or PIN on the attached list for December 2005 through December 2006, by the end of business Monday, August 6, 2007.

3. Exhibit E for housekeeping employees identified by name and/or PIN in binders Volume 1 through 14, details days which said employee worked but no room assignment logs were provided or days where room assignment logs were provided but no time card data was provided. Accordingly, City staff was unable to verify whether said employees exceeded the workload threshold or were paid 1.5 times the average minimum compensation for days the workload threshold was exceeded. Woodfin should submit to the City room assignment logs and time card data for said employees on the days noted by end of business Monday, August 6, 2007.
4. In accordance with condition #5 of Woodfin Suites Hotel Annual Measure C Hotel Permit, Woodfin submitted "as built" floorplans of guest rooms to the City on June 29, 2007. Based on the "as built" floorplans, the average square foot of floorspace for Traditional rooms is 288 square feet, Suite rooms is 490 square feet, and Corner rooms is 478 square feet. Based on information provided by Woodfin on January 4, 2007, the audit assumed that Traditional rooms are 236 square feet, Suite rooms are 480 square feet, and Corner rooms are 430 square feet. Given the disparity in size for the Traditional room (i.e. 52 square feet), Suite room (i.e. 10 square feet) and Corner room (i.e. 48 square feet), City staff were instructed to update the information for the Audited Period based on the average square foot of floorspace for Traditional, Suite and Corner rooms as reflected from the "as built" floorplans submitted by Woodfin.
5. City staff were instructed to update the information for the Audited Period based on information provided by Woodfin to City staff pursuant to items 1 through 3 above and utilize the average square foot of floorspace for Traditional, Suite and Corner rooms as reflected from the "as built" floorplans submitted by Woodfin.

Unaudited Period: December 16, 2005 through July 31, 2006

1. As noted above, the effective date of Measure C is December 16, 2005. Therefore, the Unaudited Period as referred to in Woodfin Suites Hotel Annual Measure C Hotel Permit Expiring June 30, 2008 and the Orders Regarding Seventeen (17) Administrative Complaints Seeking Back Wages is December 16, 2005 through July 31, 2006.
2. During the hearing on the appeal the City Council will consider the results of the audit of the documentation for the Unaudited Period that was submitted by Woodfin after June 1, 2007.
3. Numerous room assignment logs for January through July 2006 were provided with no identifying employee identification number or PIN. A copy of these logs were hand delivered to Woodfin representatives at the July 17, 2007 City Council meeting. Woodfin should resubmit these room assignment logs to the City with

the appropriate employee identification number or PIN by the end of business Monday, August 6, 2007.

4. Woodfin should double check all room assignment logs produced for the period of January through July 2006, since none of the logs submitted indicate any rooms cleaned as “check-out” rooms. Any corrected room assignment logs should be submitted to the City by the end of business Monday, August 6, 2007.
5. A preliminary review of time card data submitted by Woodfin for housekeeping employees identified by name and/or PIN for January through July 2006 details days and hours worked, but for some days no room assignment logs were provided. Thus, City staff are unable to verify whether said employees exceeded the workload threshold or were paid 1.5 times the average minimum compensation for days the workload threshold was exceeded. At the July 17, 2007 City Council regular meeting, City staff provided Woodfin representatives a list of employee names and/or PIN and days that no room assignment logs were provided. Woodfin should submit to the City room assignment logs for said employees on the days noted by end of business Monday, August 6, 2007.
6. Woodfin should submit all appropriate time card data information and room assignment logs for housekeeping employees for the entire Unaudited Period, including December 16, 2005 through December 31, 2005, by the end of business Monday, August 6, 2007.
7. City staff were instructed to audit the information for the Unaudited Period based on information provided by Woodfin to City staff pursuant to items 2 to 6 above and utilize the average square foot of floorspace for Traditional, Suite and Corner rooms as reflected from the “as built” floorplans submitted by Woodfin.

On Monday, August 6, 2007, Woodfin submitted additional records in response to the City Council’s direction as set forth above. A copy of Woodfin’s cover letter is attached in Exhibit E of Volume 16S. Thereafter, additional documentation was submitted on Wednesday, August 8, 2007. An e-mail dated August 9, 2007 was sent by Woodfin to City staff to confirm delivery of the documentation provided on August 8, 2007 (see Exhibit E of Vol. 16S). City staff was able to conduct an initial assessment of the information provided as discussed above and noted that all appropriate time card data information still had not been provided. Further, information that had been provided raised questions with respect to the accuracy of previously submitted room assignment logs. Thus, on Friday, August 10, 2007, City staff sent Woodfin representatives an e-mail reiterating the City’s request of Woodfin to submit all appropriate time card data and room assignment logs for housekeeping employees for the period of December 16, 2005 through December 31, 2006, by the morning of Wednesday, August 15, 2007 (see Exhibit E of Volume 16S). On August 15, 2007, Woodfin submitted additional time card data under cover letter dated August 14, 2007 (see Exhibit E of Volume 16S).

City staff thereafter requested a continuance of the August 27, 2007 hearing as detailed in the agenda of the August 21, 2007 regular meeting of the City Council. See Exhibit 1 to report dated August 24, 2007 from Benjamin L. Stock and Benjamin D. Winig, Special Counsel, to Mayor Nora Davis and Members of the City Council. The request for a continuance was denied.

AUDIT FINDINGS

Non-housekeeping Employees

Documentation provided to the City by Woodfin indicates that all non-housekeeping employees, with the exception of security guards, were paid the appropriate wage rate as required by Measure C for the period of September 1, 2006 through December 31, 2006. No documentation has been provided for non-housekeeping employees for the period of December 16, 2005 through August 31, 2006. Thus, the Annual Measure C Hotel Permit should be conditioned on Woodfin submitting a signed declaration to the City that Woodfin has affirmatively reviewed all wage records for all non-housekeeping employees for the period of December 16, 2005 through August 31, 2006, and that all non-housekeeping employees have been paid the appropriate wage rate in accordance with Measure C for said time period. Also, if necessary, Woodfin must make payments to all non-housekeeping employees of back wages for the period of December 16, 2005 to August 31, 2006.

Security Guards

Woodfin failed to timely produce complete documentation requested by the City for security guards for the period of December 16, 2005 through December 31, 2006. Documentation related to security guards (see Exhibit C, Volume 16) was produced on May 18, 2007 (see Exhibit E, Volume 16), however those records merely indicate what Woodfin paid for security guard services as a whole and do not show what rate of pay the individual security guards received. Thus, the Annual Measure C Hotel Permit should be conditioned on Woodfin submitting a signed declaration to the City that Woodfin has affirmatively reviewed all wage records for all security guards for the period of December 16, 2005 through December 31, 2006, and that all security guards have been paid the appropriate wage rate in accordance with Measure C for said time period. Also, if necessary, Woodfin must make payments to or make arrangements with third parties for payments to all security guards of back wages for the period of December 16, 2005 to December 31, 2006.

Housekeeping Employees

As will be described below, the documentation provided for housekeeping employees was incomplete and does not reasonably demonstrate that housekeeping employees were paid the appropriate wage rate required by Measure C. The goal of this audit was to ascertain if Woodfin was compliant with Measure C by paying housekeepers 1.5 times the average hourly minimum wage as set forth in Measure C for every hour

worked in a day when their daily cleaning assignments exceeded the 5,000 square foot workload threshold set forth in Measure C².

The workload threshold for room cleaners established by Measure C is 5,000 square feet of floor space in an eight hour workday. The workload threshold is prorated for hours worked if a housekeeping employee worked less than 8 hours in a work shift. Thus, if a room cleaner worked a 4 hour day, the workload threshold would be 2,500 square feet of floor space for that day. Additionally, the workload threshold is reduced at the rate of 500 square feet per check-out room or rooms with removable beds if a room cleaner is assigned in excess of 6 such rooms per work shift. Thus, if a room cleaner was assigned 8 rooms that were check-out rooms or had removable beds, the workload threshold would be reduced by 1,000 square feet (i.e. 2 rooms in excess of 6 per work shift times 500 square feet).

The records provided consisted of room assignment logs and time card data for individual employees. These records were then sorted by employee identification number or PIN. The room assignment logs indicate the employee identification number for the individual room cleaner, the work date, the room numbers assigned to be cleaned that day, the status of the room (C/O = check-out room; DND = do not disturb; N/S = no service), and the room type (T=Traditional Room; C=Corner Suite; S=Suite). The time card data indicate the employee identification number or PIN, the work date, and total hours worked each day.

The Woodfin has 3 styles of guestroom: Suite, Corner, and Traditional rooms. The average square footage assigned to these different styles of rooms was derived from the “as built” floor plans submitted by Woodfin on June 29, 2007. City staff added the square footage of each guestroom designated as a Suite on the “as built” floor plans and then divided the total square footage by the number of Suite rooms to obtain an average of 490 square feet per Suite room. The same process was undertaken for the Corner and Traditional rooms. Suite rooms average 490 square feet, Traditional rooms average 288 square feet, and Corner rooms average 478 square feet. Thus, Suite rooms were audited at 490 square feet, Traditional rooms at 288 square feet, and Corner rooms at 478 square feet.

The “as built” floor plans confirm that the majority of rooms in the Woodfin Suites Hotel are Suite style rooms. The initial audit of information submitted before June 1, 2007, assigned the room as a Suite in the event a room assignment log did not have a room type listed. Since the number of instances in which this assumption was made was minimal, City staff did not go back and update the information with the actual room type.

In the event a room assignment log indicated the status of the room as DND = do not disturb or N/S = no service, the floor space of that room was not counted toward the calculation of the workload threshold.

² An obvious additional goal of the audit was to verify that Woodfin compensated each Employee the required minimum compensation and the minimum average compensation for all Employees.

As noted above, the room assignment logs and time card data were sorted by employee identification number or PIN and placed into binders. Sixteen (16) binders (Volumes 1 through 16) of information relating to the Woodfin Suites Hotel audit were previously provided to the City Council and Woodfin representatives in conjunction with the City Council regular meeting of July 17, 2007. Eighteen (18) binders (Volumes 1S through 18S) of information relating to the Woodfin Suites Hotel audit submitted after June 1, 2007, are attached with this report. Volumes 1 through 14 and Volumes 1S through 14S, 17S and 18S contain the audit data for each employee identified by name and/or employee identification number or PIN. The information in Volume 1S relates to the same employees previously identified in Volume 1, and so forth for Volumes 2 through 14 and Volumes 2S through 14S. Volume 17S and 18S contains information for employees who were not previously identified in the audit of information provided prior to June 1, 2007. Once the documentation was appropriately sorted, the pertinent information was input to a spreadsheet to ascertain if an employee cleaned more than the workload threshold on a particular day.

Audit Process

As an example, open Volume 4 and 4S and go to the tab for Maria Martinez - #1182. Exhibit A of Volume 4 and 4S contains all of the room assignment logs and Exhibit B of Volume 4 and 4S contains all the time card data produced by Woodfin relative to Ms. Martinez for the period of January 1, 2006 through December 31, 2006. The pertinent information was then input to a spreadsheet which is depicted in Exhibit C of Volume 4S.

Reviewing Exhibit C for the date of August 1, 2006, you will note that Ms. Martinez was assigned to clean 13 rooms, 1 was a DND and 1 was a N/S, for a total of 11 rooms cleaned. Of these 11 rooms cleaned, 0 was a Traditional, 8 were Suites, and 3 were Corners (you will find this information on the room assignment log for August 1, 2006 in Exhibit A of Volume 4). Taking the average square footage ascribed to these rooms by the "as built" floor plans provided by Woodfin, we find that Ms. Martinez cleaned **5,354** square feet (i.e. 8 Suites x 490 s.f. = 3,920 s.f.; 3 Corners x 478 s.f. = 1,434 s.f.; 3,920 s.f. + 1,434 s.f. = 5,354 s.f.) on August 1, 2006. Next, we note that none of the rooms cleaned were check-out rooms or rooms with removable beds. Thus, there is no deduction to the workload threshold for this work day. Also, from the timecard data for this day (see Exhibit B of Volume 4), we note that Ms. Martinez worked an 8-hour day and thus the workload threshold is not prorated. Accordingly, the workload threshold for August 1, 2006 remains at 5,000 square feet. Ms. Martinez cleaned 5,354 square feet that day, which is 354 square feet in excess of the workload threshold, and thus Woodfin is required to pay Ms. Martinez 1.5 times the average hourly minimum wage as set forth in Measure C for every hour worked that day.

As another example, look at November 15, 2006. Ms. Martinez was assigned to clean 14 rooms, 1 was a DND and 0 were N/S, for a total of 13 rooms cleaned. Of these 13 rooms cleaned, 1 was a Traditional, 9 were Suites, and 3 were Corners (you will find this information on the room assignment log for November 15, 2006 in Exhibit A of

Volume 4). Taking the average square footage ascribed to these rooms by the “as built” floor plans submitted by Woodfin, we find that Ms. Martinez cleaned **6,132** square feet (i.e. 1 Traditional x 288 s.f. = 288 s.f.; 9 Suites x 490 s.f. = 4,410 s.f.; 3 Corners x 478 s.f. = 1,434 s.f.; 288 s.f. + 4,410 s.f. + 1,434 s.f. = 6,132 s.f.) on November 15, 2006. Next, we note that seven (7) of the rooms cleaned were check-out rooms or rooms with removable beds, which is one (1) over the maximum of six (6). Accordingly, the workload threshold is reduced by 500 square feet for a workload threshold of 4,500 for November 15, 2006. Also, from the timecard data for this day (see Exhibit B of Volume 4), we note that Ms. Martinez worked an 8-hour day and thus the workload threshold is not prorated. Accordingly, the workload threshold for November 15, 2006 is 4,500 square feet. Ms. Martinez cleaned 6,132 square feet that day, which is 1,632 square feet in excess of the workload threshold, and thus Woodfin is required to pay Ms. Martinez 1.5 times the average hourly minimum wage as set forth in Measure C for every hour worked that day.

As another example, look at November 27, 2006. Ms. Martinez was assigned to clean 10 rooms, 0 was a DND and 0 were N/S, for a total of 10 rooms cleaned. Of these 10 rooms cleaned, 0 was a Traditional, 8 were Suites, and 2 were Corners (you will find this information on the room assignment log for November 27, 2006 in Exhibit A of Volume 4). Taking the average square footage ascribed to these rooms by the “as built” floor plans submitted by Woodfin, we find that Ms. Martinez cleaned 4,876 square feet (i.e. 8 Suites x 490 s.f. = 3,920 s.f.; 2 Corners x 478 s.f. = 956 s.f.; 3,920 s.f. + 956 s.f. = 4,876 s.f.) on November 27, 2006. Next, we note that five (5) of the rooms cleaned were check-out rooms or rooms with removable beds, which is one (1) under the maximum of six (6). Accordingly, the workload threshold is not reduced based on check-out rooms or rooms with removable beds cleaned. However, from the timecard data for this day (see Exhibit B of Volume 4), we note that Ms. Martinez worked 6.5 hours that day and thus the workload threshold is prorated. Accordingly, the workload threshold for November 27, 2006 is 4,062.5 square feet (6.5 hours divided by 8 hours times 5,000 s.f. = 4,062.5 s.f.). Ms. Martinez cleaned 4,876 square feet that day, which is 813.5 square feet in excess of the workload threshold, and thus Woodfin is required to pay Ms. Martinez 1.5 times the average hourly minimum wage as set forth in Measure C for every hour worked that day.

Next turn to Exhibit D of Volume 4S relative to Ms. Martinez. All of the dates shown on Exhibit D of volume 4S are the work days shown on Exhibit C of Volume 4S that Ms. Martinez cleaned rooms in excess of the workload threshold and thus should have been paid 1.5 times the average hourly minimum wage for every hour worked that day. For each such date, time card data of regular hours and overtime hours worked for each day was multiplied by 1.5 times the average hourly minimum wage as set forth in Measure C (i.e. \$16.83 as of March 1, 2006) to arrive at a Premium Pay value for that date. Thus for August 1, 2006, Ms. Martinez worked 8 hours, which multiplied by the pay rate of \$16.83 per hour, equals a Premium Pay value of \$134.64.

To calculate a value for back-wages owed to an individual, the regular pay rate of \$9.73 per hour was assigned to all housekeepers whose actual pay rate was unknown³. In the case of Ms. Martinez, her known pay rate was utilized. For each such date, time card data of regular hours and overtime hours worked for each day was multiplied by the regular pay rate to arrive at an Actual Compensation value for that date. The Actual Compensation value was then subtracted from the Premium Pay value, to arrive at a Back Pay owed value for each date. These values of Back Pay owed for each date were then added together to arrive at a Total Back Pay owed to Ms. Martinez in the amount of **\$6,139.94**.

As alluded to earlier, the information provided by Woodfin was incomplete. In particular, from the time card data (Exhibit B of Volume 4 and 4S) we know each date that Ms. Martinez worked. However, the audit revealed that for many days that Ms. Martinez worked, Woodfin failed to provide room cleaner logs for corresponding days. Thus, one of the columns in Exhibit E of Volume 4S sets forth dates which Ms. Martinez worked, but no corresponding room cleaner logs were provided. Accordingly, having failed to provide room cleaner logs for days that Ms. Martinez worked, Woodfin has failed to show that Ms. Martinez did not clean rooms in excess of the workload threshold. Having failed to meet its burden as to the dates set forth in Exhibit E for which Ms. Martinez worked but no corresponding room cleaner logs were provided, Woodfin is required to pay Ms. Martinez 1.5 times the average hourly minimum wage as set forth in Measure C for every hour worked for each day.

Additionally, the other column in Exhibit E of Volume 4S sets forth dates (July 3, 4, 10, 12, 13 and 14, 2006) which Ms. Martinez appears on room cleaner logs showing she has cleaned certain rooms on the dates noted, but no corresponding time card data has been provided. For those dates for which no time card data has been provided, the City assumed an 8 hour day in determining if the workload threshold has been exceeded and, if so, calculation of back pay owed.

Thus, turning to Exhibit F of Volume 4S, the first entry of **\$6,139.94** is the total back pay owed (as calculated in Exhibit D of Volume 4S) relative to work days that time card data and room cleaner logs (Exhibit A and B of Volume 4 and 4S) show that Ms. Martinez cleaned rooms in excess of the workload threshold.

The next entry of 24.00 is the total number of hours set forth in Exhibit E of Volume 4S which Ms. Martinez worked during the period of January 1, 2006 through February 28, 2006, but for which no corresponding room cleaner logs were provided.

³ Monthly wage rate information for employees in the housekeeping department was provided by Woodfin for the months of August and September 2006 (see Exhibit E, Volume 16; e-mail of April 28, 2007 for September 2006). However, said information identified employees by "Clock #" which is different than employee identification numbers or PIN. On July 17, 2007 City staff provided Woodfin a list of 30 employees whose wage rate was unknown and on August 6, 2007 Woodfin provided additional wage rate information for some of those employees. Accordingly, for housekeeping employees whose actual pay rate was unknown from other documentation provided by Woodfin, the average of the hourly wage rates ascribed to the various "Clock #" provided was utilized

The next entry of 0.00 is the total number of overtime hours set forth in Exhibit E of Volume 4S which Ms. Martinez worked during the period of January 1, 2006 through February 28, 2006, but for which no corresponding room cleaner logs were provided.

The next entry of 245.50 is the total number of hours set forth in Exhibit E of Volume 4S which Ms. Martinez worked during the period of March 1, 2006 through December 31, 2006, but for which no corresponding room cleaner logs were provided.

The next entry of 2.75 is the total number of overtime hours set forth in Exhibit E of Volume 4S which Ms. Martinez worked during the period of March 1, 2006 through December 31, 2006, but for which no corresponding room cleaner logs were provided.

The next entry of \$11.05 is Ms. Martinez' hourly pay rate.

The next entry of \$3,023.56 is the Actual Pay Ms. Martinez received for those work hours (i.e. 269.50 hours x \$11.05 per hour = \$2,977.98 *plus* 2.75 overtime hours x \$11.05 per hour x 1.5 = \$45.58; \$2,977.98 + \$45.58 = \$3,023.56).

The next entry of \$1,550.49 is the total amount owed for the hours worked set forth in Exhibit E for which no corresponding room cleaner logs were provided. (i.e. 24.00 hours x \$16.50 per hour = \$396.00 *plus* 245.50 hours x \$16.83 per hour = \$4,131.77 *plus* 2.75 overtime hours x \$16.83 per hour = \$46.28; \$396.00 + \$4,131.77 + \$46.28 = \$4,574.05; \$4,574.05 minus Actual Pay of \$3,023.56 = \$1,550.49).

Finally, the last entry in Exhibit F of Volume 4S of **\$7,690.43**, is the sum of the total back pay owed as calculated in Exhibit D of Volume 4S relative to work days that Ms. Martinez cleaned rooms in excess of the workload threshold (i.e. **\$6,139.94**) *plus* the total amount owed for the hours worked set forth in Exhibit E of Volume 4S for which no room cleaning log data was provided (i.e. **\$1,550.49**).

As noted at the outset, Woodfin only provided documentation for January 1, 2006 through December 31, 2006 (the "audited period") and no documentation was provided by Woodfin for December 16, 2005 through December 31, 2005 (the "unaudited period"). Thus, with respect to Ms. Martinez, Woodfin is required to make a back wage payment of **\$7,690.43** for the audited period. Ms. Martinez also filed one of the seventeen (17) administrative complaints for back wages and provided the City with copies of complete payroll record data for the period of December 16, 2005 through December 31, 2006 (see Exhibit H of Volume 4). (Six other complainants also provided to the City complete payroll record data for that same time period; see Exhibits H in Volume 1: Alma Cruz - #2711 and Luz Dominguez - #1976; Volume 3: Maria Elia de Leon - #1188; Volume 4: Luisa Lopez - #3328 and Maria Martinez - #1182; Volume 5: Marcela Melquiodez - #2378 and Ma Ana Mendoza - #2712). The information provided by Ms. Martinez and the other six (6) complainants noted above allowed the City to determine the number of hours worked and actual compensation received by these individuals during the un-audited period. The City then calculated a Premium Pay value by multiplying the number of hours worked during the un-audited period by 1.5 times the

average hourly minimum wage as set forth in Measure C (i.e. \$16.50). Then, the amount of actual compensation was subtracted from the Premium Pay value to arrive at an amount of back wage payment. Thus, with respect to Ms. Martinez, Exhibit H of Volume 4 shows that Ms. Martinez worked 88 regular hours and 0.25 overtime hours during the unaudited period and received \$929.71 of actual compensation. The Premium Pay value for those hours is \$1,456.13. Thus the amount owed for the unaudited period is **\$526.42** (i.e. \$1,456.13 - \$929.71 = \$526.42. Similar calculations for the un-audited period were also able to be made relative to Alma Cruz - #2711, Luz Dominguez - #1976, Maria Elia de Leon - #1188, Luisa Lopez - #3328, Marcela Melquiodez - #2378 and Ma Ana Mendoza - #2712. Note that the spreadsheet in Exhibit G of Volumes 1 through 6 are not relevant for purposes of this report on the findings for the Audit Period described above.

The audit process described above was undertaken with respect to each housekeeping employee for whom records were provided (see Volumes 1S through 14S, 17S and 18S). Other than the immediately aforementioned seven (7) employees who filed complaints and provided the City with complete payroll record data for the un-audited period, the City has no records whatsoever for the un-audited period. Accordingly, having failed to affirmatively show that room cleaners have not exceeded applicable workload thresholds for each day worked, Woodfin has failed to substantiate compliance with Measure C. Therefore, for the un-audited period, Woodfin is required to pay each housekeeping employee an amount equal to the sum of the number of hours worked by each employee during the period of December 16, 2005 through December 31, 2005 times \$16.50 per hour less the amount of actual wages paid by Woodfin to each employee during the period of December 16, 2005 through December 31, 2005.

Volumes 15 and 15S contain room assignment logs with multiple room cleaner employees appearing on the same log. The audit reviewed 3,442 room cleaner logs pertaining to a single room cleaner and 144 room cleaner logs with multiple room cleaner employees appearing on the same log. Where no time card data was provided, an 8-hour work day was assumed by the audit, resulting in a workload threshold of 5,000 square feet for each room cleaner. The amount of square footage cleaned was divided by the number of employees appearing on the log.

Finally, Volumes 16 and 16S contain miscellaneous records. Exhibit A in Volume 16 and 16S are numerous room assignment logs that have no employee identification number or PIN and/or do not indicate a work date. Accordingly, these records were unable to be utilized in the audit. Exhibit B in Volume 16 contains one room assignment log that is unreadable.

Percentage of Violations of Workload Threshold

As discussed above, if Woodfin failed to provide room cleaner logs for days that a housekeeping employee worked, then Woodfin failed to meet its burden to show that the housekeeping employee did not clean rooms in excess of the workload threshold. Having failed to meet its burden for those dates a housekeeping employee worked but no corresponding room cleaner logs were provided, the audit presumes the workload

threshold has been exceeded and requires Woodfin to pay the housekeeping employee 1.5 times the average hourly minimum wage as set forth in Measure C for every hour worked for each day. While imposition of such a presumption in the absence of room cleaner log documentation may seem unfair, statistics from the audit suggest that presumption is justified.

Exhibit C in Volumes 1 through 14, 1S through 14S, 17S and 18S, reflect all the days during the Audited Period for which Woodfin provided (i) time card data and room assignment logs for housekeeping employees or (ii) room assignment logs for housekeeping employees, but no time card data and thus the City assumed an eight (8) hour work day. With that information the City was able to ascertain whether the workload threshold had been exceeded. Thus, it can be determined the frequency or percentage of times a Woodfin housekeeping employee cleaned floor space of guest rooms in excess of the workload threshold. Accordingly, we are presented with the following percentage of occurrences the workload threshold was exceeded by month:

- January 2006 – 92.35%
- February 2006 – 85.43%
- March 2006 – 93.36%
- April 2006 – 84.26%
- May 2006 – 92.12%
- June 2006 – 94.3%
- July 2006 – 90.48%
- August 2006 – 78.69%
- September 2006 – 59.79%
- October 2006 – 52.83%
- November 2006 – 26.77%
- December 2006 – 24.69%

Penalties

Measure C required Woodfin, with reasonable diligence, to discover and provide records to the City for calendar year 2005 by March 31, 2006, and for calendar year 2006 by March 31, 2007. Notwithstanding these statutory time limits, the City allowed Woodfin until June 1, 2007 to produce all relevant records after having set prior deadlines of April 9, 2007 and May 1, 2007, which were ignored. Thereafter, the City Council provided Woodfin until August 6, 2007 to supplement the record with additional documentation and City staff accepted records through August 15, 2007. Measure C provides that failure to provide a copy of such records within ten days of the due date will result in a penalty of \$100.00 per day. For calendar year 2005, recognizing that the City first sent Woodfin and the other Hotels written notice of its demand for records by letter dated August 11, 2006, such records for calendar year 2005 should have been discovered and produced to the City with reasonable diligence no later than September 11, 2006 as requested in the letter. For calendar year 2006, such records should have been discovered and produced to the City with reasonable diligence no later than April 10, 2007.

Accordingly, Woodfin should be assessed a penalty for failing to timely produce records as requested.

“As Built” Floor plans

Section 3 of the Measure C Regulations requires Woodfin to submit “as built” floor plans by June 30, 2007. Woodfin produced the “as built” floor plans in a timely manner.

Annual Permit Fee

City staff has spent 389.5 hours to determine Woodfin’s compliance with Measure C in connection with issuance of an annual permit, which time is billed at the rate of \$68.64 per hour. Woodfin has previously deposited \$5,000.00 with the City for the Annual Permit Fee and thus there is a balance due of \$21,735.28. While Resolution No. 06-179 establishing the Annual Permit Fee provides the City an independent basis to collect the balance due, a condition may be added to the permit to remind Woodfin of this requirement.

April 30, 2007 Notice of Violation

On April 27, 2007, the City Attorney sent Woodfin a letter reminding Woodfin of its legal obligation to not terminate any employee who has filed a complaint that is pending prior to May 7, 2007 (see Exhibit E, Volume 16). Nevertheless, on April 27, 2007, Woodfin placed several employees who had filed administrative complaints with the City on unpaid leave status without reasonable and substantiated cause pending the City’s investigation. On April 30, 2007, the City notified Woodfin of a violation of Measure C’s Urgency Ordinance, Section 5-32.2.3 of the Emeryville Municipal Code (see Exhibit E, Volume 16). The protections afforded to said employees by Measure C, which prevented Woodfin from placing these employees on an unpaid status, expired on May 7, 2007. Accordingly, Woodfin should be required to compensate these terminated employees for the eleven (11) days (i.e. April 27, 2007 through May 7, 2007) they were prematurely terminated.

Annual Enforcement Fee

Resolution No. 06-179, adopted September 15, 2006 provides for payment of an Annual Enforcement Fee for all staff and/or consultant time expended to respond to, investigate and enforce violations of Measure C during the preceding year. Other than the costs of Finance Department staff whose time is recouped as part of the Annual Permit Fee, the City has expended considerable resources on outside attorneys and investigators to investigate and enforce violations of Measure C. While Resolution No. 06-179 provides the City an independent basis to collect the Annual Enforcement Fee, a condition may be added as a reminder that the Enforcement Fee will need to be paid to the City as part of Woodfin’s application for an Annual Measure C Hotel Permit expiring June 30, 2009.

Recommendation

Based on the results of the audit as described herein and documented in thirty four (34) binders labeled “Woodfin Suites Hotel Annual Measure C Hotel Permit Expiring June 30, 2008”, Volume 1 through Volume 16, and “Supplement to Woodfin Suites Hotel Annual Measure C Hotel Permit Expiring June 30, 2008”, Volume 1S through Volume 18S, it is recommended that an Amended Annual Measure C Hotel Permit be issued to Woodfin Suites Hotel, 5800 Shellmound Street, Emeryville, California 94608 conditioned as set forth in Exhibit “A” attached hereto.

Michael G. Biddle, City Attorney

Margaret L. O’Brien, Revenue Division Manager

EXHIBIT "A"

**Amended Annual Measure C Hotel Permit
Expiring June 30, 2008
Woodfin Suites Hotels
5800 Shellmound Street
Emeryville, California 94608**

1. Documentation provided to the City by Woodfin Suites Hotels ("Woodfin") for the period of September 1, 2006 through December 31, 2006 indicates that all non-housekeeping employees, with the exception of security guards, were paid the appropriate wage rate as required by Measure C. Woodfin failed to timely produce any documentation requested by the City for non-housekeeping employees for the period of December 16, 2005 through August 31, 2006, which should have been discovered and produced to the City with reasonable diligence in accordance with the terms of Measure C. Accordingly, the Annual Measure C Hotel Permit expiring June 30, 2008, is issued to Woodfin conditioned on (i) Woodfin submitting a declaration to the City signed by Woodfin's General Manager as to its truth and accuracy that Woodfin has affirmatively reviewed all wage records for all non-housekeeping employees for the period of December 16, 2005 through August 31, 2006, and all non-housekeeping employees have been paid the appropriate wage rate in accordance with Measure C for said time period, and (ii) if applicable, making payments to all non-housekeeping employees of back wages for the period of December 16, 2005 to August 31, 2006. Any such payments due and owing to non-housekeeping employees shall be made to the affected employee on or before September 14, 2007. Thereafter, on or before October 1, 2007, Woodfin shall deliver to the attention of Margaret O'Brien, Revenue Division Manager, the original signed declaration and, if applicable, a letter confirming all required payments to non-housekeeping employees of back wages have been made, with a list of the names of the employees and amounts paid.
2. Woodfin failed to timely produce complete documentation requested by the City for security guards for the period of December 16, 2005 through December 31, 2006, which should have been discovered and produced to the City with reasonable diligence in accordance with the terms of Measure C. Accordingly, the Annual Measure C Hotel Permit expiring June 30, 2008, is issued to Woodfin conditioned on (i) Woodfin submitting a declaration to the City signed by Woodfin's General Manager as to its truth and accuracy that Woodfin has affirmatively reviewed all wage records for all security guards for the period of December 16, 2005 through December 31, 2006, and all security guards have been paid the appropriate wage rate in accordance with Measure C for said time period, and (ii) if applicable, making payments to or making arrangements with third parties for payments to all security guards of back wages for the period of December 16, 2005 to December 31, 2006. Any

such payments due and owing to security guards shall be made to the affected employee on or before September 14, 2007. Thereafter, on or before October 1, 2007, Woodfin shall deliver to the attention of Margaret O'Brien, Revenue Division Manager, the original signed declaration and, if applicable, a letter confirming all required payments to security guards of back wages have been made, with a list of the names of the employees and amounts paid.

3. Documentation provided to the City by Woodfin for the period of January 1, 2006 through December 31, 2006 (the "audited period") was incomplete and does not reasonably demonstrate that housekeeping employees were paid the appropriate wage rate as required by Measure C. Woodfin failed to timely produce any documentation requested by the City for housekeeping employees for the period of December 16, 2005 through December 31, 2005 (the "unaudited period"), which should have been discovered and produced to the City with reasonable diligence in accordance with the terms of Measure C. Section 7(g) of Resolution No. 07-31, adopted February 6, 2007 by the City of Emeryville City Council, provides that the City Manager may presume that if a Large Hotel (as defined in Measure C) fails to timely produce requested documentation or otherwise unreasonably fails to cooperate or interferes with the processing, review and consideration of an Annual Measure C Hotel Permit application, such actions of the Large Hotel tend to substantiate non-compliance with Measure C. In addition, Section 10(f) of Resolution No. 07-31, provides that the City Manager may presume that if a Large Hotel (as defined in Measure C) fails to timely produce requested documentation or otherwise unreasonably fails to cooperate or interferes with an investigation of an administrative complaint, such actions of the Large Hotel tend to show that the allegations in the administrative complaint are substantiated. Having failed to affirmatively demonstrate that housekeeping employees have not exceeded applicable workload standards for each day worked during the period of December 16, 2005 through December 31, 2006, the City has determined this substantiates non-compliance with Measure C and that the allegations in seventeen (17) administrative complaints seeking back wages are substantiated. Therefore, the Annual Measure C Hotel Permit expiring June 30, 2008, is issued to Woodfin conditioned on (i) Woodfin submitting a declaration to the City signed by Woodfin's General Manager as to its truth and accuracy that Woodfin has affirmatively reviewed all wage records for all housekeeping employees for the period of December 16, 2005 through December 31, 2006, and all housekeeping employees have been paid the appropriate wage rate in accordance with Measure C for said time period, and (ii) Woodfin making payments to housekeeping employees of back wages for the period of December 16, 2005 to December 31, 2006 as follows:

- Alma Cruz⁴- #2711: \$10,149.54 for the audited period ***plus*** \$490.04 for the unaudited period, for a total of **\$10,583.34**.

⁴ Alma Cruz filed a complaint alleging back wages owed in the amount of \$10,560.00.

- Luz Dominguez⁵ - #1976: \$8,251.71 for the audited period **plus** \$375.99 for the unaudited period, for a total of **\$8,627.71**.
- Juana Flores⁶ - #3445: \$1,825.56 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour **less** actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Guadalupe Gonzalez⁷ - #1317: \$9,444.28 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour **less** actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Maria Elia de Leon⁸ - #1188: \$8,919.87 for the audited period **plus** \$239.56 for the unaudited period, for a total of **\$9,159.43**.
- Consuelo Lima⁹ - #3419: \$1,871.97 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour **less** actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Luisa Lopez¹⁰ - #3328: \$4,733.81 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour **less** actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Maria Martinez¹¹ - #1182: \$7,690.43 for the audited period **plus** \$526.42 for the unaudited period, for a total **\$8,216.85**.
- Marcela Melquiodez¹² - #2378: \$9,393.01 for the audited period **plus** \$580.00 for the unaudited period, for a total of **\$9,973.01**.
- Ma Ana Mendoza¹³ - #2712: \$9,029.03 for the audited period **plus** \$531.85 for the unaudited period, for a total of **\$9,560.88**.
- Delfina Zamora¹⁴ - #3464: \$1,322.88 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per

⁵ Luz Dominguez filed a complaint alleging back wages owed in the amount of \$10,560.00.

⁶ Juana Flores filed a complaint alleging back wages owed in the amount of \$3,360.00

⁷ Guadalupe Gonzalez filed a complaint alleging back wages owed in the amount of \$11,820.00.

⁸ Maria Elia de Leon filed a complaint alleging back wages owed in the amount of \$10,560.00.

⁹ Consuelo Lima filed a complaint alleging back wages owed in the amount of \$3,840.00.

¹⁰ Luisa Lopez filed a complaint alleging back wages owed in the amount of \$3,840.00.

¹¹ Maria Martinez filed a complaint alleging back wages owed in the amount of \$10,560.00.

¹² Marcela Melquiodez filed a complaint alleging back wages owed in the amount of \$10,560.00.

¹³ Ma Ana Mendoza filed a complaint alleging back wages owed in the amount of \$10,560.00.

¹⁴ Delfina Zamora filed a complaint alleging back wages owed in the amount of \$2,880.00.

hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.

- Yenis Caballero¹⁵ - #1974: \$9,279.15 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Maria Concepcion Guererro¹⁶ - #2980: \$8,894.74 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Beatriz Hernandez - #3462: \$1,618.78 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Maria de Jesus¹⁷ - #1306: \$9,089.46 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Laura Magana¹⁸ - #1245: \$6,189.57 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Alicia Sanchez¹⁹ - #2772: \$9,159.97 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Munkhtuya Batmunkh - #1760: \$174.34 for the audited period plus the sum of the number of regular and overtime hours worked by said

¹⁵ Yenis Caballero filed a complaint alleging back wages owed in the amount of \$10,560.00.

¹⁶ Maria Concepcion Guererro filed a complaint alleging back wages owed in the amount of \$8,640.00.

¹⁷ Maria de Jesus filed a complaint alleging back wages owed in the amount of \$7,680.00.

¹⁸ Laura Magana filed a complaint alleging back wages owed in the amount of \$3,840.00.

¹⁹ Alicia Sanchez filed a complaint alleging back wages owed in the amount of \$11,520.00.

employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.

- Dolgormaa Dalkhjav - #1935: \$9,015.98 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Maria Lopez - #2259: \$10,355.23 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Marciela Macias-Gonzales - #2593: \$6,379.49 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Guadalupe Vasquez - #2804: \$8,434.98 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Patricia Sagal²⁰ - #2806: \$6,587.95 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Eduardo M. Dominguez - #2926: \$54.64 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Marino Cruz-Martinez - #2979: \$10,349.92 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee

²⁰ Patricia Sagal filed a complaint alleging back wages owed in the amount of \$6,720.00.

for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.

- Amalia Garcia de Osuna - #3006: \$9,614.97 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour **less** actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Vincente Duenas - #3223: \$2,045.06 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour **less** actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Enkhtuya Batsukh - #3290: \$3,544.33 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour **less** actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Edgardo Mendoza - #3327: \$104.16 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour **less** actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Saida Martinez - #3331: \$753.28 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour **less** actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Sofia Marmolejo - #3336: \$3,146.72 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour **less** actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Maria Aguilar - #3358: \$2,055.27 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour **less** actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Maria D Luna - #3359: \$696.56 for the audited period **plus** the sum of the number of regular and overtime hours worked by said employee as a

housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.

- Taralah Roberts - #3425: \$504.10 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Crus Pineda - #3426: \$170.40 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Margari Arzeta-Castrejon - #3457: \$314.73 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Luis Valadez-Arzeta - #3461: \$201.91 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Karina Segovia - #3534: \$500.28 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Fabiola Hernandez - #3629: \$632.48 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Marina I. Perez - #3691: \$302.31 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.

- Carmelita E. Bautista - #3695: \$198.14 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Esther Cruz - #3721: \$178.22 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Elsa Magallon - #3723: \$229.99 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Housekeeper PIN Number 3434: \$56.80 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Housekeeper PIN Number 7019: \$56.80 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Housekeeper PIN Numbers 1118, 1248, 2390, 3466, 3507, 3554, 3664, and 3693: \$0.00 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Rosalba T. Santiago - #2215: \$7,329.64 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Housekeeper PIN Number 2699: \$113.28 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period

times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.

- Housekeeper PIN Number 2250: \$56.80 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Housekeeper PIN Number 3701: \$56.80 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Guadalupe Martinez - #1352: \$1,495.43 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Amalia C. Rodriguez - #2521: \$5,474.66 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Ericka Rodriguez - #2083: \$4,751.45 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Maria D. Lupericio - #3015: \$1,741.37 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Norma Martinez - #3053: \$284.00 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.

- Carmen E. Lopez - #2867: \$2,275.98 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Housekeeper PIN Number 7156: \$2,101.60 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Housekeeper PIN Number 3368: \$56.80 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Alicia Galvan-Mora - #1259: \$5,032.23 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Housekeeper PIN Number 1638: \$0.00 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Rosa C. Raya - #2628: \$5,349.69 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Jean C. Arroyoplate - #2771: \$4,406.61 for the audited period plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period times \$16.50 per hour less actual wages paid by Woodfin to said employee for regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the unaudited period.
- Rosa I. Mata - #1242, Rosario Rodriguez - #1560, Cecilia Rodriguez - #2685, and any other housekeeping employee not identified above by name of Housekeeper PIN Number shall be paid back wages by Woodfin in an amount equal to the sum of the number of regular and overtime

hours worked by said employee as a housekeeper at the Woodfin during the period of December 16, 2005 through February 28, 2006 times \$16.50 per hour plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the period of March 1, 2006 through December 31, 2006 times \$16.83 less actual wages paid by Woodfin to said employees for regular and overtime hours worked as a housekeeper at the Woodfin during the period of December 16, 2005 through December 31, 2006.

- Unless compliance with Measure C has otherwise been affirmatively demonstrated by Woodfin through documentation provided to the City as of August 15, 2007, all housekeeping employees shall be paid back wages by Woodfin in an amount equal to the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the period of December 16, 2005 through February 28, 2006 times \$16.50 per hour plus the sum of the number of regular and overtime hours worked by said employee as a housekeeper at the Woodfin during the period of March 1, 2006 through December 31, 2006 times \$16.83 less actual wages paid by Woodfin to said employees for regular and overtime hours worked as a housekeeper at the Woodfin during the period of December 16, 2005 through December 31, 2006.

The payment of back wages set forth above shall be made to the aforementioned employees on or before September 14, 2007. Thereafter, on or before October 1, 2007, Woodfin shall provide to the City, the original signed declaration and a letter confirming these payments have been made, with a list of the names of the employees and amounts paid. This information should be delivered to the attention of Margaret O'Brien, Revenue Division Manager.

4. Measure C required Woodfin with reasonable diligence to discover and provide records to the City for calendar year 2005 by March 31, 2006, and for calendar year 2006 by March 31, 2007. Notwithstanding these statutory time limits, the City allowed Woodfin until June 1, 2007 to produce all relevant records. Thereafter, the City Council allowed Woodfin until August 6, 2007 to provide City staff with supplemental documentation. Woodfin provided to the City its final submission of documentation on August 15, 2007. Measure C provides further that failure to provide a copy of such records within ten days of the due date will result in a penalty of \$100.00 per day. For calendar year 2005, recognizing that the City first sent Woodfin and the other affected Large Hotels (as defined in Measure C) written notice of its demand for records by letter dated August 11, 2006, such records for calendar year 2005 should have been discovered and produced to the City with reasonable diligence no later than September 11, 2006 as requested in the letter. Accordingly, Woodfin is hereby assessed a penalty of \$32,800.00 for failure to provide a copy of records for calendar year 2005 from September 22, 2006 through August 15, 2007. For calendar year 2006, such records should have been discovered and produced to the City with reasonable diligence no later than April 10, 2007.

Accordingly, Woodfin is hereby assessed a penalty of \$12,700.00 for failure to provide a copy of records for calendar year 2006 from April 11, 2007 through August 15, 2007. The total penalty payment of \$45,500.00 shall be paid to the City of Emeryville on or before September 14, 2007.

5. On or before September 14, 2007 Woodfin shall pay to the City of Emeryville an additional sum of \$21,735.28 for the Annual Permit Fee, adopted September 15, 2006, pursuant to Resolution No. 06-179. City staff have spent 389.5 hours to determine Woodfin's compliance with Measure C in connection with issuance of an annual permit, which time is billed at the rate of \$68.64 per hour. Woodfin has previously deposited \$5,000.00 with the City for the Annual Permit Fee.
6. On April 27, 2007, Woodfin placed several employees, who had filed administrative complaints with the City, on unpaid leave status without reasonable and substantiated cause pending the City's investigation. On April 30, 2007, the City notified Woodfin of a violation of Measure C's Urgency Ordinance, Section 5-32.2.3 of the Emeryville Municipal Code. The protections afforded said employees by Measure C, which prevented Woodfin from placing these employees on an unpaid status, expired on May 7, 2007. Accordingly, the Annual Measure C Hotel Permit expiring June 30, 2008, is issued to Woodfin conditioned on (i) Woodfin submitting a declaration to the City signed by Woodfin's General Manager as to its truth and accuracy that Woodfin has affirmatively reviewed wage records for all such employees for the twelve (12) week period preceding the commencement of the unpaid leave status, and (ii) Woodfin making payments to these employees equal to their last hourly wage rate times the average number of hours these workers worked on a daily basis during said aforementioned twelve (12) week period, for each day during the period of April 27, 2007 to May 7, 2007. All payments due shall be made to the affected employee on or before September 14, 2007. Thereafter, on or before October 1, 2007, Woodfin shall deliver to the attention of Margaret O'Brien, Revenue Division Manager, the original signed declaration and a letter confirming all required payments to said employees of back wages have been made, with a list of the names of the employees and amounts paid.
7. Woodfin shall pay to the City the Annual Enforcement Fee for all City staff and/or consultant time expended to respond to, investigate and enforce violations of Measure C, as provided by Resolution No. 06-179, adopted September 15, 2006. The Annual Enforcement Fee shall be paid to the City concurrent with its Annual Permit Fee deposit and application for an Annual Measure C Hotel Permit expiring June 30, 2009. The Annual Enforcement Fee, Annual Permit Fee deposit, Annual Measure C Hotel Permit application and all required documentation for calendar year 2007 must be submitted to the City on or before March 31, 2008. The City Manager shall make good faith efforts to notify Woodfin in writing of the amount of all City staff and/or

consultant time expended to respond to, investigate and enforce violations of Measure C through December 31, 2007, no later than January 31, 2008. Said amount shall constitute the Annual Enforcement Fee.

8. The City hereby declares that every section, paragraph, clause, and phrase of these Annual Measure C Hotel Permit conditions of approval is severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses, or phrases.
9. As provided by Measure C, in the event the City brings an action in Superior or Municipal Court to defend or enforce the terms and conditions of this Annual Measure C Hotel Permit or to otherwise enforce Measure C, the City reserves its right to seek penalties of at least one hundred dollars and not more than one thousand dollars per day, plus expenses and reasonable attorneys fees.