June 17, 2026

The Honorable Marcia Moermond
Legislative Hearing Officer
St. Paul City Hall & Court House
15 West Kellogg Blvd.
St. Paul, MN 55102

via email to rentappeals@ci.stpaul.mn.us

Re: Supplemental Appeal Submission – Appeal of Michael Smith, RLH RSA 26-7

Dear Hearing Officer Moermond:

Enclosed please find a supplemental submission for the rent-stabilization appeal of Michael Smith, tenant of Unit D at 1517 Portland Ave, Saint Paul, MN 55403. I've also enclosed a signed document from Mr. Smith authorizing Housing Justice Center to submit this supplemental submission on his behalf.

Going forward, please include me on any communications directed to Mr. Smith regarding this appeal.

Sincerely,

s/ Abbie Hanson
Abbie Hanson
Tenant Rights Attorney, Housing Justice Center
651-391-8393
ahanson@hjcmn.org

Encl: Authorization Document
Supplemental Memorandum

Submission Authorization

I, Michael Smith, agree that Housing Justice Center may, on my behalf, communicate with the City of Saint Paul and submit appeal submission for the rent-stabilization appeal RLH RSA 26-7. I also agree that attorneys for Housing Justice Center may receive communications regarding this appeal.

Date: 6/17/2026 Signed: ______________________

Supplemental Memorandum Supporting Michael Smith's Rent Stabilization Appeal
RLH RSA 26-7

Michael Smith appealed the March 3, 2026 Department of Safety & Inspections ("Department") determination granting his landlord a 17.97% rent increase. Housing Justice Center submits this memorandum to supplement Mr. Smith's appeal. As noted below, concerns related to the landlord's utility billing practices, along with Mr. Smith's outstanding habitability issues, prohibit the landlord from qualifying for a rent-cap exception, or, at minimum, require further consideration by the City prior to approving a rent-cap deviation.

BACKGROUND

Mr. Smith lives in Unit D of a four-unit apartment complex located at 1517 Portland Avenue, St. Paul, MN 55104 ("the Property"). He has lived at the Property for over a decade. Mr. Smith described his apartment and its condition issues in both his initial appeal submission and at the May 21, 2026 legislative hearing. Below are brief descriptions of the issues relevant to this supplemental memorandum.

Utilities

Under Mr. Smith's lease, he pays a base rent of $1,266 along with a utility charge of $200, for a total monthly rent of $1,466. The $200 monthly utility charge represents payment for the following utilities: water, trash, gas, and common area electricity.[1] Those utilities are in the name of the landlord and paid by the landlord directly to the relevant utility provider. To arrive at the $200 per month utility charge, Mr. Smith's landlord apportions the cost of building utilities by adding up the prior year's total utility costs and dividing by four. The resulting number is then equally applied to the rents of all four units at the Property. As described more below, the landlord's utility apportionment method does not comply with state law regarding shared-meter utilities.

ADDENDUM B TO RESIDENTIAL LEASE AGREEMENT

Addendum to Residential Lease Agreement between parties, dated ___________________, 2025, pertaining to lease of the premises located at 1517 Portland Avenue, Apartment D, St. Paul, MN 55104.

In the event of a conflict between this Addendum and any other provisions of the lease agreement, the language of this Addendum shall govern.

Utilities are paid by tenants as follows: Tenants pay their own unit's Xcel Energy bill. All other utilities are paid by building owners directly to providers. Tenants pay one-fourth (1/4) of these bills through their rent payments. These bills include water, common area electricity, full building gas for heat, and trash removal. The monthly amount included in your rent for utilities is $200.

The owner has the right to back bill if utility costs increase on property. Owner shall give proof of overage and may not charge more than actual costs. Owner also reserves the right to change payment process for utilities with 60 days prior notice.

[1] Mr. Smith separately pays for electricity charges directly metered to his unit, along with charges directly metered to his laundry machines.

Habitability

As Mr. Smith described at the May 21 hearing and in his appeal submissions, he has multiple outstanding habitability concerns. These include, but are not limited to, the following: a nonfunctional stove, out-of-date refrigerator, and difficulty controlling the temperature of his unit.

In addition, the Property itself is a Class B property and has a required fire certificate of occupancy renewal inspection that is overdue by approximately one year. *See 1517 Portland Ave Apt. D- Staff Report*, at p. 3. At the May 21 legislative hearing, Hearing Officer Moermond directed that she will delay a recommendation in the appeal until the Property is reinspected. At the inspection, Mr. Smith plans on raising the following additional issues: slipping window frames, water damage, and a leaking toilet. As of submission of this supplemental memorandum, Mr. Smith's unit has not been reinspected, nor is he aware of a property-wide inspection occurring.

ARGUMENT

St. Paul's Rent Stabilization Ordinance ("Ordinance") limits rent increases to 3% annually. St. Paul, Minn., Legislative Code ("SPLC") § 193A.04. Landlords can request an exception to the rent cap based on their right to a reasonable return on investment ("RROI"). SPLC § 193A.06(a). However, the Ordinance is unequivocal that before any application for a rent increase can be approved, a landlord **must** comply with the implied warranty of habitability: "The city *will **not** grant an exception* to the limitation on rent increases for any unit where the landlord has failed to bring the rental unit into compliance with the implied warranty of habitability in accordance with Minn. Stats. § 504B.161."[2] SPLC § 193A.06(c). In addition, the Ordinance requires that the Department consider nine factors when evaluating a landlord's eligibility for a rent-cap exception based on the RROI standard. *See* SPLC § 193A.06(a). Among those factors, the Department must consider the landlord's compliance with state and local housing law, and any substantial deterioration of the property. SPLC § 193A.06(a)(7), (8).

I. The Landlord's Utility Practices Prohibit Her From Obtaining an Exception to the Rent Cap.

As previously described, the landlord passes on to tenants the cost of water, trash, gas, and common area electricity. *See* SPLC § 193A.03(hh) ("Utilities shall include, but are not limited to natural gas, electricity, water service, and refuse and recycling removal."). However, the landlord has failed to comply with state law when it comes to the apportionment of utilities. This failure alone requires that the City deny her application for a rent-cap exception. But, beyond that, the landlord's charging of utilities requires that utility costs be excluded from the rent-increase calculation as pass-through expenses, reducing any approved rent increase.

A. The landlord did not comply with Minn. Stat. § 504B.216 and is thus in violation of Minn. Stat. § 504B.161.

Under Minnesota's shared-meter utility law, landlords who choose to bill tenants separately for utilities measured by a single meter must adhere to strict apportionment, billing, and disclosure requirements. *See* Minn. Stat. § 504B.216, subds. 5-17; *see also* Minn. Stat. § 216B.023,

[2] Unless otherwise designated, all bolded or italicized text indicates emphasis added.

subd. 2. The requirements provide transparency regarding the total cost of a tenancy and protect tenants from the risk of landlords overcharging them for the use of utilities that are not directly measured with respect to their units. The rights found in section 504B.216 cannot be waived or modified and are in effect for any lease renewed or entered into on or after January 1, 2025. Minn. Stat. § 504B.216, subd. 14(2); 2024 Minn. Laws ch. 107, § 10(b). This includes Mr. Smith's most recent lease.

As shown in the below chart, the landlord's current utility practice does not comply with the requirements of section 504B.216. **Critically, failure to comply with section 504B.216 is a violation of section 504B.161, Minnesota's implied warranty of habitability**. *See* Minn. Stat. § 504B.216, subd. 16 ("A violation of [section 504B.216] subdivisions 2 to 12 is a violation of section 504B.161 . . .."); *see also id.*, subd. 3 (incorporating and requiring compliance with section 216B.023 (electricity billing) under section 504B.216).

Requirement under section 504B.216	**Landlord's practice**	**Does landlord's practice comply with section 504B.216?**
Tenants' apportioned water & gas must be based on previous billing period's actual bill. Minn. Stat. § 504B.216, subds. 6(b), 7(b).	Bases utility charge on average of prior year's total utility payments.	**No**
Tenants' apportioned gas bill must be based on sq. footage in each tenants' unit as a proportion of sq. footage of all units in the building. *Id.*, subd. 6(b).	Divides total gas charge by four.	**No**
Tenants' apportioned water bill must be based on number of tenants listed on the lease as a proportion of occupancy of all the building's units. *Id.*, subd. 7(b).	Divides total water charge by four.	**No**
Landlords may not charge tenants for gas or water consumed or used in common areas. *Id.*, subds. 6(c), 7(c).	Charges tenants for common area gas and water.	**No**
Apportionment of electricity is prohibited, and tenants may not be charged for electricity usage in common areas. *Id.*, subd. 5(a); Minn. Stat. § 216B.023, subd. 2.	Charges tenants for apportioned common area electricity.	**No**
Provide as lease attachment a prescribed disclosure re: apportionment billing and tenant rights. Minn. Stat. § 504B.216, subd. 10.	Omits required disclosure.	**No**

The landlord's failure to comply with section 504B.216 is a violation of section 504B.161. *See* Minn. Stat. § 504B.216, subd. 16. Consequently, the landlord has failed to bring Mr. Smith's unit into compliance with the implied warranty of habitability and the City **cannot** approve a rent increase above the 3% cap for his unit. SPLC § 193A.06(c) ("The city will not grant an exception to the limitation on rent increases for any unit where the landlord has failed to bring the rental unit into compliance with the implied warranty of habitability in accordance with Minn. Stats. § 504B.161.").[3] **The City must grant Mr. Smith's appeal and deny landlord a rent-cap exception.**

It should also be noted that the Ordinance itself requires compliance with section 504B.216's predecessor statute: Minn. Stat § 504B.215. Under section 193A.06, the Ordinance states: "The rental agreement shall establish whether the landlord or tenant is responsible for paying each utility," and that:

> For single metered mulitunit [sic] residential buildings, a landlord seeking to impose utility payments as a pass through expense under this chapter must follow all conditions established in **Minn. Stats. § 504B.215, subdivision 2a**.

SPLC § 193A.06(a)(2)(a)(1). Section 504B.216 replaced section 504B.215 in 2025. *See* 2024 Minn. Laws ch. 107, §§ 9, 10(b). Although the statute reference has not yet been updated in the Ordinance, it is clear that the intent of the Ordinance is that a landlord must comply with state utility law when a landlord seeks to apportion and pass-through those expenses. Here, the landlord has not complied with state utility law and her rent-cap exception must be denied.

B. The utilities are pass-through expenses that must be excluded from the landlord's rental income and expenses.

Beyond the landlord's failure to comply with Minnesota utility-apportionment law, the utilities themselves are a "pass through expense" that must be excluded from both the landlord's income and expenses. The Ordinance defines a "pass through expense" as:

> Expenses that a landlord may recover from the tenant on a pass through basis when the expense is directly attributable to the tenant as approved in this chapter. A pass through expense shall not be considered rent and the **landlord may *not* consider the pass through expense as rental income or as an operating expense**.

[3] The landlord's failure to comply with section 504B.216 must also be evaluated under SPLC § 193A.06(a)(8): the City "**must** take into account" "[f]ailure on the part of the landlord to . . . comply substantially with applicable state rental housing laws[.]" SPLC § 193A.06(a)(8). The landlord's failure to comply with section 504B.216 weighs heavily against the grant of a 17.97% rent increase.

SPLC § 193A.03(s). Here, the landlord has identified the Property's utilities as a pass-through expense.[4]

Type of Service	Paid by Landlord, but not passed through to Tenants	Tenants pay service directly	Landlord pays service and passes cost through to Tenants
Gas			X
Electricity	X – COMMON AREAS	FOR OWN APARTMENTS	X FOR COMMON AREAS
Water			X
Sewer	X		
Garbage			X
Other:	X LAWN & SNOW		

1517 Portland Avenue Apt. D- Landlord MNOI CAP Improvement Worksheet 12-28-25, at p. 3.[5]

Moreso, the Department in its Staff Report describes the utilities as being "passed through."

The applicants described the services provided to each rental unit.

- The landlord pays for sewer, lawn maintenance, snow removal (building, sidewalks, alley), repairs, pest control, Reduced Pressure Zone valve testing and related plumbing.
- The landlord additionally pays for electricity to the common areas, and for gas, water and garbage, and passes the costs through to the tenants. (The applicants note that they would like to pass through all costs to the renters.)
- The tenants pay for electricity in their units.

1517 Portland Ave Apt. D- Staff Report, at p. 2.

Because the landlord and the Department have both identified water, gas, trash, and common area electricity as a pass-through expense, these utilities must, per the plain language of the Ordinance, be excluded from both the landlord's rental income and operating expenses. SPLC § 193A.03(s). Despite this, the landlord's February 2026 maintenance of net operating income

[4] Mr. Smith notes that the landlord's application identified common area electricity as being paid both by the landlord and the tenants, but the landlord's utility addendum (see above) indicates that the landlord passes <u>all</u> common area electricity through to tenants.

[5] In a February 28, 2026 email from the landlord to Mr. Smith, she applies the projected rent increase only to the "base" rent amount ($1,266) and then later adds the unchanged $200 utility amount to the now increased base rent amount. *See 1517 Portland Ave Apt D.Doroshow-Vang email 5-12-26*, at p. 2. This offers further support that the landlord views the utilities as a pass through expense.

("MNOI") worksheet has these pass-through utilities listed under both income and expenses. *See 1517 Portland Avenue Apt D- MNOI 2-27-26*, at p. 1 ¶ 16 (income), p. 2 ¶¶ 19-23 (expenses).

The landlord's own submitted documents, along with the Department's staff report, give no indication that there are utility costs, besides sewer, for which the landlord does not pass on the full costs to tenants. Moreover, Mr. Smith's understanding as a tenant is that the landlord passes on all utility costs to tenants via the apportionment method described above. Thus, the full amount of gas, water, electricity, and trash found in the landlord's expenses and income for the MNOI must be excluded because these costs are pass through expenses. When this occurs, the updated income and expenses are:

	Base Year 2023	**Current Year** 2025
Total Income (¶ 18) – Utility Fee (¶ 16) = **Updated Total INCOME**	$69,072 - $9,144 = **$59,928**	$76,128 - $7,200 = **$68,928**
Total Operating Expenses (¶ 32) – (Gas + Electricity + Water + Garbage & Recycle) (¶¶ 19-21, 23) =**Updated Total EXPENSES**	$36,301.11 – ($3,082.32 + $637.68 + $1,575.94 + $1,479.54) = **$29,525.63**	$53,648.31 – ($4,601.46 + $676.90 + $2,245.98 + $3,123.88) = **$43,000.09**

Using the updated total incomes and expenses for 2023 and 2025 respectively, the calculation of fair return becomes the following:

	Base Year 2023	**Current Year** 2025
Line 1: Proposed Adjusted/Total Income	**$59,928**	**$68,928**
Line 2: Operating Expenses	**$29,525.63**	**$43,000.09**
Line 3: Net Operating Income (Income – Operating Expenses	(**$59,928** - **$29,525.63**) = $30,402.37	(**$68,928** - **$43,000.09**) = $25,927.91
Lines 4 & 5: CPI (unchanged)	4.81%	
Line 6: Fair Net Annual Operating Income (Line 3 Base Year Adjusted by Line 5 Percent)	$30,402.37 x 1.0481 = $31,864.72	
Line 7: Allowable Rent Increase (Line 6 - Line 3 Current Year)	$31,864.72 - $25,927.91 = $5,936.81	
Line 8: **Allowable Rent Increase Percentage** (Line 7 / Current Year Scheduled Rental Income)	($5,936.81 / $66,048) **= 9%**	

Once the pass-through utility expenses are excluded from calculations as required by the Ordinance, the approved rent increase falls from 17.97% to __9%__. Although, as explained above, the landlord's rent-cap exception must be denied in its entirety because her failure to comply with Minn. Stat. § 504B.216 is a violation of the implied warranty of habitability, *see* SPLC § 193A.06(c), Minn. Stat. § 504B.216, subd. 16, the inclusion of pass-through expenses in the landlord's MNOI resulted in an artificially high rent-cap exception. If the Department does allow the exception to be granted despite the landlord's violation of the implied warranty of habitability, the rent increase must be adjusted down to 9%.

Furthermore, the exception must be adjusted downward for **__all__ tenants** at the Property. The numbers reported in the MNOI served as a basis for a 17.97% rent increase for three of the four units at the Property, and a 19.20% increase for the fourth unit. *1517 Portland Ave Apt. D- Staff Report*, at p. 2. If the landlord's utilities are pass-through expenses, their inclusion has negatively impacted the approved rent increase for all units. As such, the exception must be corrected and adjusted down for all units.

If the Department has a basis for inclusion of water, trash, gas, and common area electricity in both the income and expense category of the landlord's MNOI, Mr. Smith requests an updated staff report explaining the Department's reasoning.

II. The Habitability Issues Raised by Mr. Smith Must be Evaluated Prior to Any Rent Increase.

As noted above, Mr. Smith has raised multiple habitability concerns for both his unit and his building. Furthermore, the Property, which is a Class B building, has an overdue fire certificate of occupancy inspection. At the May 21 legislative hearing, Hearing Officer Moermond ordered another inspection to take place and indicated that her recommendation would be forthcoming after said inspection was complete. **Mr. Smith has not yet had his unit inspected, nor is he aware of any Property-wide inspection that has occurred.**

The habitability of an apartment building is a factor that the City must consider prior to the grant of any rent-cap exception. As previously described, if a landlord fails to bring a rental unit into compliance with the implied warranty of habitability, codified at Minn. Stat. § 504.161, the City cannot grant the landlord an exception to the 3% cap. SPLC § 193A.06(c).

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

> (1) that the [rental] premises and all common areas are fit for the use intended by the parties;
>
> (2) to keep the premises and all common areas in reasonable repair during the term of the lease or license . . .; [and]
>
> (4) to maintain the premises and all common areas in compliance with the applicable health and safety laws of the United States, of the state, and of the local units of government . . . where the premises are located[.]

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

Here, Mr. Smith has described issues within his apartment that would qualify as violations of section 504B.161 (see the above discussion of unlawful utility practices). This itself would be a bar to a rent-cap exception. But beyond the landlord's violations of section 504B.161, the Department must also consider the habitability of Mr. Smith's apartment under the mandatory evaluation factors identified under the Ordinance's RROI standard. The Ordinance language requires that the City take into account nine factors when deviating from the standard 3% limitation. SPLC § 193A.06(a). Among the factors the City "**must**" take into account" are:

> (7) Substantial deterioration of the rental unit other than as a result of normal wear and tear; [and]
>
> (8) Failure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health, and safety codes, or the rental agreement[.]

SPLC § 193A.06(a)(7), (8). "'Must' is mandatory." Minn. Stat. § 645.44, subd. 15a; SPLC § 2.18 (adopting state definitions). *See also* SPLC § 193A.07(f) ("The department shall receive, review and process all RROI applications and complaints under this section and **shall consider all factors established in section 193A.06**."); Minn. Stat. § 645.44, subd. 16 ("'Shall' is mandatory.").

Neither the Staff Report, nor anything communicated at the May 21 hearing, indicate that the habitability of Mr. Smith's unit has been taken into account. In fact, a habitability inspection of Mr. Smith's unit and the Property generally is **overdue by a year**: "The last Fire Certificate of Occupancy inspection rated 1517 Portland Avenue as a Class B property. A renewal inspection was due on June 22, 2025." *1517 Portland Ave Apt. D- Staff Report*, at p. 3. *See* SPLC § 40.05(2)(b) ("Class B properties shall be renewed every four (4) years."). As noted above, Hearing Officer Moermond requested an inspection of the Property be completed at the May 21 hearing. That inspection has not yet occurred. During the inspection, Mr. Smith plans to explain to the inspector issues related to his appliances, heat, slipping windows, water damage, and a leaking toilet.[6] Mr. Smith requests that an updated Staff Report, incorporating the findings of the inspection be issued once that inspection has occurred.[7]

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[6] Many of these issues have already been communicated to the landlord.

[7] To be clear, the existence of a fire certificate of occupancy does not, in and of itself, mean that a building complies with section 504B.161. *See Appeal of James Bush*, 2025 WL 3754066, at *7 n.8 (Minn. Ct. App. Dec. 29, 2025) ("[A] fire certificate of occupancy that is over a year and a half old is not equivalent to a current finding that a rental unit complies with habitability laws.")

III. The Landlord Cannot Require Mr. Smith to Pay Any Approved Rent Increase for the Months Prior to a Final Determination.

Finally, in the landlord's May 12, 2026 submission to Legislative Hearing Coordinator Mai Vang, the landlord requested that the City affirm the granted exception and order that Mr. Smith "pay the amount of $1661 commencing June 1, 2026, and pay the full amount owed retroactive to May 1, 2026." *1517 Portland Ave. Rebuttal to Apt D response to upward variance 5-12-26*, at p.4.

The Ordinance only allows rent increases exceeding the 3% cap to take effect upon a **final determination**. *See* SPLC § 193A.04 ("Any rent increase over three (3) percent made pursuant to section 193A.06 of the Code shall not take effect until a final determination is issued."); SPLC § 193A.07(c)(5) ("The [rent-increase approval] notice shall convey the following information . . .: That no rent increase may take effect until a final determination by the city, and that a final determination will not occur until after the tenant has had an opportunity to appeal"); SPLC § 193A.07(g)(4) ("In accordance with section 193A.04 of the Code, any rent increase that is the subject of an appeal may not be imposed until final determination."). In the case of a tenant appeal, a "final determination" only occurs once "the [City] council has issued a decision following a recommendation from the legislative hearing officer." SPLC § 193A.03(k).

At this point, there is no final determination. Thus, a rent increase greater than 3% cannot be imposed upon Mr. Smith. Should a rent increase above 3% be approved—an action which, as shown above, is contrary to the plain language of the Ordinance—Mr. Smith requests that the Hearing Officer make clear in the resulting recommendation that the increase can only take effect upon approval by the City Council and cannot be imposed retroactively.

CONCLUSION

The City **cannot** grant an exception to the 3% rent cap for "any unit where the landlord has failed to bring the rental unit into compliance with the implied warranty of habitability in accordance with Minn. Stats. § 504B.161." SPLC § 193A.06(c). Here, the landlord has failed to comply with the shared-meter utility law codified at Minn. Stat. § 504B.216. Failure to comply with section 504B.216 is a violation of the implied warranty of habitability. *See* Minn. Stat. § 504B.216, subd. 16. As such, the Ordinance requires that Mr. Smith's appeal must be granted and the landlord's request for a rent-cap exception be denied. *See* SPLC § 193A.06(c).

Irrespective of the landlord's violation of section 504B.216, the inclusion of pass-through utility expenses artificially inflated the approved rent increase. The approved rent increase must be reduced for **all tenants** at the property. If it is not, Mr. Smith requests an updated Staff Report to explain why utilities identified by both the Department and landlord as "passed through" to tenants are included in the MNOI, when the plain language of the Ordinance requires exclusion of those costs from both a landlord's income and expenses. SPLC § 193A.06(s).

Finally, Mr. Smith awaits the results of the required reinspection of his unit and Property. If the habitability concerns identified by Mr. Smith are not resolved, those concerns themselves are a barrier to any rent-cap exception sought by the landlord. *See* SPLC § 193A.06(a)(7), (8), (c).

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

Date: June 17, 2026

HOUSING JUSTICE CENTER

s/ Abigail Hanson
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