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BEFORE THE HEARING EXAMINER FOR THE CITY OF LAKEWOOD

In re: the Properties Located at 2621 84th St. SW Lakewood, WA.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
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**Summary**

This Decision sustains a July 10, 2019 Findings and Order issued by the City of Lakewood Public Officer requiring multiple abatement actions for premises and property designated as dangerous for the Karwan Village Mobile Home Park located at 2621 84th St. SW Lakewood, WA. Compliance deadlines have been extended to accommodate the processing of this appeal and to recognize the compliance efforts and practical difficulties faced by the Appellant. The Appellant has also been given the choice of repairing Unit 29 as opposed to demolishing it as currently required by the Findings and Order.

The conditions that qualify the buildings, structures and premises of the subject property as dangerous are serious and unquestionably threaten public health and safety. Multiple failing septic systems jeopardize the health of park residents as well as the public at large. Exposed and unprotected wires installed without permits are prevalent throughout several mobile home units, often in structures with leaking roofs that soak floors and walls. Squatters and vagrants use bathrooms without any functioning plumbing and RV units without septic connections simply dump sewage onto the ground. Carports that are decades old have undergone years of water damage. Some are listing and subject to makeshift repairs without required permits. Windows are broken leaving units exposed to the elements. Water is provided to some mobile homes via garden hoses. Makeshift water connections are illegally made above ground without backflow devices, facilitating the

1 contamination of the park’s water supply.

2 This Decision only addresses findings in the Findings and Order that address compliance with the  
3 IPMC. The Findings and Order also determined that the conditions of the mobile home park qualify  
4 as nuisances under separate nuisance sections of the Lakewood Municipal Code (“LMC”),  
5 specifically Chapters 8.16 and 8.26 LMC. However, the LMC does not grant the examiner any  
6 appellate authority over these separate nuisance sections. The limitation of this Decision to IPMC  
7 violations has not affected the scope of Findings and Order corrective actions subject to review, since  
8 all corrective actions address conditions that qualify as dangerous<sup>1</sup> under the IPMC.

9 Understandably, the City takes the position that the failing septic systems are a major concern in this  
10 abatement action. Unfortunately, unlike almost all other dangerous conditions addressed, the  
11 Administrative Complaint that initiated this action as well as the Findings and Order did not identify  
12 what code provisions are implicated by the failing septic systems. Ultimately, this Decision finds that  
13 the failing systems renders the property unsanitary and unfit for habitation under IPMC 108.1.5(9).  
14 Although the Appellant was not given notice of what code provision addresses the septic issue, the  
15 septic issue was brought up during the hearing before the Public Officer, who addressed it in detail in  
16 his Findings and Order. Further, since the Appellant did not raise this absence of notice during the  
17 hearing process, it should be barred from doing so on judicial appeal. *See AHO Constr. I, Inc. v. City*  
18 *of Moxee*, 430 P.3d 1131 (2018)(issues not raised during administrative review may not be brought  
19 up during judicial review due to failure to exhaust remedies).

#### 20 **Exhibits**

- 21 1. City Response to Administrative Appeal, including attachments A-F (F being building  
22 permit added during hearing).
- 23 2. City photographs, 1-165.
- 24 3. Appellant brief and attachments 1-7.
- 25 4. All email correspondence involving City, LLC and Hearing Examiner.

#### 26 **Findings of Fact**

##### **Procedural:**

1. Appellant. Karwan Village LLC (“LLC”).
2. Hearing. The hearing examiner held a hearing on the appeal on September 19, 2019 at the  
City Council chambers of Lakewood City Hall.
3. Appeal. This is an appeal of a Findings and Order issued by the City of Lakewood Public  
Officer on July 9, 2019, File No. A0051 (“Findings and Order”). The appeal was filed on August 9,

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<sup>1</sup> The IMPC identifies nuisance conditions as “dangerous,” hence references to “dangerous” in this decision should also be understood to include conditions more commonly understood to be nuisances.

1 2019.

2 **Substantive:**

3  
4 4. Subject Property. The property subject to the Findings and Order is a mobile home park  
5 located at 2621 84th St. SW and is a little under four and a half acres in area. The mobile home park  
6 is several decades old and has a carport associated with each mobile home lot. There are thirty  
7 mobile homes identified in public records on the site as well as two stick-built structures, built in  
8 1967, with add-ons, one which house electrical utilities serving the park (Unit 34), the other a rental  
9 housing unit.

10 5. Administrative Complaint/Service. On May 7, 2019 the City issued a Complaint and Notice  
11 of Hearing (“Administrative Complaint”) that commenced the code enforcement action subject to this  
12 Decision. The Administrative Complaint was served on the LLC and several tenants of the Karwan  
13 mobile home park. The Administrative Complaint was served upon the LLC by certified mail and  
14 the mailbox area in a common area of the mobile home park. See City Response, Att. E (declaration  
15 of service); Appellant’s prehearing brief, p. 5.

16 6. Hearing Before Public Officer. Lakewood Assistant City Manager for Community and  
17 Economic Development David Bugher, acting as Public Officer for purposes of LMC 15.05.090, held  
18 a hearing on the Administrative Complaint on June 3, 2019. Mr. Kim, on behalf of the LLC and  
19 several tenants named in the Administrative Complaint presented evidence at the hearing. Findings  
20 and Order, Finding 11.

21 7. Findings and Order/Service. The Findings and Order subject to this appeal determined that  
22 the subject property has premises and structures that qualify as dangerous under the International  
23 Property Maintenance Code. The Order specified numerous abatement actions, including the repair  
24 and/or demolition of mobile home units and carports. The Findings and Order was issued as a result  
25 of the hearing identified in Finding of Fact No. 6. The Findings and Order was served upon the LLC  
26 by certified mail and posted in the common mailbox area of the mobile home park. See City  
Response, Att. F (declaration of service); Appellant’s prehearing brief, p. 6.

8. Administrative Complaint Based Upon Multiple Inspections. Inspection of the Property was  
conducted by City of Lakewood inspectors on the following dates: January 10, 2018; February 8,  
2018; April 12, 2018; May 22, 2018; May 24, 2018; May 30, 2018; August 15, 2018; October 23,  
2018; October 24, 2018; November 8, 2018; January 2, 2019; January 8, 2019; January 9, 2019;  
January 15, 2019; February 5, 2019; February 19, 2019; March 5, 2019; March 14, 2019; March 26,  
2019; April 16, 2019; April 23, 2019; May 7, 2019; May 31, 2019; June 27, 2019, July 3, 2019 and  
September 17, 2019. These inspections are chronicled in detail at Pages 4-11 of the Administrative  
Complaint.

9. Inspections Made by Qualified City Staff. The property inspections identified in Finding of  
Fact No. 8 were made by qualified City staff, primarily Code Enforcement Officer Bill Mathies,  
Program Manager Jeff Gumm and Police Officer Shawn Noble. Mr. Gumm provided most of  
testimony supporting the Findings and Order. He serves as a program manager for Lakewood and

1 has worked for the City for 18 years in different capacities. He manages all the housing programs, all  
2 the construction for low income housing, dangerous and nuisance buildings and rental inspections.  
3 He was a licensed contractor for 15-20 years. He was also a certified international code building  
4 inspector until 2009. Mr. Simmons, a building inspector for the City, noted he's made 30-40 visits to  
5 the mobile home park in the last two or three years. Officer Noble, Lakewood police officer, stated  
6 he began working for Lakewood in 2004. He's knows the subject property well because there's been  
a high number of 911 calls generated by the property. He became more involved with the property  
upon being designated a neighborhood police officer assigned to problem properties, which includes  
the subject property.

7 10. Carports Owned by LLC. The preponderance and substantial evidence in the record  
8 establishes that the carports on the subject property are owned by the LLC. As testified by Mr.  
9 Gumm, the type of lumber used to construct the carports is of dimensions that were only used prior to  
10 1972. The design of each carport is the same and there is one carport built alongside each mobile  
11 home lot. Mr. Gumm was also of the opinion that the carports were all built at about the same time.  
12 Mr. Gumm believed modifications made to the carports that involved extensions of electrical wiring  
13 and conversion from carports to garages were done and owned by the tenants. Given that there  
would be no reason for the landlord to make these types of improvements that belief is also taken as a  
verity. No conclusions can be drawn on improvements made to stabilize the carports, such as bracing  
or replacement of parts, since tenants could very well demand that their landlord make those type of  
improvements.

14 11. Ownership and Control of Manufactured Homes. According to uncontested testimony from  
15 Mr. Kim, the only manufactured homes and structures owned and/or controlled by the LLC other  
16 than common area improvements are Units 30, 34, 39 and the office building. The office building  
has no number. In the absence of any contrary evidence, Mr. Kim's testimony on this issue is taken  
as a verity.

17 12. Inadequate and Unsafe Egress. The units listed below are identified in the Administrative  
18 Complaint as having unsafe and/or inadequate egress as defined by LMC 15A.05.090. At hearing,  
19 the Appellant expressly stated they were not contesting any of these City findings. As noted in  
20 Finding of Fact No. 8 and 9, the assertions made in the Administrative Complaint are based upon  
21 multiple City inspections conducted by City staff with extensive expertise in assessing dangerous and  
22 nuisance buildings. For these reasons, all findings and assertions made in the Administrative  
23 Complaint, as summarized below, are taken as verities unless otherwise noted. City witnesses also  
presented a substantial amount of evidence during the hearing that corroborates the assertions made  
in the Administrative Complaint, which are also summarized below. **Based upon all the evidence  
summarized in this finding and the lack of any contrary evidence, the units listed below are  
determined to have unsafe and/or inadequate egress.**

24 #4- The Administrative Complaint asserts that doorways on both the N and S elevations  
25 are missing proper stairs and landings necessary for safe egress.

26 #22- The Administrative Complaint asserts that Unit 22 had an addition appended to the  
back of the mobile home composed of a door and stairs that were both too narrow and

1 improperly constructed for safe egress. Mr. Gumm also identified this condition during  
2 the hearing. The addition has been removed since issuance of the Findings and Order, so  
3 the egress issue has been properly abated.

4 **#28-** The Administrative Complaint notes that the front and rear entry  
5 porches/stairs/railings/guards do not comply with egress requirements in accordance with  
6 IRC Section R311. The Complaint further notes that the front and rear porch and stairs  
7 were improperly constructed without permit or inspection and in such poor condition that  
8 they are subject to failure and also that the railings and guards are incomplete and the  
9 stairs do not comply with riser and tread height and depth requirements. The uncontested  
10 findings of the Administrative Complaint are supported by the testimony of Jeff Gumm.  
11 Mr. Gumm identified that Slide<sup>2</sup> 61 shows the front stairs as failing with no code  
12 compliant guard rails. Mr. Gumm identified that Slide 64 shows the front deck is  
13 improperly constructed and missing guardrails and is unsafe for egress. Mr. Gumm also  
14 noted that Slide 66 shows the back stairs as failing and completely improper.

15 **#29-** The Administrative Complaint asserts that the front and rear entry porches/stairs do  
16 not comply with egress requirements in accordance with IRC Section R311. The  
17 Complaint further asserts that the front and rear porch and stairs were improperly  
18 constructed without permit or inspection and in such poor condition, that they are subject  
19 to failure and that the stairs are also failing, missing treads and/or do not comply with  
20 riser and tread height and depth requirements.

21 **#39-** The Administrative Complaint asserts that the front and back landing and steps are  
22 completely rotten and unsafe for proper egress.

23 13. Carpports Likely to partially or completely collapse. The carport units identified below are all  
24 listed in the Administrative Complaint as likely to partially or completely collapse, or to become  
25 detached or dislodged. Those staff findings are based upon multiple site visits and observations by  
26 qualified City staff as outlined in Findings of Fact No. 8 and 9. At hearing, Appellant's counsel  
asserted that the LLC was unable to find any structural engineer who had the opinion that the carports  
would collapse, but counsel did not identify who was consulted, what if any evaluation was  
conducted and what units were inspected. In contrast, the owner, Mr. Kim, testified that when he  
spoke to unspecified structural engineers, he was advised that structural engineers don't assess the  
stability of carports. Given that Appellant's counsel was not providing testimony, it is determined  
that the Appellant's consultation with structural engineers was limited to one or more engineers  
responding that they don't assess carport stability. Beyond noting that structural engineers were not  
willing to assess carport stability, the Appellant presented no evidence challenging the City position  
that the carports are unstable, except to note that the carports did not collapse during a February 2019  
snow event. **Based upon all the evidence summarized in this finding and the lack of any  
compelling contrary evidence, the carport units identified below are determined to likely  
partially or completely collapse, or to have portions likely to become detached or dislodged.**

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<sup>2</sup> All references to "Slide" in this Decision are to photographs as numbered in Ex. 2.

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**#4 Carport-** The Administrative Complaint asserts that the carport has extensive water damage to roof and supporting members. The Complaint further asserts that the carport has had post and roof framing replacement without permit or inspection and that the carport is listing. Mr. Gumm testified that Slide 24 shows a carport listing to the left for Unit 4. Mr. Gumm further testified that Slide 78 and 126 shows additional carport roof damage for Unit 4.

**#6 Carport-** The Administrative Complaint asserts that the carport has extensive water damage to roof and supporting members. Mr. Gumm testified that Slide 75 shows the side of the carport with water damage.

**#7 Carport-** The Administrative Complaint asserts that the carport has extensive water damage to roof and supporting members. The Complaint further asserts that the carport appears to have been recently reconstructed without permit or inspection. Mr. Gumm testified that Slide 70 shows the carport has been completely reconstructed without any permits. He found it continues to leak incessantly. Mr. Gumm identified that Slide 71 shows the underside of the carport roof with extensive water damage. He further noted that Slide 73 shows that the wood panels for the roof are oriented strand board, which his wood made up of wood wafers that are failing due to water damage.

**#12 Carport-** The Administrative Complaint asserts that the carport has extensive water damage to its roof and supporting members. Mr. Gumm testified that Slide 67 shows that the carport has been modified with Slide 68 showing unprotected and unpermitted Romex wiring going into the structure.

**#17- Carport-** The Administrative Complaint asserts that the carport has extensive water damage to its roof and supporting members. Mr. Gumm testified that Slide No. 4 shows a seam on the carport roof that is leaking. He added that Slide No. 5 shows additional roof damage that is the result of years of water damage. The photograph also shows illegal wiring added to the structure.

**# 19 Carport-** The Administrative Complaint asserts that the carport has extensive water damage to roof and supporting members. Mr. Gumm testified that Slide 69 shows water damage and sagging in the middle of the roof caused by water damage.

**#27 Carport-** The Administrative Complaint asserts that the carport has extensive water damage to roof and supporting members and that the carport is listing. Mr. Gumm testified that Slide No. 1 shows the water damage through the roof membrane.

**#29 Carport-** The Administrative Complaint asserts that the carport is listing and that support posts are improperly anchored at the base.

**#32 Carport-** The Administrative Complaint asserts that the carport is listing.

1 **#33- Carport-** The Administrative Complaint asserts that the carport has damage to a support  
2 post and improper connection to its concrete base. Mr. Gumm testified that Slides 128 and  
3 129 shows a 4x4 supporting the carport that is broken out at its base, which isn't structurally  
4 sound. He opined that if the carport moves sideways it will fail.

5 **#37 Carport-** The Administrative Complaint asserts that the carport has extensive water  
6 damage to roof and supporting members. Mr. Gumm testified that Slides 22, 92 and 93 show  
7 that the carport has significant water damage.

8 14. Unsafe for Occupancy. The following units are all listed in the Administrative Complaint as  
9 unsafe for use or occupancy. Those staff findings are based upon multiple site visits and observations  
10 by qualified City staff as outlined in Findings of Fact No. 8 and 9. The Appellant presented no  
11 evidence contrary to that presented and acknowledged that some work still needs to be done. **Based  
12 upon all the evidence summarized in this finding and the lack of any compelling contrary  
13 evidence, units identified below are determined to be unsafe for occupancy.**

14 **#29-** The Administrative Complaint asserts that the unit was posted Unsafe to Occupy by  
15 Order of the City of the City of Lakewood Building Official on April 23, 2019 due to  
16 unpermitted modification without permit or inspection, electrical modification and exposed  
17 wiring in violation of RCW 19.28.101, missing windows, improper egress requirements per  
18 IRC Section 311, water infiltration and damage to structure, nonfunctional bathroom  
19 facilities, nonfunctional and damaged electrical and plumbing systems, and unsanitary  
20 conditions throughout. The Complaint further asserts that the front porch awning cover  
21 supports are failing and have been modified without proper permit or inspection in accordance  
22 with IBC Section 105. The unit remains vacant and abandoned.

23 Jeff Gumm testified about several photographs of Unit 29. All statements in this paragraph  
24 are a summary of his testimony. Slide 97 shows water has been leaking into the unit. It's had  
25 squatters. Slide 98 shows the toilet of Unit 29. Squatters have been using the bathroom  
26 without plumbing and it's an unsanitary situation. Slide 99 shows a hole inside the bathroom  
that someone tried to patch with cardboard. Slide 149, taken 9/17, shows tires and debris  
along Unit 29. The tires are moved around a lot and may have been thrown over the fence  
from Unit 30. Slide 51 shows an attachment to Unit 29 composed of a broken support for the  
awning. A concrete footing is required for such an awning and there is none. Slide 52 shows  
rotted and deteriorated stairs. Slide 53 shows rotting and failing framing for the stairs. Falling  
insulation under the trailer from Unit 29 is also visible.in Slide 53. Slide 55 shows the stairs  
are missing a required railing. Slide 56 shows a broken window. Before the window was  
secured there was no protection from water getting into the unit. Slide 58 shows the  
underside to Unit 29 with under skirting removed providing access to pests. It also shows a  
window that's been removed and reframed with no permits. Slide 59 shows a door extension  
added to the north elevation of Unit 29 with no permits. The stairs don't comply with egress  
requirements.

**#34-** Unit 34 is owned by the LLC and used to have offices serving the mobile home park as  
well as a power distribution room for half of the mobile home park. The Administrative

1 Complaint asserts that the unit was posted Unsafe to Occupy by Order of the City of  
2 Lakewood Building Official on January 10, 2019 listing violations as unpermitted and  
3 improper wiring and construction per IBC Section 105, unauthorized separation of  
4 occupancies per IBC Table 508.4, egress requirements per IBC Section 1030, extensive water  
5 damage and water infiltration in the roof and structure, nonfunctional bathroom facilities, and  
6 improper exterior door installation. The Complaint further identifies structural modifications  
7 without permit or inspection that include: modification of interior living spaces; modification  
8 of fire rated assemblies; and modification of roof structure. The Complaint concludes that the  
9 unit lacks proper smoke and carbon monoxide detectors; that both bathrooms in the structure  
10 have failed and have effluent backing into the interior spaces; and that the unit remains  
11 vacant, abandoned and unsecured.

12 Jeff Gumm testified about several photographs of Unit 34. All statements made in this  
13 paragraph are a summary of his testimony. Slide No. 9 shows an electrical panel in Unit 34  
14 completely exposed that contains lethal live wires. Slide No. 11 shows the roof of Unit 34.  
15 The roof used to be flat. A second roof has been added that has devolved into an irregular  
16 roofline due to sagging caused by water damage. The roof leaks into the unprotected  
17 electrical system below that provides power to half the mobile home park. Unit 34 used to be  
18 a service building with showers and office. It's been converted to a residence on the back  
19 side. Slide 15 shows a broken window for Unit 34 with water getting into the building. Slide  
20 27 shows the interior of Unit 34 with electrical modifications done without a permit. The  
21 slide shows water damage as well. Slide 28 shows plumbing in Unit 34 that's backed up with  
22 buckets underneath. The buckets are completely full of water. In back there's electrical lines  
23 running close to the overflowing plumbing system. Slide 29 shows water damage throughout  
24 the interior roof of Unit 34. Someone has tried to use a rubber membrane to contain the water  
25 damage. Mold is also present. The damage has occurred from years of water infiltration.  
26 Slide 30 shows a skylight in Unit 34 that has been sheathed over. Had proper permits been  
acquired the skylight would have been required to be reframed to create better support. Slide  
31 shows more unauthorized electrical modifications. Slide 32 shows the Unit 34 shower  
completely backed up with water. The bathroom was backed up with sewage and water.  
This was an unhealthy situation and the tenants were relocated. Slide 33 shows an outlet with  
charring in Unit 34. Slide 34 shows damage below a damaged soffit. It shows water has  
entered the building and created extensive damage and the water runs into electrical fixtures  
as well. There are also unauthorized electrical modifications inside of the wall. Slide 35  
shows a damaged exterior soffit. Someone has patched the chimney where water has gotten  
into the building. Slide 36 shows a light added to Unit 34 with unprotected wires. It's  
powered by an extension cord that runs through the building to serve as permanent wiring.  
Slide 37 shows the extension cord, which is not allowed to be used for permanent wiring.  
Slide 38 shows a soffit on back side of Unit 34 starting to fall off the building. Slide 39 shows  
additional soffit damage with sagging. Slide 40 shows more extensive soffit damage caused  
by running water. Slide 41 shows wires without a cover plate. One of the wires is  
unprotected and accessible. Slide 80 shows the bathroom of Unit 34. The entire floor is  
soaked. Slide 81 shows Unit 34 electrical panels with open meter faces. Slide 82 shows the  
covering of the wall removed exposing plumbing and wiring. Adjoining the unprotected wall  
is a leaking water heater. Slide 84 shows another view of the leaking water heater. Water



1 shouldn't be leaking on the floor of an electrical system. When Mr. Gumm had initially gone  
2 into the building it had water on the floor with unprotected wiring throughout, which was  
3 unsafe. Slide 84 shows unprotected wiring connected to a service panel. Slide 85 shows  
4 unprotected wiring leading from a service panel to a hole in the wall. Slide 86 shows the  
5 unprotected wiring connected to the exterior of the unit. The wiring connects to a light  
6 fixture. Slide 111 shows the irregular roof line of Unit 34. The roof sways and sags in all  
7 directions. The roof is in a state of failure.

8 Roy Simmons, Lakewood Building Inspector, was particularly concerned about Unit 34.  
9 Statements in this paragraph are all a summary of his testimony. He found it dangerous to  
10 have the power distribution room in a unit with a failing roof. He noted that the upper portion  
11 of the Unit 34 roof is failing and that the lower portion is leaking, which means there's a  
12 failure throughout. Last time he was in there, there was water on the floor. A water heater is  
13 located directly adjacent to the power meters of the power distribution room, which is  
14 completely illegal. Three feet of clearance is required in front of power meters to enable  
15 enough space to service the meters. There isn't that space. There's a water tank sitting there  
16 instead that was installed without permits.

17 Mr. Kim testified that Unit 34 is owned by the LLC. The LLC is undertaking efforts to abate  
18 the problems with Unit 34. All electrical into Unit 34 has been disconnected so that all the  
19 exposed wiring doesn't create an issue. Unit 34 has also been secured.

20 #39- The Administrative Complaint asserts that the unit was posted Unsafe to Occupy by  
21 Order of the City of Lakewood Building Official on October 24, 2018 due to extensive  
22 electrical modification and exposed wiring in violation of RCW 19.28.10 1, structural repair  
23 without proper permit or inspection, missing siding/exterior weather protection, and  
24 unsanitary conditions. The unit remains vacant and abandoned.

25 Jeff Gumm testified about several photographs of Unit 39. All statements in this paragraph  
26 are a summary of his testimony. Slide 18 is a January 2019 picture of the unit. The City had  
it posted unsafe. A demolition permit has been issued for the unit. There was a fire in it, it  
was completely stripped of exterior siding, the electrical was modified without permits, the  
interior was unsafe and unhealthy to live in. Slide 90 shows the interior of the carport to Unit  
39. There are extension cords improperly being used for permanent wiring as well as a lot of  
exposed wiring. Slide 91 is the side view of Unit 39 showing debris and a slider door  
installed without permit. Slide 132 and 133 show a garden hose serving as a water source for  
Unit 39. No permits have been issued for this water installation. The water hose connection  
is above ground, which can cause contamination of the water supply.

15. Harbor for Vagrants and criminal. Units 1, 4, 30 and 28 serve as a harbor for vagrants and  
criminals. It is uncontested that in 2018, Lakewood Police responded to complaints a total 254 times  
and made a total of 25 arrests. Through June 26, 2019, Lakewood Police have responded to  
complaints a total of 100 times and made a total of 8 arrests. As testified by City witnesses and  
summarized below, squatters and vagrants continue to be a problem in unsecured units and storage  
buildings throughout the park leaving behind garbage, debris and unsanitary conditions.

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2 Officer Shawn Noble, Lakewood police officer, testified he has been assigned the task of responding  
3 to calls for service of problem properties such as Karwan. He testified that Karwan has been the  
4 source of many calls for service. Many of these calls were generated by RVs on the property. The  
5 current owner, the LLC as managed by Mr. Kim, has cooperated in removing some of the RVs and  
6 trailers – specifically, Units 31A, B and C and 32. These structures had been causing numerous  
7 problems. However, Units 1, 4, 30 and 28 continue to generate calls for service. Officer Noble  
8 continues to make arrests of people associated with those units. There continue to be code related  
9 issues with junk vehicles, people living in cars, and homeless camps being set up in the back yards of  
10 Units 28 and 30. There’s a constant traffic of people going and leaving these units that have warrants  
11 for their arrest or are clearly involved in drug activity as evidenced by the way they answer questions.  
12 Officer Noble has specifically requested that Mr. Kim take eviction action against those units or at  
13 least hold those people accountable for violations of their leases. Those units haven’t been addressed.  
14 Credit is due for Mr. Kim’s action in abating activity in Unit 35. Eviction action was taken on Unit  
15 31 and 29. There has been a reduction in issues with those units, but the people from those units  
16 continue to be associated with people in the other problem units so the problems are on-going. Some  
17 people have left and moved on, but others remain. An on-site manager, who had been residing in  
18 Unit 34, has recently been added to the facility and he has been responsive to maintenance issues, but  
19 he doesn’t address people living in cars and homeless camps. These issues are plain and obvious and  
20 are not being addressed by anyone at the park.

21 Mr. Gumm testified that Unit 29 is used by squatters and that Slide 98 depicts a bathroom in Unit 29  
22 that is used by squatters even though it has no functional plumbing.

23 Mr. Kim testified that he had hired a security company for \$12,000 for three months but this didn’t  
24 help reduce calls for service. Mr. Kim acknowledged that there are still issues with vagrants at the  
25 property. He asserted that the problem has been greatly decreased. As soon as they find vagrants,  
26 they’re removed. He also noted that improperly parked vehicles are marked and impounded,  
although he still needs to investigate his legal rights to do so. Relying upon call for service statistics  
for the months of June and July 2019, Mr. Kim’s counsel noted in his prehearing brief that the rate  
for calls for service has been reduced by 50% and arrests by 76% since service of the Administrative  
Complaint.

16, Substantial risk of fire, building collapse or other threat to life and safety. The following units  
are all listed in the Administrative Complaint as posing a substantial risk of fire, building collapse or  
other threat to life and safety due to nonconformance to applicable building standards. Those staff  
findings are based upon multiple site visits and observations by qualified City staff as outlined in  
Findings of Fact No. 8 and 9. The LLC response to the substantial risk issue is that electrical  
modifications to carports are a tenant issue and that the LLC has little knowledge of what  
modification have been made by the tenants. **Based upon all the evidence summarized in this  
finding and the lack of any compelling contrary evidence, the units identified below are  
determined to pose a substantial risk of fire, building collapse or other threat to life and safety  
due to nonconformance to applicable building standards.**

1 #1 - The Administrative Complaint asserts the Unit 1 carport has been illegally converted into  
2 a garage without proper permit or inspection per IBC Section 105. All statements in this  
3 paragraph are assertions made in the Complaint. The storage shed located behind the carport  
4 structure was constructed without proper permit or inspection. The garage and storage shed  
5 have extensive improper electrical modification and exposed wiring throughout the structures  
6 in violation of RCW 19.28.010. The patio awning was constructed without proper permit or  
inspection and the framing and supporting members do not conform to minimum construction  
standards prescribed in IRC Section R301 (Design Criteria), R802 (Wood Roof Framing),  
Chapter 9 (Roof Assemblies) and IRC Table R802.5 .1(1).

7 Jeff Gumm testified about several photographs of the Unit 1 accessory structures. All  
8 statements in this paragraph are a summary of his testimony. Slide 42 shows Unit 1 with a  
9 corrugated metal structure installed between the carport and trailer. This was added after the  
10 carport was installed. He believes it was added by the “owner (apparently Mr. Gumm is  
11 referring to the mobile homeowner). The corrugated addition doesn’t meet Lakewood’s snow  
12 load requirements or any other city’s snow loading requirements. It’s not anywhere near  
required snow loads so it is at significant risk of collapsing. Slide 47 shows the inside of the  
carport with extensive unauthorized wiring modifications and unprotected wiring. Slide 48 is  
another view of Unit 1’s exposed and unprotected wiring.

13 # 3 - The Administrative Complaint asserts the Unit 3 carport has been illegally converted  
14 into a garage without proper permit or inspection per IBC Section 105. The Complaint  
15 further asserts that the storage shed located behind the carport structure was constructed  
without proper permit or inspection and is improperly using an extension cord in place of  
permanent wiring in violation of RCW 19.28.101.

16 # 4 - The Administrative Complaint asserts that Unit 4 has multiple windows broken out, a  
17 tarp and plywood installed over a window to prevent water infiltration, and doorways on both  
18 the N and S elevations missing proper stairs and landings necessary for proper egress. Jeff  
19 Gumm testified that slide 77 shows the Unit 4 tarp over a window that’s been broken for  
several years.

20 # 5 - The Administrative Complaint asserts that the Unit 12 carport has improper electrical  
21 modifications and exposed wiring in violation of RCW 19.28.101. Jeff Gumm testified that  
22 Slide 67 shows that the carport has been modified with Slide 68 showing unprotected and  
unpermitted Romex wiring going into the carport.

23 # 29 - The Administrative Complaint asserts that the Unit 29 front and rear porch and stairs  
24 were improperly constructed without required permit or inspection and are in such poor  
25 condition that they are subject to failure. Jeff Gumm testified that Slide 53 shows rotting and  
26 failing framing for the front stairs. Slide 55 shows the front stairs installed without a building  
permit. Slide 59 shows a door extension added to the back side of Unit 29 with no permits.  
The stairs to the door don’t comply with egress requirements.

1 # 30 - The Administrative Complaint asserts that Unit 30 has improper electrical  
2 modifications and exposed wiring in violation of RCW 19.28.101. Jeff Gumm testified that  
3 Slide 49 shows Unit 30 with a light fixture that's been added to the exterior with unprotected  
4 wiring coming out of it with an improper electrical connection. Slide No. 50 shows the back  
5 side of Unit 30 with numerous modifications to the electrical panel with unprotected Romex  
6 wiring added without permits.

7 # 34 - The Administrative Complaint asserts that Unit 34 has an electrical room with wall  
8 finishes that have been removed to access wiring and plumbing, improper electrical  
9 modification, exposed wiring, improperly protected wiring, open electrical meters, and  
10 improper clearance between water heater and electrical panels in violation of RCW 19.28.101.  
11 In addition, water has infiltrated the roof and walls of the building causing extensive structural  
12 damage to much of the roof and supporting framing.

13 Jeff Gumm testified that Slide 82 shows the covering of the wall removed exposing plumbing  
14 and wiring. Adjoining the unprotected wall is a leaking water heater. Slide 83 shows another  
15 view of the leaking water heater. Water shouldn't be leaking on the floor of an electrical  
16 system. When Mr. Gumm had initially gone into the building it had water on the floor with  
17 unprotected wiring throughout. It was unsafe to walk into the building to start with. Slide 84  
18 shows unprotected wiring connected to a service panel. Slide 85 shows unprotected wiring  
19 leading from a service panel to a hole in the wall. Slide 86 shows the unprotected wiring  
20 connected to the exterior of the unit. The wiring connects to a light fixture.

21 # 29, 34 and 39 - The Administrative Complaint asserts that Units 29, 34 and 39 have all been  
22 posted Unsafe to Occupy due to improper modification without proper permit or inspection,  
23 improper electrical modification, and generally unsafe and unsanitary conditions throughout.  
24 These unauthorized and illegal actions create substantial risk of threat to life or safety as  
25 further detailed in Finding of Fact No.14.

26 17. Unsanitary and/or Unfit for Habitation. The following units are all listed in the  
Administrative Complaint as unsanitary or unfit for human habitation. Those staff findings are based  
upon multiple site visits and observations by qualified City staff as outlined in Findings of Fact No. 8  
and 9. **Based upon all the evidence summarized in this finding and the lack of any compelling  
contrary evidence, the units identified below are determined to be unsanitary and/or unfit for  
habitation.**

# 1 - The Administrative Complaint asserts that Unit 1 is unsafe and unsanitary for human  
habitation due to its lot being littered with garbage, debris, junk, trash, building material,  
scrap, furniture, and personal belongings.

Jeff Gumm testified about photographs depicting unsanitary conditions on the Unit 1  
property. As testified by Mr. Gumm, Slide 156 shows a breach in the fencing between Unit 1  
and an adjoining Pierce County stormwater pond, from which debris is thrown onto the Pierce  
County property. Slide 157 shows some of the wood debris thrown onto the Pierce County  
property from Unit 1. You can see part of the wood debris still on the Unit 1 property. Slide

1 158 shows more debris thrown on the Pierce County property from Unit 1. Slide 159 shows  
2 the fence cut back on Unit 1 and a large amount of debris that needs to be cleaned up. Slide  
3 160 shows another hole in the fence to Unit 1 with debris. Slide 161 shows debris on the  
4 backside to Unit 1. Slide 163 shows debris overflowing from Unit 1 onto the Pierce County  
property. Slide 164 shows a tarp covering improper storage and unpermitted wiring.

5 Slide 153, taken 9/17, shows the front side of Unit 1 with garbage and debris. Slide 154,  
6 taken 9/17, is another view of Unit 1 and its garbage. Slide 156, taken 9/17, another view of  
7 Unit 1 with shed and garbage and debris and improper storage. At hearing the Appellant  
8 asserted that Unit 1 has been cleaned up, but the 9/17 photographs and testimony of Mr.  
Gumm establish that there is still a significant amount of trash etc. on the Unit 1 property that  
renders the property unfit for habitation.

9 **# 29, 34 and 39** - The Administrative Complaint asserts that Units 29, 34 and 39 have all been  
10 posted Unsafe to Occupy due to improper modification without proper permit or inspection,  
11 improper electrical modification, and generally unsafe and unsanitary conditions throughout.  
The units are found to be unsanitary and/or unfit for habitation due to these conditions as  
substantiated by the facts recited for each unit in Finding of Fact No. 14.

12 18. Improper Water and Electrical Connections. The following units are all listed in the  
13 Administrative Complaint as having unauthorized and improper water and/or electrical connections  
14 that constitute a threat to life or health. Those staff findings are based upon multiple site visits and  
15 observations by qualified City staff as outlined in Findings of Fact No. 8 and 9. Based upon all the  
16 evidence summarized in this finding and the lack of any compelling contrary evidence, the units  
identified below are determined to have unauthorized and improper water and/or electrical  
connections that constitute a threat to life or health.

17 **# 31C** - The Administrative Complaint asserts that the Unit 31 C- RV has been installed  
18 without proper permit or inspection in accordance with LMC 1 8A.70.440 (V). It further  
19 asserts that the unit lacks proper water and electrical utility connections. Mr. Kim  
20 acknowledged in cross-examination that he's aware of waterline issues with Unit 31C and that  
his contractor was working on the problem. The Appellant did not otherwise present any  
evidence disputing the assertions made about Unit 31C.

21 **# 40** - The Administrative Complaint asserts that the Unit 40 RV has been installed without  
22 proper permit or inspection in accordance with LMC 1 8A.70.440 (V). The Complaint further  
23 asserts that the unit lacks a proper water connection and that its water supply is improperly  
provided by a garden hose and that a water meter and supply piping has been improperly  
modified/disassembled without proper permit or inspection.

24 Mr. Gumm presented Slide 95 at the hearing, which he testified shows a disassembled water  
25 main that serves Unit 40. The work on the main has not been permitted. He noted there are  
26 no permits for Unit 40 to connect to that waterline. Slide 130 shows a disconnected water  
meter for Unit 40. The meter remains disconnected. Slide 145, taken 9/17, shows a garden  
hose still serving Unit 40. Mr. Kim acknowledged in cross-examination that he's aware of

1 waterline issues with Unit 40 and that his contractor was working on the problem. The  
2 Appellant did not otherwise present any evidence disputing the assertions made about Unit  
3 40.

4 19. Abandoned Attractive Nuisance. The Administrative Complaint asserts that Units 29, 34, and  
5 39 have been posted Unsafe to Occupy and remain vacant, abandoned, unsecured and an attractive  
6 nuisance and hazard to the public. According to the uncontested assertions of Appellant's counsel,  
7 all units have been secured since issuance of the Administrative Complaint. Mr. Kim testified that he  
8 has acquired a demolition permit for Unit 39 and is working on its removal. It is unclear from the  
9 testimony whether the units still serve as an attractive nuisance since they've been secured.  
10 Consequently, the City has not met its burden of proof on this dangerous building condition and it  
11 cannot be determined that Units 29, 34 and 39 constitute attractive nuisances.

12 20. Septic Failures. The property contains numerous failing septic systems. The leaking systems  
13 are a health hazard both because of their proximity to the residents of the park and the proximity of  
14 the park to a Pierce County stormwater pond. The pond adjoins the park and is located at a 20 foot  
15 drop off in elevation. Roy Simmons, City of Lakewood Building Inspector, testified failing systems  
16 are leaching raw sewage towards the stormwater pond, which ultimately discharges into Puget Sound.

17 Mr. Simmons testified that there are numerous septic leaks on the property. Units 28, 29, 34 and 3  
18 have obvious surface leaks on the ground. Mr. Gumm testified that he's seen sewage bubbling out of  
19 Units 1, 29, 28, 34 and a few other ones. Mr. Simmons noted that the RVs and camping trailers had  
20 surface leaks because they weren't connected properly, dumping sewage on the ground and around the  
21 units. Mr. Simmons noted that the Health Department is very busy and hasn't had the time to address  
22 all the problems at the subject property. He considers the septic problem to be a time bomb. When  
23 septic fails, it fails and doesn't fix itself. As an example of the poor sanitary conditions of the park, he  
24 identified that in Unit 1 there's a disabled person where Pro-Vac, a septic company, put a toilet in the  
25 middle of the living room because the disabled person wasn't able to get up and leave the room.  
26 Before Pro-Vac's efforts, human waste was just dumping straight to the ground below the mobile  
home. That mobile home is about 20 feet from the fence that goes to the stormwater pond. The new  
toilet is plumbed to a septic system now, but the septic system is in failure. Most septic failures are  
along the 20 foot drop off overlooking the stormwater pond. There isn't any more land available at the  
subject property to accommodate expanded drain fields. All septic systems are required to have  
reserve areas to serve as alternate drain fields should a drain field fail. There are no reserve areas  
available in the subject property. The drain fields work, or they don't. When a drain field fails, Mr.  
Simmons doesn't know how that could be remedied. At that point the ground is saturated and isn't  
taking effluent anymore. In cross-examination, Mr. Simmons acknowledged he's not licensed to  
evaluate septic systems. He can just say he's observed raw sewage on top of the ground on numerous  
occasions at numerous residences. The last time he was at the park was two months ago.

Mr. Kim testified that he was made aware of septic issues only recently. He wasn't aware it was an  
on-going issue. There were times when there were surface septic issues. With septic tanks that  
happens sometimes and its addressed right away. Mr. Kim's attorney pointed out that Pierce County  
Health, which has jurisdiction over septic permits and enforcement of septic regulations, has not  
identified any failing septic systems or a need to remedy them. This is not a very compelling

1 argument. As noted by Mr. Simmons, Pierce County Health doesn't have the resources to pursue all  
2 septic violations. Further, the documentary evidence establishes that Pierce County Health in fact does  
3 have a concern with failing septic systems. In response to inspections made by Pierce County Health,  
4 prior owners of the property in 2017 submitted design drawings that identified multiple failed drain  
5 fields and replacements and de-commissioning of septic tanks. See 10/10/17 Approved "Septic  
6 System Repair Design," (3 site plans) Ex. C to City's Response brief. At least two of the failed drain  
7 fields, for Units 1 and 10, are adjacent to the Pierce County storm pond. Pierce County Public Health  
8 inspector notes dated 12/7/17 accompanying the design drawings show multiple concerns raised by the  
9 department, including: a mobile home with no record of any septic system or where the sewage is  
10 going; sewer connection needed for Units 38, 39, and 40; Units 2, 10, 14, 15, 16, 17, 18, 29, 30, 31A-C,  
11 32, 34 and 37 in failure and repair applications required. Unit 40 was identified as leaking sewage into  
12 a bucket. *Id.*

13 Given the multiple septic failures identified by both Pierce County Health and City inspectors, as well  
14 as the proximity of the failures to a stormwater pond, there is clearly and unquestionably a serious  
15 problem with failing and inadequate septic systems on the subject property that poses a threat to public  
16 health and creates unsanitary conditions both for Karwan residents and the public at large.

17 21. Unit 29 and 39 Assessed Value and Repair Costs. Finding No. 17 of the Findings and Order  
18 determined that according to the records of the Pierce County Assessor-Treasurer, the assessed  
19 property improvements for Units 29 and 39 have a market value of \$6,800.00 and \$5,000.00,  
20 respectively. For the appeal hearing, the City presented evidence on the assessed value of the mobile  
21 home park as a whole, see Att. A to Ex. 1, but the City did not present any evidence on the assessed  
22 value of individual mobile homes. Finding No. 17 further found that the estimated cost to rebuild the  
23 building(s) would exceed 50% of the value of the buildings. Mr. Kim confirmed this by testifying  
24 that he estimates that the costs for repairing Unit 29 were eight to ten thousand dollars. He also  
25 testified that Unit 29 had recently been sold at a foreclosure sale for ten thousand dollars. Given that  
26 the Appellant has not disputed Finding No. 17, it is determined to accurately identify the assessed  
value of Units 29 and 39 as well as the cost of repairs.

27 22. Mitigating Circumstances. The Appellant has made a strong effort to abate the problems with  
28 the property. The LLC purchased the property in December 2017. The LLC was originally run by  
29 Mr. Kim's father, but then handed to Mr. Kim so that his father could take care of his ill mother. As  
30 testified by Officer Noble in Finding of Fact No. 15, Mr. Kim has removed some problem RVs and  
31 evicted problem tenants, but others remain. As acknowledged by the City, Mr. Kim has also abated  
32 the trash located in the common areas that created a nuisance as identified in the Administrative  
33 Complaint. As previously noted, Mr. Kim has hired an on-site property manager and also spent  
34 \$12,000 using a security firm to monitor the property at night. Mr. Kim has secured Units 29, 34 and  
35 39. In uncontested testimony, Mr. Kim asserted that for the Unit 34 and 30 fixes, the 39 demolition  
36 and the carport fixes within their control, it would take six to nine months to do all the repairs  
according to his contractor.

### Conclusions of Law

1 1. Authority. The hearing examiner has authority to hear appeals and issue final decisions on  
2 appeals of abatement orders issued pursuant to the IPMC. LMC 15A.05.090(H), amending IPMC 111,  
3 Official for dangerous building abatements pursuant to enforcement of the IPMC.

4 The LMC is not as clear about examiner authority over administrative appeals over nuisance  
5 abatements under Chapter 8.16 and 8.26 LMC<sup>3</sup>. There is in fact no administrative appeal process  
6 identified for these chapters in the municipal code<sup>4</sup>. LMC 8.16.050 authorizes the City Manager or  
7 designee to issue nuisance abatement orders but doesn't identify any appeal process for such orders.  
8 LMC 8.26.080 requires that a hearing upon request be held for abatement of junk vehicles, but such a  
9 hearing has already been held by the Building Official. Chapter 8.26 LMC doesn't authorize or require  
10 any appeal process for decisions made after holding the hearing required by LMC 8.26.080. As  
11 acknowledged by the City during the appeal, some of the City's LMC 8.16 and 8.26 claims have  
12 become moot since issuance of the abatement order due to correction actions completed by the  
13 Appellant. In order to avoid complicating the record with unauthorized modifications to the nuisance  
14 abatement order due to lack of jurisdiction, this decision will only address the IPMC claims.

15 2. Service. The Appellant claims the Administrative Complaint and Findings and Order were not  
16 properly posted as required by RCW 35.80.030(1)(c) and (f), respectively. As relevant, RCW  
17 35.80.030(1)(c) requires "*that, if after a preliminary investigation of any dwelling, building, structure*  
18 *or premises*" it is found that the subject property is unfit for human habitation or other use, the City  
19 shall "*post in a conspicuous place on **such property***" (emphasis added) the complaint initiating the  
20 Chapter 35.80 RCW action. Analogous wording is used to require posting of the Findings and Order.  
21 The Appellant argues that since the complaint identifies specific structures and buildings such as  
22 dangerous mobile homes and carports, that the specific structures and buildings should have been  
23 posted since they qualify as "such property" in the preceding emphasized quoted language. While  
24 there might be some merit to this position for service on individual tenants, the position is not  
25 compelling for the LLC. The LLC owns the entire mobile home park and doesn't own many of the  
26 individual structures called out as dangerous in the Administrative Complaint. For structures it doesn't  
own, the LLC only has control via its authority to evict and other remedies available to it through its  
lease agreement with mobile home park tenants. Overall, in this regard, it is appropriate to construe

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20 <sup>3</sup> The Administrative Complaint also asserts noncompliance with business license requirements, but the  
21 Administrative Complaint was not framed as including a license revocation proceeding governed by Chapter 5.02  
22 LMC. To the extent that the City was referencing business license conditions to corroborate its position that there  
are dangerous building and nuisance conditions on the property, that point is well taken but not necessary for the  
determinations made in this Decision.

23 <sup>4</sup> LMC 15.05.090(E) authorizes the Building Official to include any condition of the property in the LMC 15.05  
24 Findings and Order that renders the property "unfit for human habitation or other use." Arguably, some of the  
25 nuisance conditions identified in Chapter 8.16 LMC would qualify, although "unfit for human habitation or use" is a  
26 term specifically used in the IPMC and could be construed as limited to the context of the IPMC. In any event, the  
Administrative Complaint and resulting Finding and Order did not frame the Chapter 8.16 LMC and 8.26 LMC  
violations as Chapter 15.05 LMC violations. Further, its is highly questionable whether the small number of junk  
vehicles violations rendered the subject property "unfit for human habitation" as contemplated for the LMC 15.05  
abatement process.



1 “property” in RCW 35.80.030(1)(c) and (f) broadly as the entire mobile home park, i.e. the “premises,”  
2 which would include the individual structures and buildings located upon it.

3 3. LLC Responsible for Tenant Violations. The Appellant claims that the Mobile/Manufactured  
4 Home Landlord Tenant Act, Chapter 59.20 RCW (“MHLTA”) prohibits the City from making the  
5 landlord responsible for structures or modifications owned by the tenants. It is concluded that the  
6 MHLTA only governs the responsibilities between landlord and tenant and does not govern the  
7 responsibilities of the landlord to the general public. To the extent authorized by City ordinances and  
8 state law, the City can make the landlord responsible for tenant code violations, but under due process  
9 reasonableness standards any enforcement actions taken against landlords must accommodate the  
10 limitations placed upon landlords by the landlord-tenant relationship.

11 The Appellant cites to various MHLTA provisions that make tenants responsible for maintaining the  
12 improvements they own in compliance with applicable code provisions. RCW 59.20.100 provides that  
13 improvements purchased and installed by tenants remain the property of tenants. RCW 59.20.100  
14 provides that tenants are required to comply with applicable city and state laws and to generally  
15 maintain their lots in good order. RCW 59.20.130(7) prohibits landlords from entering mobile homes  
16 and RCW 59.20.130 provides that landlords have no duty to repair defective conditions caused by  
17 tenants.

18 The Appellant’s arguments fail to recognize that all the provisions regulating the duties of landlords  
19 and tenants in Chapter 59.20 RCW arise from the legal relationship between the two parties as created  
20 by their rental agreement. RCW 59.20.040 expressly limits the applicability of Chapter 59.20 RCW as  
21 follows:

22 *This chapter shall regulate and determine legal rights, remedies, and obligations*  
23 *arising from any rental agreement between a landlord and a tenant regarding a mobile*  
24 *home lot and including specified amenities within the mobile home park, mobile home*  
25 *park cooperative, or mobile home park subdivision, where the tenant has no ownership*  
26 *interest in the property or in the association which owns the property, whose uses are*  
*referred to as a part of the rent structure paid by the tenant. All such rental agreements*  
*shall be unenforceable to the extent of any conflict with any provision of this chapter....*

27 Nothing in RCW 59.20.040 or any other portion of Chapter 59.20 RCW purports to define the  
28 landlord’s responsibility outside of rental agreements. Chapter 59.20 RCW is limited to defining how  
29 the parties to rental agreements can apportion responsibility and renders any contrary provisions  
30 unenforceable. Indeed, RCW 59.20.130(1) imposes a duty on landlords to comply with ordinances  
31 applicable to mobile home park. RCW 59.20.080(1) authorizes a landlord to evict a tenant for failure  
32 to comply with local ordinances. These two statutes are some of the reasons that the Washington State  
33 Supreme Court has held that the MHLTA does not preempt local regulation of mobile home parks.  
34 *See Lawson v. City of Pasco*, 168 Wn.2d 675 (2010).

35 Given the preceding, it is entirely consistent with the MHLTA and the *Lawson* case to make landlords  
36 responsible for tenant conformance to dangerous building standards via the landlord’s authority to  
evict tenants for failure to comply with such standards. Pursuant to its authority to regulate tenant

1 improvements, which according to *Lawson* is not preempted by the MHLTA, the City has adopted the  
2 IPMC, which Section 107.1 provides as amended by LMC 15.05.090 that a dangerous building  
3 complaint can be served upon “*all persons having any interest*” as shown in county auditor records of  
4 any dwelling, building, structure or premises. The scope of this clause is clarified by Section 101.2 of  
5 the IPMC, as amended by LMC 15.05.090, which provides that the City should abate and seek  
6 reimbursement from uncooperative “*owners or other persons in possession or control*” of dangerous  
7 properties.

8 *When the owners or other persons in possession or control of such properties*  
9 *[dangerous properties] are unwilling or unable to correct such conditions in a proper*  
10 *and timely manner, it is in the interest of the community for the City to intervene and*  
11 *correct, repair, or remove such buildings, structures, and conditions and to pursue all*  
12 *legal means to recover from such persons and/or properties the costs of doing so...*

13 The provision quoted above evidences a legislative intent to go after anyone having a controlling  
14 interest in property subject to abatement. The only persons who could be subject to cost recovery for  
15 abatement would be those who can be initially served by a dangerous property complaint, which would  
16 have to be the “*all persons having any interest*” in the property as referenced in IPMC Section 107.1.  
17 The LLC has an “interest” in the mobile homes subject to the Administrative Complaint by virtue of its  
18 ownership of the underlying real property upon which the structures are located and the resulting rental  
19 agreement governing the rights of the LLC and its tenant. That landlord’s interest from its control of  
20 the tenant as a landlord is the type of control contemplated in IPMC Section 101.2, since the landlord  
21 can compel tenants to comply with City dangerous building requirements by threatening eviction as  
22 authorized by RCW 59.20.080(1). In point of fact, the Appellant itself demonstrates the practical  
23 utility of such an interpretation. The Appellant’s prehearing brief is appended with several notices  
24 (Ex. A to the brief) to its tenants requiring the tenants to comply with the Administrative Complaint as  
25 it applies to them or face eviction.

26 Although the MHLTA does not preclude the City from making landlords responsible for tenant  
dangerous building violations, its limitations on landlord authority must still be considered when  
imposing corrective actions. The fact that the City’s authority to regulate dangerous buildings isn’t  
preempted by the MHLTA doesn’t mean that the City can change the landlord/tenant relationship in a  
manner that is inconsistent with it. It would likely violate LLC’s due process rights to impose  
correction actions that would be impossible or overly burdensome to comply due to limitations placed  
upon the landlord by the MHLTA. The ability of the landlord to exact conformance from its tenants to  
dangerous building standards is largely limited to its eviction authority in the absence of any penalty  
provisions included in the rental agreements. In this regard, any corrective action required of the  
landlord for improvements owned by tenants must give the landlord sufficient time to employ its  
eviction process.

Whether or not the City has provided this amount of time is muddled by the fact that at hearing the  
City has stated that it’s just made the tenants responsible for abating conditions on improvements  
owned or constructed by the tenants, but the correction actions listed in the Findings and Order do not

1 expressly identify which correction actions are limited to tenant implementation.<sup>5</sup> This decision finds  
2 the landlord responsible to abate all tenant IPMC violations and will revise the Findings and Order as  
3 necessary to give the landlord a reasonable amount of time to utilize its eviction authority should the  
4 City choose for any reason not to seek abatement directly from tenants for tenant owned  
improvements.

5 A second complicating factor on the issue of responsibility for tenant improvements is whether the  
6 carports are tenant as opposed to landlord improvements. For the reasons outlined in Finding of Fact  
7 No. 10, it is determined that the carports are owned by the LLC and modifications that don't qualify as  
8 repairs are made by the tenants. Extended compliance deadlines will be given to the LLC for tenant  
improvements and improvements that qualify as repairs in case those improvements were made by the  
tenants.

9 4. Burden of Proof. The City has the burden of proof in establishing that the structures and  
10 premises of the subject property qualify as dangerous buildings, structures and premises. The LMC  
11 doesn't assign any burden of proof to these proceedings. There is very little case law on any  
12 constitutional requirements pertaining to burden of proof, but the little that is available suggests that if  
13 deprivation of a significant property interest is at stake, as a matter of procedural due process the City  
14 has the burden of proof in proving that all applicable criteria are met. *Hardee v. State Dept. of Social  
and Health Services*, 172 Wash.2d 1, 256 P.3d 339 (2011) (constitutional due process required that the  
15 State prove by a preponderance of the evidence that its decision to revoke a home child health care  
16 license should be upheld). Given code enforcement actions are subject to review under the Land Use  
Petition Act, Chapter 36.70C RCW ("LUPA"), the substantial evidence standard along with  
preponderance of evidence is applied to the City's burden of proof. See RCW 36.70C.030 (LUPA  
exclusive judicial review of land use decisions); RCW 36.70C.020(2)(c)(land use decision defined to  
include code enforcement of regulations pertaining to use and maintenance of land); RCW  
36.70C.130(1)(c)(substantial evidence standard applies to LUPA review).

17 5. Review Criteria. As concluded in Conclusion of Law No. 1, the hearing examiner only has the  
18 authority to consider appeals over the findings and orders made by the Public Officer based upon the  
19 International Property Maintenance Code ("IPMC"). The only pertinent IPMC provision in this regard  
20 is IPMC 108.1.5, which are the only IPMC provisions used by the Administrative Complaint to require  
abatement. Applicable IPMC provisions are quoted below in italics and applied to the subject property  
in associated conclusions of law.

21 **IPMC 108.1.5 Dangerous structure or premises.** *For the purpose of this code, any structure*  
22 *or premises that has any or all the conditions or defects described below shall be considered*  
23 *dangerous:*

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24 <sup>5</sup> It could be implied that if a tenant is named as one of the Administrative Complaint defendants that it is solely  
25 responsible for the corrective action assigned to its unit, but in the absence of any such express limitation on such a  
26 significant issue this Decision will adhere to the plain meaning of the language used in the Administrative Complaint,  
which places no limitations on the properties to which the LLC is responsible. Given that the City might be taking a more  
restrictive position than the examiner on landlord responsibility for tenant improvements, it would be highly speculative  
for the examiner to have to both try to ascertain what responsibility the City believes the landlords does have towards  
tenant improvements and then apply that standard to determine what properties were intended for landlord correction.

1  
2 2. *The walking surface of any aisle, passageway, stairway, exit or other means of egress is so*  
3 *warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.*

4 6. Units 4, 28, 29 and 39 are all found to not have safe and adequate means of egress as  
5 contemplated in IPMC 108.1.5(2) for the reasons identified in Finding of Fact No. 12.

6 **IPMC 108.1.5(3)** *Any portion of a building, structure or appurtenance that has been damaged by*  
7 *fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause*  
8 *to such an extent that it is likely to partially or completely collapse, or to become detached or*  
9 *dislodged.*

10 7. Units 4, 6, 7, 12, 17, 19, 27, 29, 32, 33, 37 are all found to be in danger of likely to partially or  
11 completely collapse, or to become detached or dislodged as contemplated in IPMC 108.1.5(3) for the  
12 reasons identified in Finding of Fact No. 13.

13 **IPMC 108.1.5(6)** *The building or structure, or any portion thereof, is clearly unsafe for its use*  
14 *and occupancy.*

15 8 Units 29, 34 and 39 area all found to be clearly unsafe for their use and occupancy as  
16 contemplated in IPMC 108.1.5(6) for the reasons identified in Finding of Fact No. 14. It is  
17 recognized that the Appellant has acquired a demolition permit for Unit 39 and that this unit will  
18 likely soon be eliminated from the premises.

18 **IPMC 108.1.5(7)** *The building or structure is neglected, damaged, dilapidated, unsecured or*  
19 *abandoned so as to become an attractive nuisance to children who might play in the building or*  
20 *structure to their danger, becomes a harbor for vagrants, criminals or immoral persons, or enables*  
21 *persons to resort to the building or structure for committing a nuisance or an unlawful act.*

22 8. Units 1, 4, 28, 29 and 30 are all found to serve as a harbor for vagrants as contemplated in  
23 IPMC 108.1.5(7) for the reasons identified in Finding of Fact No. 15. Arrests and calls for service  
24 have gone as a result of efforts made by the LLC, particularly in removing several RVs, but several  
25 other problem units remain despite requests from Officer Noble to have the tenants evicted. The LLC  
26 has partially mitigated the dangerous condition but has not yet fully abated it.

27 **IPMC 108.1.5(8)** *Any building or structure has been constructed, exists or is maintained in violation*  
28 *of any specific requirement or prohibition applicable to such building or structure provided by*  
29 *the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as*  
30 *to present either a substantial risk of fire, building collapse or any other threat to life and safety.*

1 9. Units 1, 3, 4, 5, 29, 30, 34 and 39 are all found to present a substantial risk of fire, building  
2 collapse or other threat to life and safety as contemplated in IPMC 108.1.5(8) for the reasons  
3 identified in Finding of Fact No. 16.

4 **IPMC 108.1.5(9)** *A building or structure, used or intended to be used for dwelling purposes,*  
5 *because of inadequate maintenance, dilapidation, decay, damage, faulty construction or*  
6 *arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is*  
7 *determined by the code official to be unsanitary, unfit for human habitation or in such a condition*  
8 *that is likely to cause sickness or disease.*

9 10. Units 1, 29, 34 and 39 are found to be unsanitary and/or unfit for human habitation as  
10 contemplated in IPMC 108.1.5(9) for the reasons identified in Finding of Fact No. 17.

11 The subject property at large, including its individual dwelling units, is determined to be unsanitary  
12 and unfit for habitation due to failing septic systems as outlined in Finding of Fact No. 20.  
13 Appellant's counsel argued that only Pierce County Public Health has the authority to enforce septic  
14 regulations. However, Appellant's counsel cited to no regulation that grants Pierce County Health  
15 exclusive jurisdiction over unsanitary and unhealthy conditions created by failing or improperly  
16 installed or constructed septic systems and no such regulation is apparent. As testified by Mr.  
17 Simmons, City staff are not experts in septic regulations, but they are trained and have the experience  
18 necessary to determine when septic conditions create nuisance and/or dangerous building/premises  
19 conditions.

20 **IPMC 108.1.5(10)** *Any building or structure, because of lack of sufficient or proper fire-resistant*  
21 *rated construction, fire protection systems, electrical system, fuel connections, mechanical system,*  
22 *plumbing system or other cause, is determined by the Public Officer to be a threat to life or health.*

23 11. Units 31C and 40 are found to be a threat to life or health due to lack of sufficient plumbing  
24 and electrical systems as contemplated in IPMC 108.1.5(10) for the reasons identified in Finding of  
25 Fact No. 18.

26 **IPMC 108.1.5(10)** *Any portion of a building remains on a site after the demolition or destruction of*  
27 *the building or structure or whenever any building or structure is abandoned so as to constitute such*  
28 *building or portion thereof as an attractive nuisance or hazard to the public.*

29 12. The City has not met its burden of proof on this dangerous building condition for the reasons  
30 identified in Finding of Fact No. 19.

31 **LMC 15.05.090F: IPMC 107.2 Findings and Order.**

32 *A. If, after the required hearing, the Public Officer determines that the dwelling is dangerous or unfit*  
33 *for human habitation, or building or structure or premises is unfit for other appropriate use, he/she*  
34 *shall state in writing his/her findings of fact in support of such determination, and shall issue and*  
35 *cause to be served upon the owners and parties in interest thereof, as provided in this section, and*  
36 *shall post in a conspicuous place on the property, an order that (i) requires the owners and parties in*

1 *interest, within the time specified in the order, to repair, alter, or improve such dwelling, building,*  
2 *structure, or premises to render it fit for human habitation, or for other appropriate use, or to vacate*  
3 *and close the dwelling, building, structure, or premises, if such course of action is deemed proper on*  
4 *the basis of the standards set forth in this section; or (ii) requires the owners and parties in interest,*  
5 *within the time specified in the order, to remove or demolish such dwelling, building, structure, or*  
*premises, if this course of action is deemed proper on the basis of those standards. If no appeal is filed,*  
*a copy of such order shall be filed with the Pierce County Auditor.*

6 *B. In ordering the required course of action to be taken by the owner to abate the unfit or dangerous*  
7 *structure, the Public Officer may order the structure or a portion thereof demolished and not repaired*  
*under the following circumstances:*

8 *i. The structure is patently illegal with regard to building, zoning, or other regulations;*

9 *ii. The estimated cost to repair the structure or portion thereof is more than 50% of the value of the*  
10 *structure or portion thereof; or,*

11 *iii. The estimated cost to repair the structure or portion thereof is less than 50% of the value and*  
12 *repairing and/or securing the structure from entry would, nevertheless, cause or allow the structure to*  
*remain a hazard or public nuisance.*

13 *The value of the structure shall be as determined by the Pierce County Assessor-Treasurer. In*  
14 *estimating the cost of repairing the structure, the Public Officer may rely upon such cost estimating*  
15 *publication or method the Building Official deems appropriate.*

16 13. LMC 15.05.090F as quoted above gives the Building Official wide discretion in  
17 imposing the corrective actions necessary to abate dangerous building/premises conditions. The  
18 conditions of the property are extreme, but the Appellant has undertaken a strong effort in addressing  
19 the problems as outlined in Finding of Fact No. 21. The conditions of the property, especially the  
20 septic, must be addressed as quickly as possible, but where public welfare and safety permit,  
21 accommodation should be given to the Appellant to recognize its efforts. In this regard, demolition  
22 of buildings is not mandatory in all cases where repairs exceed 50% of assessed value but is rather a  
23 requirement that the City has the discretion to impose. Consequently, the Appellant will be permitted  
24 to repair Unit 29 if done so within the timeframes required by this decision. Timelines for tenant  
25 owned or constructed improvements will also be extended to accommodate the limitations on the  
26 ability of the landlord to address tenant owned improvements. As discussed in Conclusion of Law  
No. 3, it appears that the City has intended to go after the tenants at least first on tenant owned  
improvements and modifications. This Decision enables the City to pursue that strategy but leaves  
the option to go after the LLC should the City elect for whatever reason to pursue the LLC as well or  
instead of the tenant.

## Decision

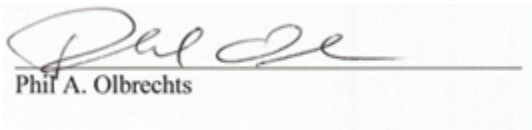
1 The July 10, 2019 Findings and Order is sustained as modified below.

2 As determined in Conclusion of Law No. 1, this Decision only assesses the validity of the Findings and  
3 Order as it pertains to application of the IPMC, because the LMC does not grant any appellate  
4 authority to the hearing examiner over staff decisions declaring the subject property or its contents a  
5 nuisance under Chapters 8.16 and 8.26 LMC. All the corrective actions required by the Findings and  
6 Order are upheld as modified below by this Decision since all such actions directly address IPMC  
violations sustained by this Decision for the reasons identified in the findings of fact and conclusions  
of law above.

7 Modifications to Findings and Order:

- 8 1. Corrective actions that have been completed need not be revisited. IPMC corrective actions  
9 already completed are identified at Pages 3-9 of the City's Response Brief, Ex. 1. Unit 22 rear  
10 door/porch corrective action has also been completed. Unit 39 demolition permit has already  
been acquired.
- 11 2. All August 16, 2019 deadlines for building permit applications set by the Order for units owned  
12 and/or controlled by the Appellant as identified in Finding of Fact No. 10 and 11 are extended to  
13 November 15, 2019. For those same units, all September 16, 2019 deadlines for demolition,  
14 clean up and/or repair are extended to December 20, 2019 and all 90-day deadlines are extended  
15 to 180 days. The August 1, 2019 deadline for Unit 34 and 39 is extended to November 1, 2019.  
An addition 90 days is added to the deadlines imposed by this paragraph for improvements  
owned by tenants. The deadlines set by this paragraph only applies to the Appellant, not the  
tenants.
- 16 3. The September 16, 2019 deadline for the septic system is extended to November 7, 2019. The  
17 October 16, 2019 deadline is extended to November 29, 2019.
- 18 4. In lieu of demolition, the Appellant may elect to repair Unit 29 following the corrective actions  
19 and deadlines applicable to Unit 34. Staff may waive Unit 34 requirements to the extent not  
20 necessary for Unit 29. Should the Appellant fail to meet any repair deadlines, the Appellant will  
be required to demolish Unit 29 within reasonable deadlines set by the City.

21 DATED this 9th day of October, 2019.

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24 Phil A. Olbrechts

25 Hearing Examiner for Lakewood  
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**Appeal Right:** This is a final decision of the City of Lakewood Appealable to Superior Court as governed by the Land Use Petition Act, Chapter 36.70C RCW.