



Edwin M. Lee
Mayor

DAVID GRUBER
PRESIDENT

Delene Wolf
Executive Director

**MINUTES OF THE SPECIAL MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

CALVIN ABE
DAVE CROW
SHOBA DANDILLAYA
RICHARD HUNG
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
KENT QIAN
DAVID WASSERMAN

Monday, October 26, 2015,
at 6:00 p.m.
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Gruber called the meeting to order at 6:12 p.m.

II. Roll Call

Commissioners Present: Abe; Gruber; Mosser; Wasserman; Dandillaya;
Marshall; Mosbrucker; Qian; Crow.
Commissioners not Present: Hung.
Staff Present: Gartzman; Collins; Kearns.

Commissioner appeared on the record at 6:30 p.m.

III. Remarks from the Public

32 individuals addressed the Board, as follows below:

1. Small property owner Nancy Leavens asked whether a subtenant is when someone moves to New York, or gets a roommate. Ms. Leavens feels that the new legislation is “yet another layer of rules and regulations” when she is trying to run the building by herself. She asked that small property owners retain the flexibility to control their own buildings.

2. Landlord Laurie Heath told the Board the new eviction protection law must be applied after November 9th, rather than to existing tenancies and the landlord should not have to waive Costa-Hawkins. Ms. Heath said there is already no guarantee who landlords will get as a tenant.

3. Landlord Shirley Chang told the Board that, even if she increased her monthly rents by 100%, they would still be below market. Ms. Chang said that a lot of tenants complain that they don’t have money, but there are lots of job openings. Ms. Chang asked that the

Board not allow additional roommates – they could be drug dealers, and the government can then take the house.

4. Noni Richen, President of the Small Property Owners Institute, asked that the Board make the Kim legislation go forward, and not be retroactive. Ms. Richen maintained that a landlord should not be at risk of waiving Costa-Hawkins by taking an application to rent.

5. Peter Reitz of the Small Property Owners Institute said that the eviction protection law should start after November 9th, and not be applied retroactively. Mr. Reitz expressed concerns about whether a dining room or living room meets the requirements for a bedroom.

6. Charley Goss of the S.F. Apartment Association urged the Board to apply the law prospectively since units paying market rate are the ones that have increased beyond tenants' ability to pay. Mr. Goss encouraged the Board to ease the rent burden for tenants paying market rents, not \$300. Mr. Goss said that the draft Rules and Regulations were a "good start" but they are advising their members not to go through the application process in order not to waive their rights under Costa-Hawkins.

7. Landlord Linda Erkeles has worked 25 years to respect the rent control laws, but she has many tenants paying below market rent. Ms. Erkeles said that these changes don't take into account wear and tear, and landlords need to get tenants that will respect other tenants. Ms. Erkeles asked why the provisions only apply to rent controlled apartments, and not buildings built after 1979.

8. Landlord Martin Eng said that he's been taken to the Board 15 or 16 times, the Commission always rejects his appeals, and "you guys referred me to the District Attorney to have me prosecuted." Mr. Eng feels that "the laws are getting worse and worse," but admitted that "recently, we have more evictions." Mr. Eng had tenants break in and squat in his building and he had to take them to court, even though they have good credit.

9 Landlord Mindy Kershner said that the Board needs to make the law understandable because an owner who buys has to follow the rules; "clarity is needed." Ms. Kershner told the Board that quiet enjoyment is just as important to tenants as to homeowners and, if that changes, asked who is responsible. Ms. Kershner posited that owners of smaller buildings are not going to rent out their units and asked for prospective application and no Costa-Hawkins waiver.

10. Josephine Zhao is the co-founder of betterhousingpolicy.org. Ms. Zhao told the Board that small landlords live near their tenants: "If we were rich, we would not share the same 2000 square feet." As to a tenant being deemed approved if not denied after 14 days, Ms. Zhao expressed a concern that if the landlord was on vacation, a pedophile could sneak in. Ms. Zhao said that the Mayor told the Rent Board to draft clear regulations and committed to future legislation should it be necessary.

11. Landlords Tracy Tang and Cindy Mei demanded that the regulations only be made applicable to future leases and that there be no waiver of Costa-Hawkins. They said that City government should have a policy of balancing the interests of landlords and tenants, and not creating more problems.

12. Landlord Meina Young agreed that the law should not apply retroactively, should not override Costa-Hawkins, and said that 14 days is not enough time. Ms. Young feels that tenants should pay the cost of regulations and government, and should have to get a business license to collect rent like everybody else. "Sometimes it is not the money, but the sanity factor." Ms. Young also believes that "seniors should have a right to waive this."

13. Jim Hirsch said that the legislation is a "joke" and no good deed goes unpunished. As a landlord, Mr. Hirsch is responsible for safety in the building and needs a little background on prospective tenants, including whether there is a criminal record. Mr. Hirsch said that legislation should only be applied to future tenancies. His water bill used to be \$200, and is now \$400; he does not feel that it is fair for an owner to be saddled with huge utility expenditures.

14. Small landlord Cindy O'Neill told the Board that most of the landlords present live with their tenants or in multi-unit buildings, and the new legislation does not give them the opportunity to screen people coming into their homes or take the landlord's risks into account. Also, the new legislation helps everyone whether they need it or not. Ms. O'Neill told the Board that people are keeping in-laws off the market because "the Rules and Regulations are too ridiculous."

15. Maria Zamudio of Causa Justa/Just Cause thanked the Board for taking a thoughtful look at the legislation. Ms. Zamudio said that the legislation provides "tools to keep people in their homes" in the light of thousands of "gotcha" evictions. According to Ms. Zamudio, the question is how to implement it equitably.

16. Diana Flores of Causa Justa/Just Cause told the Board that every section in the legislation states in bold that Costa-Hawkins is not waived. For increased refuse, electrical or water charges, the landlord is entitled to an O&M increase and increased wear and tear can be good cause for denial. The landlord is only required to allow an additional tenant once within a 12 month period, and now have to have a clear reason for denial.

17. Ivy Huang said that she is very nice to her tenant family but, when she asks them to pay rent, they say they have no money. Ms. Huang maintained that she is the poor person, who works every day. Ms. Huang said that the rent control is too strong and is supposed to help poor people, but it is not helping her.

18. Kevin Lee said that he agrees with the poor landlords here.

19. Landlord Bill Kwan asked that the Board define the guidelines for acceptance of new tenants. Mr. Kwan said that he rented an apartment at below market rent, but the

tenant can bring in new roommates and charge market. He asked if he should bring in his private investigator.

20. Landlord Christy Tam asked that, if the new legislation has to be passed, apply it only to new leases after November 9th. Ms. Tam rented out an in-law unit for \$700 including all the utilities, but utilities are now \$200. Ms. Tam wonders how she will survive, and who will guarantee the safety of her family. Ms. Tam asked if the Board is doing its job balancing landlord and tenant's rights, as she has had to hire lawyers, and has not had a vacation in 3 years.

21. Attorney Gen Fujioka of CCDC told the Board that he worked with the coalition drafting the legislation. As to retroactivity, the legislation applies to current tenancies, as that was the intention of the Board of Supervisors. The language is modeled after existing Rules and Regulations Section 6.15A and B, and all of the testimony at Land Use was regarding existing agreements.

22. Landlord Marlene Trend told the Board that she was a teacher at two locations for 35 years, working 14 hours a day. She asked where small property owners get representation, as lawyers are \$300-\$500 an hour.

23. Landlord Lou Legullo is 91 years old. His family came here in the 1800s, and owned property. He stopped coming to meetings "because we lose every time. We have no power." His son doesn't want his building because he doesn't want to put up with San Francisco.

24. Landlord Ron Dubeau noted that many items on the Board's Agenda concern diminutions in housing services. Mr. Dubeau asked if he offers the tenant a unit with 2 people, and they bring in two more, shouldn't he be entitled to a bigger rent? Mr. Dubeau concluded that, "If this is good for the goose, it's good for the gander."

25. Walt Toleran said he owns two units in the Richmond. He told the Board that tenants in the lower unit brought him to the Rent Board regarding the tenants in the upper unit. Mr. Toleran said that getting rid of the tenants upstairs would cost an inordinate amount of money and asked, "if tenants change all the time, how can we deal with this?"

26. Roxanne Arkitoli told the Board that the country guarantees freedom and property rights, and said that income from real estate is very different. Ms. Arkitoli believes that "this is a fascist law" and said that she would appreciate anything the Board can do.

27. Landlord Dennis Casey is an immigrant who worked hard, was lucky, and bought property. Mr. Casey asked that the law be applied prospectively only, or the big landlords will buy all the small buildings.

28. Landlord Lilian Sovoleva said that people don't bring other people in to live for free -- they'll charge money. Ms. Sovoleva told the Board that she'll pay more and more for water and electricity, her tenants took her to DBI and she doesn't have money for a lawyer.

Ms. Sovoleva told the Board that she and her tenant had a contract, but that they don't care.

29. Landlord Huang Chan has two units and said that the regulations should apply only to the future, otherwise "we will need to take our units off the market."

IV. Old Business: Implementation of Additional Eviction Protection Legislation (Kim: Eviction 2.0): Issues and Possible Amendments to the Rules and Regulations

At its regular meeting on October 13, 2015, the Board discussed a proposed new regulation, Section 6.15E, which was drafted by staff to implement new Ordinance Section 37.9(a)(2)(C) regarding additional occupants. There was general consensus among the Board members that staff should draft proposed amendments to existing regulations 6.15A, 6.15B and 6.15D in order to make them as consistent as possible with Section 6.15E for ease of use by the public, and to reflect the recent changes to Ordinance Sections 37.9(a)(2)(A)&(B). The Board agreed to schedule a special meeting to discuss the proposed amendments.

Following the October 13th meeting, staff drafted proposed amendments to existing regulations 6.15A, 6.15B and 6.15D and incorporated the changes to 6.15E that were made at the meeting on October 13th. In addition, amendments to subsections 6.15E(e) and (f) that were proposed by Commissioner Wasserman via an October 21, 2015 email to the Commissioners were included in the 10/23/15 draft regulations to (1) state that nothing in Section 6.15E shall serve to waive, alter or modify the landlord's rights under the Costa-Hawkins Rental Housing Act to impose an unlimited rent increase once the last original occupant no longer permanently resides in the unit [6.15E(e)], and (2) to clarify that a landlord's refusal to participate in the vetting and approval process of a proposed additional occupant is not in and of itself a denial of the tenant's request for an additional occupant [6.15E(f)].

On the day of the special meeting, Commissioner Abe sent two emails to the other Commissioners with proposed amendments. The first one proposed adding the following language to 6.15E: "Notwithstanding anything to the contrary, a subtenant who is deemed approved under Section 6.15E(c) shall not be considered approved for purposes of San Francisco Administrative Code Section 37.9(A)(7) or California Civil Code Section 1954.53(d)." The second email proposed a new regulation stating, "The new amendments to Sections 6.15A, 6.15B, 6.15D and 6.15E shall apply only to agreements entered into on or after November 9, 2015."

At the special meeting on October 26, 2015, the Commissioners discussed the two amendments proposed by Commissioner Abe. Commissioner Wasserman stated that the portion of the Kim legislation that allows for additional occupants regardless of a lease provision limiting the number of occupants or limiting or prohibiting subletting, should only apply prospectively to new tenancies that began after the effective date of the Ordinance amendment. Commissioners Marshall, Mosbrucker, Qian and Crow disagreed with the proposed amendment and stated that the Kim legislation applies to both existing and future tenancies. The Commissioners had a discussion on the issue of whether the Kim legislation could be applied only to new tenancies that begin after the effective date of the legislation versus applying to both existing and future tenancies. Commissioner Dandillaya requested that a Deputy City Attorney be invited to the next Board meeting to give an opinion regarding the issue of whether the Rent Board has authority to enact a regulation to make the Rent

Ordinance amendment in 37.9(a)(2)(C) regarding additional occupants apply only to new tenancies that begin on or after the effective date of November 9, 2015. Commissioner Dandillaya also requested staff to provide any information available from the Board of Supervisors' meetings where the issue of prospective application of the Kim amendments was discussed. The commissioners agreed to continue discussion of this issue to the next meeting.

There was also disagreement between the tenant commissioners and the landlord commissioners on Commissioner Abe's proposed amendment to 6.15E(b) stating that a subtenant who is deemed approved under Section 6.15E(c) shall not be considered an approved subtenant for purposes of eviction under Ordinance Section 37.9(a)(7). Commissioner Dandillaya asked that the Deputy City Attorney provide an opinion regarding the issue of whether the Rent Board has the authority to enact the proposed amendment to 6.15E(b).

The Commissioners discussed and agreed upon several changes to the proposed Rules and Regulations including: to define what is meant by receipt by the landlord of the tenant's written request to replace a departing roommate or to add an additional family member or other additional occupant to the unit, including time frames for service by mail, email and personal service; to specify that a landlord has 5 days from receipt of the tenant's written request to ask the the proposed new occupant complete a standard form application or provide typical background information; to specify that a tenant has 5 days after actual receipt of the landlord's request to provide the standard form application or background information for the proposed additional occupant; to clarify that nothing in proposed Rules and Regulations §§6.15A, 6.15B, 6.15D or 6.15E should be construed as allowing a landlord to require a replacement roommate, additional family member or an additional occupant to pay some or all of the rent to the landlord. In addition, the Commissioners clarified the non-waiver language in the proposed Rules and Regulations regarding a landlord's rights under Costa-Hawkins. The Commissioners also agreed to different language to more explicitly indicate that a landlord's non-response to a tenant's written request shall not be deemed an unreasonable denial of a tenant's request to replace a departing tenant or to additional occupants.

The Board agreed to continue discussion of the proposed amendments to 6.15A, 6.15B, 6.15D and 6.15E at the next regularly scheduled meeting on November 10, 2015.

V. Remarks from the Public (cont.)

30. Mindy Kershner told the Board that a flow chart would be helpful. She asked under new Section 6.15E, if a new tenant agrees to follow the terms, how does this function?

38. Chris DeWeiss said that new Sectin 6.15E requires prior approval.

39. Shirley Chen asked the Board how she would find out about the next meeting.

VI. Calendar Items

November 10, 2015

6 appeal considerations

Old Business:

Implementation of Additional Eviction Protection Legislation (Kim: Eviction 2.0):
Issues and Possible Amendments to the Rules and Regulations
Executive Session: Personnel

VII. Adjournment

President Gruber adjourned the meeting at 9:19 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.