



London N. Breed
Mayor

Robert A. Collins
Executive Director

DAVID GRUBER
PRESIDENT

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

DAVE CROW
SHOBA DANDILLAYA
RICHARD HUNG
REESE AARON ISBELL
ASHLEY KLEIN
CATHY MOSBRUCKER
KENT QIAN
ARTHUR TOM
DAVID WASSERMAN

Tuesday, January 28, 2020
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 6:07 p.m.

II. Roll Call

Commissioners Present: Dandillaya; Gruber; Hung; Isbell; Klein; Mosbrucker; Qian; Tom; Wasserman.
Staff Present: Brandon; Collins; Koomas; Varner.

Commissioners Not Present: Crow.

III. Approval of the Minutes

MSC: To approve the minutes of December 10, 2019.
(Wasserman/Qian: 5-0)

IV. Remarks from the Public

A. Zach Karnazes told the Board that he is an SF tenant and disability advocate, and that staff members Jennifer Rakowski, Van Lam, Greg Miller, Nick Pagoulatos, and Marissa Jimenez have all been extremely helpful with disability accommodations and accessing records. Zach wanted to point out that evictions are bad for people with disabilities. He said that the Americans with Disabilities Act (ADA) of 1990 does not apply to units built before 1991, and that he uses a wheelchair and can't get a ramp to leave his apartment, and that if a person loses their ability to walk and lives in a rent-controlled unit they're trapped. He said that according to the 2017 SF Point In Time Count 8,035 people are homeless, 74% have a health condition, and 27% have a physical disability. He said that 2,169 San Franciscans are disabled and without homes, that he is trying not to become another one of those statistics, and that he hopes the Rent Board can work to improve access to services. Zach said that he is in strong support of the amendments being presented at the meeting today, as they make

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a lot of positive improvements as to giving disabled people notice when construction is happening. He said he hopes there will come a time when one can submit video and audio evidence.

B. Ingrid Perez, the tenant at 1505 Gough Street #3 (AL190200), told the Board that SF is facing an abysmal housing crisis, and that as a result of the Costa-Hawkins Rental Housing Act, many landlords are attempting to get tenants out a year after the tenancy began so they can increase rents to market rate. Ms. Perez said that her landlord began efforts to get her to move when the year was up when he started switching the property manager and implementing new rules. She said that the first year the landlord started denying her access to the backyard for her emotional support animal, and that the second reduction went on for well over two years as the landlord refused to fix the mold that has been detrimental to her health. Ms. Perez stated that the owners don't care about the Rent Ordinance nor the well-being of their tenants, and have assigned their rents to JP Morgan in order to cash out, and have not maintained the property in good condition, and she had no choice but to vacate. She said that the landlord appealed the case late, and even after she obtained a copy of the case file 10 days after the appeal period there was no proof they had filed the appeal.

C. Charly Goss of SF Apartment Association (SFAA) said that he was there to speak about the primary (principal) place of residence agenda item, and that a number of SFAA members saw the item on the agenda and felt compelled to speak about it. He told the Board that the Rent Board's current policy on principal place of residence leads to a tremendous amount of abuse, as it allows a tenant to have two principal places of residence, and the landlord to have one, which leads to widespread abuse, rent gouging of roommates, and rooms getting left vacant, even though we are in a housing shortage. Mr. Goss said that there was one egregious case which involved an owner of a Napa winery who claims his main residence is an apartment on Jackson Street, where the initial rent was established in 1972 by the tenant's father, and now owns a home in Vancouver. He said that owners have the ability to hire attorneys and can meet the burden of proof, but small property owners are impacted by this and are often unable to hire attorneys for a lengthy period of time and meet the burden of proof.

D. Joe Ensel said that he is one of the small landlords; and that as a tenant in 1977 he moved into a set of flats, one of which he purchased in 1979. He said that in 2009 he rented a flat to a tenant who he later realized was difficult and unmanageable. He said that he moved to Portland and the tenants in other units were complaining, and had to hire an attorney to get the difficult tenant out. He said that now he has another tenant who is living in Southern California, and Mr. Ensel has established that he's working and voting there; and said that there should only be one principal place of residence for both landlords and tenants.

E. Annette Perry told the Board that she owns a building in SF with her husband and do not use a management company, but have a property manager on site. She said that they have no problem with tenants who pay rent and the landlords themselves abide by the Regulations. She said that they have a tenant who's been there for years, lives with her boyfriend elsewhere and uses the unit as a closet, and who will only move out if her boyfriend proposes to her; but this can only be well-documented if they have the money to hire a private investigator. Ms. Perry said she was told by an attorney that it doesn't matter if she has video cameras, the Rent Board will do nothing about the tenant not living at the property;

and that the Rent Board is protecting a tenant who is an attorney at a high-powered law firm but pays only \$900.00, and that doesn't seem right.

F. Jason Matlof, a small property owner in the Inner Richmond, spoke in favor of the principal place of residence proposal, and said that he supports rent control to protect tenants from unfair rent increases and unwarranted evictions, and that fair standards should be adopted to make sure that tenants are not manipulating the market to the detriment of the rest of the city, because it drives up housing prices. He said that he has several tenants who pay rents that are 50-70% of market rate who own homes outside of the city; and has overwhelming evidence to prove that they are not in their units, including homeowners' exemption claims and thousands of hours of surveillance video. He said that current Rent Board standards allow tenants to falsify and manipulate the rules. He urged the Commissioners to impose more certain standards regarding principal place of residency.

G. A man that owns a duplex and works at a furniture store said that an employee who no longer works for him bought a home in Monterey in 2007 and kept an apartment in Nob Hill, and then sold the home for three times the purchase price and was so happy that he was going to be able to move back into his rent-controlled apartment. The man said that he hears customers in his furniture store saying that they're buying furniture for their pied-a-terre that is a rent-controlled apartment, and these same people are out of SF but refuse to give up their rent-controlled apartments. He said that if the goal is to try to open up housing, there should be a board that can investigate these situations. The man said that he knows people that rent out their units acting as if they are the landlord, collecting full market rents. He said that it is shocking, especially with all the people here who can't afford a place.

H. Peter Wong, who has a four-unit property, told the Board that he wanted to submit a letter from one of his tenants; that tenant is complaining that all these items in the apartment are bad. He said that when the property manager wants to fix the items, the tenant has an excuse so he can't enter; and then starts saying that because he's on a fixed income, he's considering getting a roommate; but then later became open to a buyout, which is a blatant example of people who want to profit. He said that he wants to run his property as a fair business. Mr. Wong said that two years ago, one tenant inherited a house out of state, and with many of his tenants, there are no resources to prove who is paying rent; and that it's hard to get permits to make repairs.

I. Kevin Kumana, who works for a property manager in SF, said that it is an implicitly unfair situation and tenants should only be allowed to have only one place of residence. He said that he was lucky to be able to successfully argue that a tenant wasn't living in a unit after they had to hire private attorneys and investigators. Mr. Kumana said that not every landlord has enough to do the same and the tenant had an advocate that was paid for by public funds. Mr. Kumana said that if rent control is to stand, and it should, it should not be at the obvious expense of someone else, and Regulations that promote acrimony between landlords & tenants don't help anybody.

J. One owner of 1505 Gough Street #3 (AL190200), Zein Yountchi, said that he bought an old building 35 years ago and has had tenants who have been living in the building for 30 years and they have never had complaints that they couldn't fix. He said that he takes care of everything and follows through with every inspection and every Rule and Regulation.

K. Isolde Wilson said that she owns a property in SF and that the occupancy issue is a pervasive problem. She said that the first time it happened, a tenant told her she was moving to New York for an internship, and that last month she discovered that a 12-year tenant moved out and gave her key to her niece to stay at the apartment when she was working late. She said that the tenants did the right thing and gave notice and moved out. She said that as the Board considers new Regulations, they should think about what makes sense and what is the right thing to do- rent-controlled apartments shouldn't be left vacant or used as a crash pad, as it is not consistent with the purpose of the Rent Board and won't solve the housing problem in SF.

L. A landlord of an apartment in the Castro said that her tenant is profiting from the unit while living in Washington state. The landlord said that upon her return from South America she has noticed a parade of people coming in and out of the apartment. She said that she has not done anything yet but wants to see what can be done; the only alternative is to purchase a camera and prepare for war; it is not fair as the unit is \$1,000.00 under market and the tenant is profiting.

M. An SF landlord said that their tenant moved in in 2006 and was initially great, but found out in 2017 that the tenant was renting the unit on AirBnb. The landlord said that the rent amount was \$1,700.00, but the tenant was charging \$210.00 a night, which is about \$6,000.00 a month. The landlord said that he's lost his respect for the tenant, and the system is upside down.

N. Landlord Gus Cano said that in 2012, 2 brothers occupied one of his units, and one bought a home in Richmond, CA, where he got a homeowner's exemption. Mr. Cano went to a hearing where one brother brought the other in to say that he still sleeps in the unit because he works the graveyard shift and has a P.O. Box in the City. Mr. Cano said that the brother is not there anymore, but is still on the lease, and it's unfair.

O. Sylvia Curletto, a property owner, said that 100% of her tenants own property, and that her mother's tenants own property. Ms. Curletto said that she's a mortgage broker and sees tax returns, and that once she saw someone on the front page of the Chronicle who she had once prequalified. She said that some people are purchasing out of state, and some tenants make \$350,000.00 or \$450,000.00 a year. She asked why the tenants get to profit off a rent-controlled apartment. Ms. Curletto said she thought there was a shortage of housing, but these tenants rent properties on Airbnb that they don't own; and the landlords are subsidizing people who can afford market rents and two apartments.

P. Attorney Andrew Zacks said he advocates for the rights of small property owners. He told the Board that he once brought a case to the Rent Board of an international lawyer who'd moved into an SF house but lived in Honolulu, and it took two hearings and three appeals to resolve the case. Mr. Zacks said that he was also there to speak on 327 – ½ Fillmore Street #4 (AL200002). He said that his client bought a multi-unit building where the seller had rented out individual rooms as a boarding house. He said that his client then served notice to change the terms of tenancy, and lowered the rent, and no joint and several liability was created. He told the Board that he filed a lawsuit to make it clear that the landlord had the right to do this, but one tenant brought a petition alleging that the rent has been unlawfully increased, and the Rent Board concluded that the notice to change the terms of the tenancy

was improper. Mr. Zacks said that the authority of an administrative agency is limited by the Ordinance that creates it, and that there is nothing in the Rent Ordinance nor the Rules and Regulations that give the Rent Board authority to decide and give a declaratory judgment.

Q. Justin Goodman, a real estate attorney in SF who works with Andrew Zacks, said that he was commenting as a board member of the Small Property Owners of SF Institute with respect to proposed Rules and Regulations Section 1.21, and suggests there should be one principal place of residence. He said that he had a case with a tenant who had a home in Sonoma for which she had signed a homeowners' exemption. Mr. Goodman said that nothing prevents a tenant from having a vacation home, but Rules Section 1.21 and Ordinance Section 37.3(a) are meant to protect tenants in occupancy, and the Board should require that they pay a fair price. He said that with respect to Ordinance Section 37.9(a)(11), he has a client who was trying to do a voluntary seismic retrofit where a current tenant has a car in the garage, and the tenant maintains that any work in the garage is going to disturb their quiet enjoyment, which causes a delay. He urged the Board to take an expansive view of the proposed Rules 12.15, 12.16, and 12.17.

R. Attorney Curtis Dowling spoke regarding 3009 Mission Street #108 (AT190204) and 2706-2710 Sutter Street (AL190203). As to the latter case, he said that the court should vacate the ALJ's decision, because a second Ellis Act withdrawal has commenced, and there is no process for rescission of withdrawal documents. Mr. Dowling said that all the City can do is impose the Notice of Constraints, because the Ellis Act doesn't allow for rescission. He said that in this case there is one tenant left in the property who is going to move, and he has taken the position that because the first withdrawal can't be rescinded, the second withdrawal isn't effective, and will use this in defense of an unlawful detainer. He said that as to 3009 Mission Street #108 (AT190204), there should never have been an appeal of the remand on writ order, as the ALJ complied with the superior court's remand order.

S. Michelle Zimmerman, the master tenant at 2444 Lake Street (AL190202), said that she was appealing the decision regarding the personal space allocation. She told the Board that the decision increased the proportional costs of space and ruled that her son is half a person, which is very unfair.

T. Michelle Rossi, the tenant at 2250 Greenwich Street #2 (AT200003), said she appealed untimely. She told the Board that she was late to her hearing, and asked the Board to hear her case on financial hardship.

V. Consideration of Appeals

A. 2250 Greenwich Street #2

AT200003

The tenant's appeal was filed 84 days late because after she miscalendared the hearing date, she later realized she may still be eligible for hardship.

MSC: To find good cause for the late filing of the appeal.
(Wasserman/Qian: 5-0)

The tenant's application for a deferral of a capital improvement passthrough on the basis of financial hardship was dismissed due to the tenant's failure to appear at the hearing. On appeal, the tenant states that she miscalendared the hearing date, showing up one date late, and that she reassessed her eligibility for hardship and believes she is still eligible, and submits additional documentation.

MSC: To accept the appeal and remand the case for a new hearing. Should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Qian/Wasserman: 5-0)

B. 2444 Lake Street

AL190202

The subtenant's petition alleging a disproportional share of rent was granted. The ALJ determined that the subtenant paid more than her proportional share of rent from February 1, 2019 through June 14, 2019, and the master tenant was found liable to the subtenant for rent overpayments in the amount of \$1,319.81. The master tenant appeals, arguing that the ALJ erred in determining that the downstairs hallway was common space and that the master tenant and her family had exclusive use of the dining room, and allocating half of one adult's share of the utilities to her 1-year old child.

MSC: To deny the appeal.
(Wasserman/Qian: 5-0)

C. 1505 Gough Street #3

AL190200

The tenant's petition alleging decreased housing services was granted. The landlords were found liable to the tenant for rent reductions corresponding with decreased housing services in the total amount of \$2,925.00 for stains on the living room wall for the periods of March 1, 2017 through August 29, 2018 and December 1, 2018 through May 1, 2019; and removal of backyard access for the tenant's dog for the period of May 2017 through November 2017. On appeal, the landlords contend that the tenant did not cooperate in allowing landlord access to her unit; and that the tenant's claims are fraudulent and false.

MSC: To deny the appeal.
(Mosbrucker/Qian: 5-0)

D. 2025 Stockton Street #8

AL200001

The tenant's petition alleging decreased housing services was granted in part and denied in part. The landlords were found liable to the tenant for rent reductions corresponding with decreased housing services in the total amount of \$712.50 for a reduction in trash pick-up service for the period of June 1, 2018 through September 23, 2019; broken ovens for the period of December 27, 2018 through April 29, 2019; broken intercom for the period of April 24, 2019 through July 16, 2019; and inoperable, unsafe closet doors for the period of December 27, 2018 through July 16, 2019. On appeal, the landlords argue that the period for which the ALJ calculated the trash reduction service is incorrect; that the ALJ overvalued the value of the trash reduction service; and that the ovens and closet

doors always functioned and therefore the tenant should have not received any rent reduction for those items.

MSC: To deny the appeal.
(Mosbrucker/Qian: 5-0)

E. 1401 Ocean Avenue #2

AL190201

The tenants' petition alleging decreased housing services, unlawful rent increases, and challenging a water revenue bond passthrough and general obligation bond passthroughs was dismissed due to the tenants' non-appearance at the hearing. The tenants appealed, and at the October 16, 2018 meeting, the Commissioners voted to accept the appeal and remand the case for a new hearing. A remand hearing was held and a remand decision was issued, granting the tenants' claims of unlawful rent increase, and decreased housing services, and denying the tenants' claims of improper water revenue bond passthroughs and general obligation bond passthroughs. The ALJ found the landlord liable to the tenant for rent overpayments in the amount of \$3,825.00, and determined that the tenant's lawful base rent is \$1,782.72. The ALJ also found the landlord liable to the tenant for rent reductions in the total amount \$300.00 for the poor condition of the kitchen countertop grout; poor condition of the kitchen floor; and bathroom mildew for the period of April 23, 2018 through June 21, 2018. On appeal, the landlords challenge the calculations of rent overpayments for unlawful rent increases and submit new evidence concerning the amount of rent paid by the tenant for the period between May 1, 2016 and June 30, 2017.

MSC: To accept the appeal and remand the case to the ALJ to consider the newly submitted evidence on appeal, with a hearing to be held only if necessary.
(Mosbrucker/Qian: 5-0)

F. 327 – ½ Fillmore Street #4

AL200002

The tenant's petition alleging an unlawful rent increase was granted. The ALJ found that the tenant had a separate tenancy for one room at the subject unit and that the landlord's attempt to change the tenant's rental agreement to include shared occupancy of the entire unit increased the tenant's total rent liability and constituted an unlawful rent increase. On appeal, the landlord argues that Civil Code Section 827 permits landlords to unilaterally change the terms of periodic tenancies if a tenant continues in possession after expiration of the notice; and argues that the ALJ incorrectly applied the law by exceeding the scope of the Rent Board's jurisdiction in ignoring the scope of the tenant's petition, and in ignoring state law on changes to terms of the tenancy.

MSC: To deny the appeal.
(Mosbrucker/Qian: 3-2; Gruber, Wasserman dissenting)

G. 3009 Mission Street #108

AT190204

The tenant's petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was granted. In the decision, the ALJ found that although the tenant

petitioner moved into the unit as a subtenant and the landlord never accepted rent from her, it was determined that a co-tenancy was established based on other factors set forth in the Decision. The landlord appealed, and at the February 14, 2017 meeting, the Commissioners voted to deny the appeal. On May 18, 2017, the landlord filed a Petition for Writ of Administrative Mandamus in San Francisco Superior Court Case No. CPF-17-515670. On October 1, 2019, the court issued an Order remanding the case, finding that the governing law is set forth in *Mosser Companies*, and that acceptance of rent is required to create a new tenancy. Pursuant to the Superior Court's Order and based on the undisputed evidence that the landlord never accepted rent from the tenant petitioner prior to serving the Costa-Hawkins rent increase notice, the ALJ issued a remand decision finding that the tenant petitioner was a subtenant at the time the notice of rent increase was served on August 5, 2016, and that the October 4, 2016 rent increase to \$1,900.00 is therefore authorized by Civil Code Section 1954.53(d)(2). On appeal of the remand decision, the tenant contends that the ALJ abused his discretion by not examining the "other factors" that would be legally sufficient or determinative to find the "creation of a new tenancy" as stated in the Order, and whether those other factors were present in the tenant's case.

MSC: To deny the appeal.
(Wasserman/Gruber: 4-1, Mosbrucker dissenting)

H. 2706-2710 Sutter Street

AL190203

The landlord appeals the decision denying its request for rescission of a Notice of Intent to Withdraw Residential Units from the Rental Market under the Ellis Act. In the decision, the ALJ found that the landlords failed to prove that no tenants vacated after the May 2019 Ellis Act eviction notices were served, or that extraordinary circumstances exist that justify rescission in this case. On appeal, the landlord argues that the ALJ erred in determining that the landlords were not entitled to rescind the Notice of Intent; and that the landlords may rescind the Notice of Intent with or without the Rent Board's consent as the Rent Board is only authorized by state law to record the Notice of Constraints and has no authority to determine whether a Notice of Intent may be rescinded or to impose other restrictions on the property.

MSC: To deny the appeal.
(Mosbrucker/Qian: 4-1; Wasserman dissenting)

I. 1133 Fell Street #2

AT190205

The tenant's appeal was filed 109 days late because he has been undergoing health issues.

MSC: To find good cause for the late filing of the appeal.
(Wasserman/Qian: 5-0)

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 4 of 12 units was granted. The ALJ found that the landlord had met its burden of proving that at the time of the purchase of the

property, the landlord had reasonably relied on its ability to pass through the costs of increased debt service through an O&M rent increase. The tenant in unit 2 appeals, arguing that the landlord did not reasonably rely on its ability to pass through the costs of debt service at the time of its purchase of the property.

MSC: To accept the appeal and remand the case to the ALJ to consider the case under the newly adopted Rules and Regulations Section 6.10(e).
(Qian/Wasserman: 5-0)

J. 1395 Union Street #1, #4, & #6

AT190177 – AT190179

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 4 of 9 units was granted. The ALJ found that the landlord had met its burden of proving that at the time of the purchase of the property, the landlord had reasonably relied on its ability to pass through the costs of increased debt service through an O&M rent increase. The tenants in units 1, 4, and 6, appeal, arguing that the landlord did not reasonably rely on its ability to pass through the costs of debt service at the time of its purchase of the property. On October 29, 2019, the landlord filed a Notice of Withdrawal of Petition in the underlying case.

MSC: To accept the appeals and vacate the decision in the underlying case pursuant to the landlord's notice of withdrawal in the underlying case.
(Wasserman/Mosbrucker: 5-0)

K. 20 Romolo Place #B, #4, #6, #8, #9, #10, #11 & #12

AT190133 - AT190140
(cont. from 10/8/19)

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 10 of 15 units was granted. The ALJ found that the landlord had met its burden of proving that at the time of the purchase of the property, the landlord had reasonably relied on its ability to pass through the costs of increased debt service through an O&M rent increase. The tenants in units B, 4, 6, 8, 9, 10, 11, and 12 appealed, arguing that the landlord did not reasonably rely on its ability to pass through the costs of debt service at the time of its purchase of the property. At the October 8, 2019 meeting, the Commissioners voted to continue the consideration of these appeals to the January 2020 meeting. On October 29, 2019, the landlord filed a Notice of Withdrawal of Petition in the underlying case.

MSC: To accept the appeals and vacate the decision in the underlying case pursuant to the landlord's notice of withdrawal in the underlying case.
(Wasserman/Mosbrucker: 5-0)

L. 977 Pine Street #3, #203, & #4

AT190150 – AT190153
(cont. from 10/8/19)

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 10 of 24 units was granted. The ALJ found that the landlord had met its burden of proving that at the time of the purchase of

the property, the landlord had reasonably relied on its ability to pass through the costs of increased debt service and property taxes through an O&M rent increase. The tenants in units 3, 203, and 4 appeal, arguing that the landlord did not reasonably rely on its ability to pass through the costs of property tax and debt service at the time of its purchase of the property. At the October 8, 2019 meeting, the Commissioners voted to continue the consideration of these appeals to the January 2020 meeting. On October 29, 2019, the landlord filed a Notice of Withdrawal of Petition in the underlying case.

MSC: To accept the appeals and vacate the decision in the underlying case pursuant to the landlord's notice of withdrawal in the underlying case.
(Wasserman/Mosbrucker: 5-0)

M. 99 Lupine Avenue #101, #102, #203, #303, #304, #308, #401, #403, & #502

AT190141 - AT190149
(cont. from 10/8/19)

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 13 of 25 units was granted. The ALJ found that the landlord had met its burden of proving that at the time of the purchase of the property, the landlord had reasonably relied on its ability to pass through the costs of increased debt service and property taxes through an O&M rent increase. The tenants in units 101, 102, 203, 303, 304, 308, 401, 403, and 502 appeal, arguing that the landlord did not reasonably rely on its ability to pass through the costs of property tax and debt service at the time of its purchase of the property. At the October 8, 2019 meeting, the Commissioners voted to continue the consideration of these appeals to the January 2020 meeting. On October 29, 2019, the landlord filed a Notice of Withdrawal of Petition in the underlying case.

MSC: To accept the appeals and vacate the decision in the underlying case pursuant to the landlord's notice of withdrawal in the underlying case.
(Wasserman/Mosbrucker: 5-0)

N. 642 Alvarado Street #109, #203, #204, #206, #208, & #311

AT190091 - AT190096
(cont. from 10/8/19)

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 21 of 34 units was granted. The ALJ found that the landlord had met its burden of proving that at the time of the purchase of the property, the landlord had reasonably relied on its ability to pass through the costs of increased debt service and property taxes through an O&M rent increase. The tenants in units 109, 203, 204, 206, 208, and 311 appeal, arguing that the landlord did not reasonably rely on its ability to pass through the costs of property tax and debt service at the time of its purchase of the property. At the October 8, 2019 meeting, the Commissioners voted to continue the consideration of these appeals to the January 2020 meeting. On October 29, 2019, the landlord filed a Notice of Withdrawal of Petition in the underlying case.

MSC: To accept the appeals and vacate the decision in the underlying case pursuant to the landlord's notice of withdrawal in the underlying case. (Wasserman/Mosbrucker: 5-0)

O. 665 Pine Street #204, #302, #503, #701, #703, #704, #901, #902, #903, #904, #1001, #1002, #1003, #1004, & #1100

AT190097 - AT190111
(cont. from 10/8/19)

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 21 of 40 units was granted. The ALJ found that the landlord had met its burden of proving that at the time of the purchase of the property the landlord had reasonably relied on its ability to pass through the costs of increased debt service and property taxes through an O&M rent increase. The tenants in units 204, 302, 503, 701, 703, 704, 901, 902, 903, 904, 1001, 1002, 1003, 1004, and 1100 appeal, arguing that the landlord did not reasonably rely on its ability to pass through the costs of property tax and debt service at the time of its purchase of the property. At the October 8, 2019 meeting, the Commissioners voted to continue the consideration of these appeals to the January 2020 meeting. On October 29, 2019, the landlord filed a Notice of Withdrawal of Petition in the underlying case.

MSC: To accept the appeals and vacate the decision in the underlying case pursuant to the landlord's notice of withdrawal in the underlying case. (Wasserman/Mosbrucker: 5-0)

P. 41 Lafayette Street

AT190112
(cont. from 10/8/19)

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 4 of 12 units was granted. The ALJ found that the landlord had met its burden of proving that at the time of the purchase of the property, the landlord had reasonably relied on its ability to pass through the costs of increased debt service and property taxes through an O&M rent increase. The tenant in unit 41 appeals, arguing that the landlord did not reasonably rely on its ability to pass through the costs of property tax and debt service at the time of its purchase of the property. At the October 8, 2019 meeting, the Commissioners voted to continue the consideration of this appeal to the January 2020 meeting. On October 29, 2019, the landlord filed a Notice of Withdrawal of Petition in the underlying case.

MSC: To accept the appeal and vacate the decision in the underlying case pursuant to the landlord's notice of withdrawal in the underlying case. (Wasserman/Mosbrucker: 5-0)

IV. Remarks From the Public (continued)

A. Jason Matlof of the SF Small Property Owners Institute said that owners need fairness and a standard that they can trust, so that they can be fair, and expect fairness from their

tenants, and the burden of proof shouldn't be ridiculous. He said the if owners are going to be held to a fair standard, like for owner move-in evictions, then tenants should be held to a fair standard. He asked the Board to have sympathy, because the lack of Rules and Regulations is abused.

B. Dorothy Chao said that she is a property owner in SF, and is having a difficult time with a tenant who has not been living in her property for 15 years. She said that she hasn't seen her tenant for many years, but he finally showed her airline tickets, and he has only been there 2-3 weeks a year. She has a son living there, but he hasn't been able to communicate with the tenant who just collects his Social Security and then leaves. She told the Board that she had two attorneys who couldn't help her, and hopes that the Rent Board can help her give her justice.

C. Maria Vaccaro, a native San Franciscan, asked for fairness and respect. She said that her landlord parents followed the rules and the laws and taught all their children to do the same. She said that her family nickel and dime everything and her mom still goes to the properties to fix things herself and she and her son clean. She told the Board that there are not cameras to keep an eye on tenants, it is just them. She said that there are bad people on both sides, and it's hard for her mom too when she has felt uncomfortable and fearful to go to lawyers.

D. Joe Ensel, a small property owner said that he is terrified of the Rent Board. He said that he was just writing to a lawyer today, about a tenant living someplace else who has been served with notice of rent increase, and the attorney is telling him not to say certain things and asking him if the landlord has eviction insurance. Then, he said, he hears that the tenant can have two places of residence, and he can only have one. He said he was one of the founding employees of the Exploratorium, he worked blue collar jobs, he's not a rich speculator, and this is taking a toll on him. He said that his wife cries over the issues, and he is afraid to sell the place. He said that it's a big impact on a landlord like him in later life.

E. Marc Fleury, a small property owner said that there are talks about rent control as being a benefit for both landlords and tenants and providing adequate housing in SF; he has a unit where the tenant has not been in the unit for 2 years; it is a 4-bedroom that sits empty. He asked if it would be better to have one tenant not in occupancy or 4 tenants in there. He said that landlords do not have a lot of stock in decisions being made but there's a lot on the line.

F. Tom, a small building owner said that one of the confusing matters is that most of his tenants make more money than he does, and three of his units are occupied by tenants making over \$200,000.00. He said that they are not rich, greedy landlords; he just wants fairness. He sees on social media that one tenant lives in Hawai'i and it is not fair.

G. Karen O'Neill said that fairness is factor. She said that she has had a tenant in possession for 42 years, who said they moved 7 years ago, and mail their rent from the Central Valley, but they come back once a year and they're allowed to retain space. She said that another tenant of hers says she uses her unit to come to SF a couple times a year to just see what's going on in the city. She said that it's not fair, and there's nothing they can do to change it; both of these tenants are leaving their units empty and it's a sheer matter of fairness.

VI. Public Hearing

7:00 p.m. Proposed Amendments to Rules and Regulations Sections 12.15, 12.16 and 12.17 – Evictions Regarding Capital Improvement or Rehabilitation Work

Effective December 2, 2019, Rent Ordinance Section 37.9(a)(11) was amended to clarify that temporary evictions for capital improvements or rehabilitation work are only allowed where the work will make the unit hazardous, unhealthy, and/or uninhabitable, and are intended to last for the minimum amount of time required to complete the work; to modify the standards that the Rent Board must consider when reviewing a landlord's petition for extension of time to complete capital improvement work that will last more than three months; to establish procedures for the landlord to inform the displaced tenant of the tenant's right to reoccupy the unit upon completion of the work; and to establish that a landlord's failure to timely allow the tenant to reoccupy the unit may create a rebuttable presumption that the tenancy has been terminated by the landlord rather than by the tenant. The amendments also require the landlord to provide the tenant with a form prepared by the Rent Board at the time the temporary capital improvement eviction notice is served that the tenant can use to advise the landlord and the Rent Board of any change of address, and that also advises the tenant of the tenant's right to return to the unit once the work is complete. At its December 10, 2019 meeting, the Board voted to put out for public hearing proposed versions of Rules and Regulations Sections 12.15, 12.16 and 12.17, which was drafted by staff at the direction of the Board.

President Gruber opened a public comment period for members of the public to speak specifically about the proposed Rules and Regulations Sections 12.15, 12.16 and 12.17.

A. Gen Fujioka, the Policy Director at Chinatown Community Development Center said that they worked with Supervisor Peskin on this legislation, and the current draft of proposed Rules and Regulations Sections 12.15, 12.16, and 12.17 fails to adequately address the amendments. He said there is a two-step analysis: (1) the owner needs to show that all of the work is necessary and reasonable; and (2) in the event that it's not, to the extent work is elective, then the owner must establish that additional mitigation has been offered. He said that the proposal is to add language to clarify that each element of the project is established as necessary and reasonable, and this should be stated in the petition. He said that the basis for the request should be clearly stated. He said that tenants don't know whether to contest the petition, as many times they're already out of possession; and so it's really important that the petition requires landlords to state whether the work was necessary and reasonable. He said that if the work is elective then the landlord needs to specify what mitigation was offered to the tenant in addition to what is required under the existing Ordinance.

B. A man said that this puts tenants at an extreme risk if they have to relocate. He asked if they can they just arbitrarily make capital improvements and ask tenants to vacate, because it seems capricious to him. He said that a number of tenants in his building are over 65 and can't just pick up and move.

C. Charly Goss of the SFAA said that SFAA has been trying to encourage members to add accessory dwelling units (ADUs) to add to the housing stock, as this has been the first time

they have been able to create new housing. He said that the city has been implementing policies that don't necessarily align with the goal of adding housing. He said that he doesn't want members to be taking on construction projects that aren't necessary and passing them through to tenants, but he wants to add housing, and wants consideration around construction projects that add to housing stock.

Commissioner Mosbrucker then discussed the changes proposed by Gen Fujioka. She said that a change should be made to proposed Rules Section 12.15(e)(1)(C) to accurately reflect the changes to the Ordinance. Commissioner Wasserman argued that the scope of work in construction is often difficult to ascertain, and that these new requirements won't encourage landlords to rehabilitate their buildings. After some discussion, the Commissioners made and voted upon the following motion:

MSC: To move to adopt Rules and Regulations Sections 12.15, 12.16, and 12.17 as drafted by staff, with changes to Section 12.15(e)(1)(C) to read: "A written breakdown of the work to be performed, detailing where the work will be done, the cost of the work, and whether all of the work is reasonable and necessary to meet state or local requirements concerning the safety or habitability of the building or the unit, or whether any of the work is elective in nature."
(Mosbrucker/Qian: 5-0)

VII. Communications

- A. Articles from the SF Examiner, Beyond Chron, Curbed SF, and the Sacramento Bee.
- B. Copies of the amended Ordinance and amended Rules and Regulations.
- C. Updated Topic 257 – Minimum Heat Requirements.
- D. Workload statistics for November 2019.
- E. Haney Legislation.
- F. Rent Board staff phone list.

VIII. Director's Report

Executive Director Collins told the Board that in regards to the new statewide rent cap law AB 1482 (Tenant Protection Act of 2019) the Rent Board wants to be a resource to parties on both sides, and has updated the website with information concerning the new law, and have created a new form titled Report of Excessive Rent Increase Under the Tenant Protection Act. He explained that a tenant can file this form if they think their rent has exceeded the statewide rent cap and they want the Rent Board to communicate with their landlord. Executive Director Collins emphasized that the Rent Board cannot provide legal advice, and cannot enforce state law nor conduct hearings on such disputes and that filing the Report cannot prevent a landlord from serving an eviction notice or filing an unlawful detainer for nonpayment of rent.

Senior ALJ Koomas told the Board about recent amendments to the Ellis Act effective January 1, 2020, including some changes that will immediately affect staff, and some that would only apply if the Rent Ordinance is amended. These amendments were intended to clarify the following: (1) that a landlord cannot simply pay damages to excuse themselves from having to re-rent the unit to the tenant who was displaced; (2) that if any tenant receives a one-year extension of their 120-day eviction notice, then the date of withdrawal for the entire building is that one-year date; and (3) that the Ellis Act is not intended to allow an owner to return less than all of the units to the rental market, meaning that cities can require via local ordinance that if any unit is offered for re-rental during the constraints period, then the entire property must be returned to the market, with certain exceptions for owner-occupied units. SALJ Koomas said that whether these amendments are retroactive is still an open question.

Executive Director Collins told the Board about the new 90-day notice requirement for rent increases that exceed 10%, instead of the previous 60-day notice requirement.

Per Commissioner Dandillaya's request at the December 10, 2019 meeting, Deputy Director Varner updated some wording to clarify instructions in the notice of appeal consideration office form. Commissioner Dandillaya approved those changes and staff agreed to use the new language in the notice going forward. Deputy Director Varner also reminded the Commissioners that Form 700s, and Sunshine and Ethics training declarations are due by April 1.

Executive Director Collins thanked the Board for timely completing their mandatory implicit bias trainings. He informed the Board that he would be attending an event hosted by the East Palo Alto Rent Stabilization Board on February 1; he would be at the Board of Supervisors' Rules Committee meeting on February 3, 2020, regarding the buyout ordinance amendments; and staff will be at a Government Audit & Oversight Committee hearing regarding petitions and hardships in March (file number 190858), related to the Budget and Legislative Analyst report that looks into the question of passthroughs. Executive Director Collins announced that Supervisor Haney's legislation amending the Administrative Code to extend certain provisions, including just cause provisions, of the Rent Ordinance to units constructed after June 13, 1979 has passed effective January 20, 2020. He said it would extend all provisions of the Ordinance, except for the price control provisions, to all units, and to units previously exempted under substantial rehabilitation. He explained that this includes buyout provisions, owner move-in provisions, and tenant harassment. SALJ Koomas confirmed that only the Rules and Regulations Sections 1.17 and 1.18 will need to be amended to conform to the Ordinance amendments.

Finally, Executive Director Collins told the Board that it is possible that additional office space has been found in a vacant suite next door to the office.

IX. Old Business

A. Proposed Amendment to Rules and Regulations Regarding Tenant's Permanent Place of Residence

Commissioner Wasserman began the discussion regarding the proposed amendment to the Rules and Regulations regarding a tenant's permanent place of residence. He explained that currently, Rules and Regulations Section 12.14 limits a landlord to one "principal" place of residence, but that the Rent Board has interpreted the term "permanent residence" in the Costa-Hawkins Rental Housing Act to allow a tenant to reside in more than one place. He referred to a Rent Board decision that was upheld by the Commission, where the ALJ found that the tenant can have more than one permanent place of residence. He argued that this is the only rent board in the state that takes the position that the tenant can have more than one permanent place of residence, and that is nonsensical. He said that there needs to be guidelines, because a landlord is strictly held to the standard of having only one permanent place of residence and wants to adopt a similar standard for tenants. Commissioner Mosbrucker asked whether the Rent Board had authority to adopt a regulation interpreting Costa-Hawkins, which is a state law. The Commissioners discussed having certain exceptions for situations such as tenants being temporarily absent to take care of a sick relative or for educational purposes. At the conclusion of the discussion, the Commissioners directed staff to draft a proposed amendment to Rules and Regulations Section 6.14, to be discussed as a continued Old Business item at the February 25, 2020 meeting.

X. New Business

A. Fiscal Year 2020-2021 Departmental Budget

a. Public Comment Regarding Budget

NOTE: Pursuant to Administrative Code Section 3.3(b)(2), members of the public shall be limited to comments of no more than 2 minutes' duration.

No member of the public was present to provide public comment, so the public comment period was closed.

b. Budget Presentation

Executive Director Collins presented the Fiscal Year 2020-2021 and Fiscal Year 2021-2022 budget. He thanked the Board for their support of the department and briefly explained the budget process in regards to possible additional office space. He explained that the Tax Collector will have a new system to collect the Rent Board Fee. Executive Director Collins said that the two more significant items in the FY 2020-21 budget include funds for additional rent and tenant improvements, and the additional of an administrative analyst position, but that due to current savings and planned attrition savings, next fiscal year's projected fee would not be increased by the changes in the proposed budget; and FY 2021-22 includes funds for the addition of staff. At the conclusion of the discussion, the Board made and voted on the following motion:

MSC: To approve the proposed Departmental Budget for Fiscal Years 2020-2021 and 2021-2022.
(Wasserman/Mosbrucker: 5-0)

B. Proposed Amendments to the Rules and Regulations to conform to the Haney Legislation – Extending Eviction Controls to Units Constructed After June 13, 1979, and to Units That Have Undergone a Substantial Rehabilitation

After discussion about the Haney legislation, SALJ Koomas agreed to draft proposed Rules and Regulations to conform to the Haney Ordinance changes, and agreed to provide the proposed Rules and Regulations to the Board in advance of the February 25, 2020 meeting.

XI. Calendar Items

February 25, 2020

A. Consideration of Appeals

6 appeal considerations

B. Old Business

1. Proposed Amendment to Rules and Regulations Regarding Tenant's Permanent Place of Residence
2. Proposed Amendments to the Rules and Regulations to conform to the Haney Legislation – Extending Eviction Controls to Units Constructed After June 13, 1979, and to Units That Have Undergone a Substantial Rehabilitation

XII. Adjournment

President Gruber adjourned the meeting at 9:43 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.