



London N. Breed
Mayor

Robert A. Collins
Executive Director

DAVID GRUBER
PRESIDENT

**MINUTES OF THE SPECIAL 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

Monday, November 4, 2019
at 6:00 p.m.
25 Van Ness Avenue, **Room 610**

I. Call to Order

President Gruber called the meeting to order at 6:07 p.m.

II. Roll Call

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

III. Approval of the Minutes

MSC: To approve the Minutes of October 8, 2019.
(Mosbrucker/Qian: 5-0)

IV. Remarks From the Public

A. Anastasia Yovanopoulous said that she is a tenant active with the SF Tenants Union and that she came in support of the Veritas tenants who have been struggling with operating and maintenance increase (O&M) costs. She said that the building owners are calculating the costs in order to get their bank loan based on the difference between the current tenant's rent, and the potential new rent amount if the tenant were to vacate. Ms. Yovanopoulous said that the landlords go to the bank for another loan and proceed to get another property, and continue this cycle of acquiring property on the backs of the tenants who struggle to make the rent and wind up on the street. She said that she supports the Board of Supervisors resolution, in particular that the burden of proof to demonstrate reasonable reliance should be on the property owner and specific criteria could include providing net operating income.

B. Amina Rubio, a Veritas tenant, student teacher, honors student and researcher with the Housing Rights Committee (HRC) said that she is at the Rent Board day in and day out looking at Veritas O&M petitions. She said that she sees that units that are not listed on the petition are being built for cost, and the costs are egregious. Ms. Rubio said that she wants to

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be able to reasonably rely on her landlord to know what those costs are, and as a long-term tenant to not be charged for units that are not on the petition.

C. Lotus Yee Fong told the Board that she has lived in SF for 35 years, and after 2 years she was introduced to the St. Francis Square Cooperative. She said that she wants to put on the record that the Western Addition Department of Housing and Urban Development (HUD) properties that Justin Herman redeveloped are all on public land, and that the Western Addition should retain the public land and affordable cooperatives that HUD originally designed. But in today's hot property market, she said, she wants the public to know that Blackstone bought the Kabuki Hotel four years ago.

D. Greg Pennington said he is a new Veritas tenant, has lived in his building for 42 years, worked for the Environmental Protection Agency (EPA) for 31 years, and thinks he deserves his retirement. He said that if he is made to give all his money to Veritas, he can't contribute to the SF economy. Mr. Pennington said that he doesn't qualify for hardship and will eventually have to pay 80-90% of his income to rent. He stated that he came to the meeting to support proposed Rules and Regulations Draft 1 - Version 2 and that the 5% property value is an unreasonable basis for figuring out O&M costs. He asked the Board to not let Veritas push him out of town just so some real estate investors can get rich.

E. Gunvant Shah said that he has been tenant for four decades, is a Veritas tenant, was a tenant before rent control came into law, and was an International Hotel activist back in the day. He said that ever since Veritas bought his building, his rent has increased by 35% and he is a retired senior citizen and he can't afford to pay them anymore. He told the Board that tenants in this community are not a corporate landlord's ATM machine, and that if the landlord like Veritas has financial hardship he is asking for an equitable remedy that they should have to fill out a long form as to where they derive their income and show their tax returns.

F. Evan Matteo, a small property owner in SF, said that he and his wife would be affected by this change because they purchased a building in 2017 and unlike Veritas, he doesn't have the staff to process O&Ms. He said he bought the building in reliance on being able to modestly increase rents based on his increase in property tax, and understood that tenants who were in need could be sheltered from an increase. He said that this law was passed subsequent to his purchase and asked how this is equitable for small property owners who purchased in reliance; as he has to let a year pass, so to cap it at two years is unfair. He told the Board that he tried to do a Costa-Hawkins rent increase, and now he's going to try to do the O&M, but now it's two years later, so that wouldn't fit within the cap. He said that he doesn't understand the logic of the retrospective application of what a fair return is; his wife and kids rely upon the rental income from the building and in return he provides safe housing, and he lives in a 4-unit building next to his tenants and considers himself a responsible landlord. He urged the Commissioners not to pass the proposed Rules and Regulations.

G. Adrian Anzaldúa told the Board that he is a medical student at UCSF, and wanted the Commissioners to consider the social determinants of health as a result of evictions. He said that there is an inherent power differential between the landlords and the tenants defending rent increases. He spoke in regards to a planter box in the common area of his building; the landlord removed it and tried to pass it through as a capital improvement on the basis of

water damage from the plants; a tenant testified that there hadn't been plants in the planter for 20 years. He said that it shouldn't require that a person living there for 20 years has to testify to counter a claim. He told the Board that another capital improvement passthrough was a tenant's bathroom heater, but the landlord didn't specify the type. He said that vagueness in the law benefits people who are already in a position of power and understand the law, here, the landlords. He said that if there aren't organizations like HRC, they could not protect themselves from rent increases that may make them vulnerable to poor health outcomes.

H. Salman Shariat, a small property owner in SF, said that he was fortunate enough to purchase a small building with his brother and is in the midst of the O&M petition process. He gave an example of an older gentleman in the building who tried to add the 7% increase to his rent, but they sent the check back to him. Mr. Shariat said that landlords can be choosy as to who they want to apply the O&M increase to; so, having nuance in laws is going to be the thing to work on. He said that there are routes where residents can claim financial hardship, but having a blanket policy is not the solution, because he and his brother bought the building expecting to be able to petition for an O&M increase, and if this passes, it would be damaging to him and his brother.

I. Charley Goss of the SF Apartment Association (SFAA) said that SFAA believes that the Commissioners must reject the proposed Rules and Regulations. He said this proposal makes it extremely difficult and sometimes impossible for landlords to obtain O&M increases. Mr. Goss said that because the allowable increases in SF are tied to 60% of the Consumer Price Index (CPI), they are significantly lower than other rent-controlled cities. He said that the O&M has been an important component for small and large property owners to maintain their buildings. He said that the proposed Regulations go far beyond the scope of Supervisor Fewer's Ordinance amendments and significantly change the Ordinance, which the Rent Board Commission does not have the authority to do; only the Board of Supervisors does. He said that these changes illegally amend the Ordinance which violates the right of SF housing providers and that the Board should reject the proposal.

J. Manoj Kapoor said that he is a 21-year SF resident and a lifelong Bay Area resident, and that he invested in a small apartment building with friends and family. He said that he has a great relationship with the tenants and he is also a renter, and that he never attempted to buyout nor evict a tenant. He said that he invested in buildings in 2016 with the intent to impose O&M increases, and that now, he feels like the goal line is being moved in middle of the game. He told the Board that he submitted a petition in early 2018 and doesn't know what is going to happen; smaller owners are being penalized by bigger capital-backed landlords. He said that his purchase was underwritten as if the O&M increase would be granted, so now they're in trouble with their lenders and don't know if they will have enough equity to keep their loans in place; the buildings are old and need a lot of TLC. The tenants that receive the increases are generally in larger units and living in the living room and renting out the bedrooms at a profit, and no tenant has protested the increases to this point.

K. Shane Koon said the landlord imposed an O&M increase on him and half his income is now going to rent. He told the Board that the landlord said they were going to renovate, but are just tearing up the building; a 30% increase is ridiculous. He said that the people above him are paying \$6500.00 for an apartment and that SF is just crazy.

L. Devon Johnson, a small property owner, told that Board that an O&M is characterized as a tool that is abused by large corporations; but that he and his wife are not large corporation and are not abusing the increase. He said that the O&M is a very small element of fairness in the rent control law; he and his wife purchased a 6 unit building in the Richmond as a source of income and retirement; they don't receive financial assistance, aren't expecting an inheritance, don't have a vacation home or a jet plane; they are just middle-class San Franciscans interested in planning for their future. He asked that the two-year filing limit provision be removed from the proposed Regulations. He told the Board that he didn't get started on the paperwork for the O&M petition until the beginning of 2018 after a 2015 purchase and subsequent reassessment; and finally submitted it in April 2018. He said he shouldn't be penalized because most of the time he was waiting for the City to do the reassessment; it took 15 months to get a hearing, and he is still waiting for the decision. He said that it is unfair to change the rules midway through the process after he's planned and relied upon the increase and done the large amount of work to submit the petition.

M. Attorney J. Scott Weaver said that he wanted to respond to something the SFAA said- the Board is not being asked to amend the Ordinance, they are being asked to clarify what reasonable reliance is; a definition that should be narrowly tailored. He said that it is now policy of the City not to pass through increased debt service and property taxes; so the reasonable reliance issue is an exception to the rule. He said that the proposal is conceptually inappropriate because it is relying on the purchase price; a more appropriate way is to use the out of pocket purchase costs, including the down payment and associated costs, and use 3% of that as the cap; and then if the income is less than 3%, then the landlord is entitled to claim reasonable reliance and an exception to the Ordinance; more than 3%, no. He said that some may think that 3% is low, but landlords also get to pass through capital improvements, and every time a unit becomes vacant they get to jack the rent up. He said that there's no reason why a landlord cannot rely on that investment; and there are also tax advantages; keeping in mind that there will be continued vacancies after two years and an appreciation in the value of the property; and that "interests of justice" is vague and becomes subjective, and the Board needs to amend the criteria.

N. Ian Fregosi, on behalf of Supervisor Fewer's office, told the Board he wanted to speak to the intent of the amended O&M legislation. He said the Board is not being asked about debt service and property taxes as to properties purchased after April 3, 2018, however, the reason why they did include that clause on reasonable reliance was for those small property owners who purchased their properties prior to the rule change and relied on the O&M increase possibility during the time of purchase; not for the owner is simply try to maximize profits. They have heard examples of those who may have relied at the time of purchase and want them to have that opportunity to prove it in front of the Rent Board. He said that the vast majority of the O&Ms that have gone through the reasonable reliance test have been from large corporations, almost all of them have been from Veritas who have now announced they will be refunding those increases; it is now easy to argue that Veritas didn't rely on these expenses if they have the ability to refund all that they've collected. He said that the Board is not being asked to amend legislation but rather to interpret it; and the intent was to protect both the small property owners' ability to recover their costs, not profit maximization, and to protect tenants' ability to stay in their homes. He thanked the Commissioners for their time.

O. Sunny Angulo, legislative aide to Supervisor Peskin, said that she echoed everything Mr. Fregosi said; as a co-sponsor of the original legislation, they wanted to offer a friendly amendment to proposed Rules and Regulations Version Two which builds off what Mr. Weaver eloquently said: to replace property value with net operating income; the Board could deliberate about a 3% cap; out-of-pocket expenses should be driving this conversation and not property value determinations made by big banks.

P. Brad Hirn of the Housing Rights Committee thanked the Board for having a special meeting, and thanked small property owners for coming; and that he was not sure why small owners would not get their increases based on the current draft Regulations; there's been deliberate effort to include the ability to demonstrate financial hardship from the small property owner. But the reality is about maximizing profit versus cost recovery, and the O&M increase has been distorted by the actors who've filed the majority of petitions. He seconded Mr. Weaver's comments about a conceptual mistake with 5% of the property value; even the largest actors who have the staff and company to file O&M petitions would have gotten the increases under the proposed guidelines. He said he also agreed that the "interests of justice" phrase is problematic.

Q. Cathy Lipscomb said that she stands in solidarity with the heroic Veritas tenants. She said that she lives in a 36 unit building in Noe Valley and said that the recent Veritas tenants' victory is for them and all tenants in the city as well. She said it is appropriate for landlords to have to show financial records proving that they can absorb their O&M costs, given tenant displacement, lack of affordability, and Veritas' unconscionable behavior. She thanked the Board for compassion and understanding.

R. Meina Young told the Board that she is a member of the Bay Area homeowners network, and is a small property owner in SF; her family owns a 1-bedroom rented for \$700.00 and a 3-bedroom rented for \$1,000.00. She said that these people have been in their units for decades. She said that in looking at July 1, 2018 census data, the median rent in the city is \$1,709.00, and the cost for the owners is \$3332.00, so the rent collected is only about half of what it costs for the landlord. She said that rent control is devastating the rental market, and a lot of these mom and pops can't keep up the costs. She said that it costs \$20,000.00 to paint a 2-story building, so the increase for the landlord is more than triple, and based on the 42,700 units removed from the market and counting, you can't blame the owners because they cannot afford the upkeep. She said that the 60% CPI rent limit needs to be repealed.

S. Ken Young said that he is a small property owner and his parents owned for decades and have had tenants for decades. He said that costs keep going up for utilities, water and PG&E, and it's called planned obsolescence- they make it so you have to keep buying and replacing your stuff. He said that warranties not honored, and it's hard to get a contractor out at a reasonable price, but he can't get into the unit with a week's advance notice, which increases the cost because the contractor has to come back again. He said that his parents have been doing small repairs for 40 years on their property, and with the ones they can't complete, they have to hire someone. He said that some tenants deliberately break things so they don't have to pay the rent; he knows this because he works for the Department of Building Inspection (DBI). He said that now you have to be a lawyer to understand this reasonable reliance stuff.

T. Carol Cebalo said she is retired and has been living in an apartment for the last 18 years, and her financial planning has included how much her estimated costs would be given the annual allowable increase, but her O&M increase is tacked on top of her annual rent increase, plus the bond passthrough. She said she understands that small property owners are caught up versus Veritas. She said that she lives in a Brick+Timber building, and is challenging it. She thanked everyone who spoke as tenants.

V. Old Business

A. Proposal to Amend Rules and Regulations Section 6.10 – Operating and Maintenance Expenses – Evidence of Reasonable Reliance

Commissioner Isbell continued his discussion from the September 10, 2019 meeting, at which he proposed amending Rules and Regulations Section 6.10 (e)(1)(B) to define the term “reasonable reliance” in the context of an Operating and Maintenance Expense petition. Specifically, he directed staff to prepare draft Regulations stating that in order to prove reasonable reliance, a landlord must demonstrate one of the following: 1) by landlords disclosing enough actual financial information to show that the requested rent increases were necessary to pay off the claimed Year 2 expenses, taking into account the rental income of all the units at the property; 2) by landlords showing they would incur a financial hardship without the rent increases; and/or 3) by landlords showing that they would not have pursued the acquisition of the property had the ability to passthrough increased debt service and property tax costs been unavailable to them. Pursuant to Commissioner Isbell’s instructions, Rent Board staff prepared draft amendments to Rule Section 6.10 (“Draft 1”) for the Commissioners’ review. At the October 8, 2019 meeting, the Commissioners discussed Draft 1 and Commissioner Mosbrucker orally proposed some minor revisions to the language. Before the discussions concluded, Commissioner Isbell presented an alternative written draft of Rule Section 6.10 (“Draft 1, Version 2”), and Commissioner Klein requested that the landlord commissioners be given time to review the new language. At the conclusion of the discussion, the Commissioners voted to continue the discussion of the Proposal to Amend Rules and Regulations Section 6.10 at a special meeting, which was scheduled for November 4, 2019.

At the November 4, 2019 meeting, Senior ALJ Koomas began the discussion on “reasonable reliance” with a presentation that was requested by Commissioner Dandillaya. He provided a primer on O&M petitions, including the legislative history of the 2018 O&M Ordinance amendments, and data on recently decided and currently pending O&M petitions. Commissioner Wasserman continued the discussion, and Commissioner Isbell urged his fellow commissioners to define reasonable reliance because, he said, it was already being defined for them. President Gruber and Commissioners Klein and Mosbrucker requested clarification from staff about the tenant hardship application process, to which SALJ Brandon spoke. Commissioner Mosbrucker proposed small changes to Draft 1 – Version 2, and Commissioner Dandillaya voiced her concerns about the fair rate of return analysis in Draft 1 – Version 2.

At the conclusion of the meeting, the Commissioners directed staff to prepare two new versions of the draft amendments to Section 6.10, one based on changes proposed by

Commissioner Mosbrucker and one based on changes proposed by Commissioner Dandillaya, subsequently referred to as “Draft 1 – Version 3 (Mosbrucker Amendments)” and “Draft 1 – Version 4 (Dandillaya Amendments).” The Commissioners agreed to continue the discussion regarding the proposed amendments to Rules and Regulations Section 6.10 to the November 12, 2019 regular board meeting.

IV. Remarks From the Public (continued)

A. Greg Pennington said that his problem is that he's middle class; if someone is poor, they can stay in SF cause they can qualify for hardship, and if someone is rich they can afford to pay Veritas' high rent. He asked why, if he's \$1,000.00 above the income threshold, he has to pay 60-80% of his income to rent; hardship is not the answer; if you want to get rid of the middle class, will not have any services, will not get rid of the local economy. He said that no one cares that he was a federal employee and asked what the answer is- he has to pay 80 or 90% of his income to rent, is that what Veritas wants?

B. Guntant Shah said that debt service was discontinued by this rent board in 1986, and any other O&M petition should be null and void and the landlord should have to show their tax return.

C. Amina Rubio said that she is really sick and tired of paying the landlord's credit card bill. She said that at 634 Powell Street, Veritas had tenants paying for repairs for Notices of Violation (NOV), faucets, vendor damage to the property, and for repairs to market rate rentals. She said that landlords in general give a rent increase and tenants move out, cause they don't know their rights, and every unit is a candidate, and Veritas considers tenants as data for achieving their financial goals.

D. Meina Young said that recently there's been reports in newspapers that it has cost taxpayers \$900,000.00 per unit to renovate public housing, \$700,000.00 per unit in Sunnydale, \$2,486.00 for teacher housing in Sunset. She said that her parents and she partnered to buy a property, so renters should do the same.

E. Anastasia Yovanopoulous said that reasonable reliance helps to address those small property owners like those here, but when it comes to the large property owners, they should show the proof that they showed to the bank; they're getting away with a lot of income from those properties. She said that a lot of tenants are going to be just over the hardship income limits but they don't have the kind of income that can sustain what they're being asked to pay.

F. Devon Johnson said that he reached out to Supervisor Fewer when he was in the O&M petition process. He said he made a proposal that they could just put a limit on the O&M if the building has a certain number of units, which didn't make it into the legislation. He said that one of the two biggest expenses during the transfer of ownership is property taxes; the landlord and tenant don't get any more services from the increase in taxes, and that the city purports to care about the tenant, but they are the same ones who reassess property taxes at a higher rate. Mr. Johnson said that property taxes and debt service are real expenses- the IRS and the bank say so, and if he doesn't pay, there will be a lien, and they will be foreclosed and repossessed. He said that for the Board of Supervisors to pretend that they aren't is not realistic, and it raises the cost of housing.

G. Ian Fregosi, Supervisor Fewer's aide, told the Board that the whole reason for this legislation was to prevent landlords from passing through debt service and property taxes not increasing from year to year, but rather incurred from purchasing the property; the expenses are not unknown at the time of purchase. He said that granting this allowance for reasonable reliance was to allow those small property owners who did legitimately rely on that at the time of purchase; the rule was changing after they purchased the property, but moving forward, it would not make sense for the tenant to pay for the acquisition of their building; something that they're not benefitting from; getting a new landlord doesn't mean you're getting an improved unit; paying a 7% increase doesn't seem fair. Mr. Fregosi said they gave discretion to the Rent Board, and thanked the Board.

H. Evan Matteo said that his heart went out to the tenants who had to pay very large percentage increases and that no one should have to deal with that. He said he was speaking for himself and other small property owners. He said that there's a fundamental fairness to the law being applied after an action is taken; the changes in Version 2 go beyond anything that's fair with respect to setting an arbitrary allowed rate of return, and disqualifying arbitrarily a petition that is submitted more than two years after the sale; these are things that would not have been known to them before this was introduced, and it's punishing small landlords. He urged the Commissioners to not approve the rate of return and to not include 2-year cap.

IX. Calendar Items

November 12, 2019

A. Consideration of Appeals

20 appeal considerations

B. Old Business

1. Rules and Regulations Clean Up
2. Proposal to Amend Rules and Regulations Section 6.10 – Operating and Maintenance Expenses – Evidence of Reasonable Reliance
3. Proposed Amendment to Rules and Regulations Regarding Tenant's Permanent Place of Residence

XI. Adjournment

President Gruber adjourned the meeting at 8:27 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.