



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, December 8, 2020
at 6:00 p.m.

Remote Meeting via video and videoconferencing
<https://bit.ly/3ftFcx3>

Public Comment Dial In Number: (415) 655-0001 / Access Code: 146 733 8445

On February 25, 2020, Mayor London Breed declared a state of emergency in regards to COVID-19. Thereafter, Governor Newsom issued a statewide order for all residents to shelter-in-place, and numerous orders of the county health officer and supplemental orders and directives to slow and reduce the spread of COVID-19. Due to these declarations, orders, and proclamations, the Rent Board Commission’s March 17, 2020 and April 14, 2020 meetings were cancelled.

In three memorandums, the Mayor and City Attorney detailed emergency orders suspending select laws applicable to boards, commissions, and other policy bodies. On May 6, 2020, the Rent Board Commission was authorized to hold its May 12, 2020 regular meeting during the shelter-in-place remotely. Subsequently, per Mayoral and City Attorney guidance, boards and commissions are allowed to meet without first obtaining Mayoral permission, so long as the meetings are held remotely. Therefore, the Rent Board Commission meetings will be held via videoconferencing and will allow for remote public comment until further notice.

The Commission strongly encourages interested parties to submit their comments in writing, by 12:00 noon on December 8, 2020 to rentboard@sfgov.org. The meeting will be streamed live at 6:00 p.m. at <https://bit.ly/3ftFcx3>. The public comment call in instructions are being made available on the Rent Board’s website at <https://sfrb.org>.

Please visit the Rent Board’s website for ongoing updates during the COVID-19 emergency.

I. Call to Order

President Gruber called the meeting to order at 6:10 p.m.

II. Roll Call

Commissioners Present: Crow; Gruber; Hung; Isbell; Klein; Mosbrucker; Qian; Tom; Wasserman.

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Commissioners Not Present: Dandillaya.

Staff Present: Brandon; Collins; Koomas; Pagoulatos; Rakowski;
Varner.

III. Approval of the Minutes

MSC: To approve the minutes of November 11, 2020.
(Mosbrucker/Qian: 5-0)

IV. Remarks from the Public

A. Attorney Gordon Atkinson inquired as to whether a comment may be provided on an appeal during the first public comment period, and then decided that he would comment at the second public comment period.

V. Consideration of Appeals

A. 27 San Carlos Street

AL200059

The subtenant's petition alleging a disproportional share of rent and decreased housing services was granted in part and denied in part. The ALJ determined that the subtenant did not pay more than her proportional share of rent from June 1, 2016 through March 31, 2019, but found that the master tenant was liable to the subtenant for inadequate electrical service for the period of August 1, 2017 through October 31, 2018 in the amount of \$1,125.00. The master tenant appealed, contending that he did not receive notice of hearing, and submitted a Declaration of Non-Receipt of Notice of Hearing. At its May 12, 2020 meeting, the board voted to accept the appeal and remand the case for a new hearing. In the remand decision, the ALJ found the master tenant liable to the subtenant in the amount of \$825.00 for lack of dependable electrical service. The master tenant appeals the remand decision, arguing in part that the subtenant provided false testimony; that the subtenant consumed excess amounts of power with her appliances; and that the power outages were caused by the subtenant.

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

B. 3042 Sacramento Street #1

AT200055
(cont. from 11/10/20)

The tenant's appeal was filed 54 days late due to medical issues and problems with the postal service.

The Commissioners voted to accept the late appeal at the November 10, 2020 meeting.

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

The tenant's petition alleging decreased housing services was denied. The ALJ found that the tenant did not meet her burden of proving that: the condition of the front door entry and the hydraulic door closer constituted a substantial decrease in housing services; that the landlord's conduct with respect to the tenant's claims of loss of quiet enjoyment constituted a substantial decrease in housing services; that the condition of building security constituted a substantial decrease in housing services; and the condition of the common area maintenance constituted a substantial decrease in housing services. On appeal, the tenant argues that the ALJ never viewed video of illegal activity; that there was constant noise and disturbing cleaning and construction; that there was no use of masks; and that a worker assaulted her and sent her to the hospital.

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

C. 767 Jackson Street #8

AT200061

The tenant's petition alleging decreased housing services was denied. The ALJ determined that the tenant petitioner did not establish that she had a direct landlord-tenant relationship with the landlord during the months of January and February 2020, and therefore had no standing to assert a decreased in housing services claim for that time period. On appeal, the tenant petitioner contends that she had standing to assert a decreased housing services claim during the months of January and February 2020, because she was an approved subtenant.

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

D. 1423 McAllister Street

AT200056

The tenant's petition alleging an unlawful rent increase was granted. The ALJ determined that the tenant moved into a continuing tenancy that commenced on September 1, 2007, and that although the landlord's January 9, 2020 notice of rent increase was null and void, the landlord was entitled to impose accumulated rent increases dating back to the commencement of the tenancy in 2007. The tenant appeals, arguing that a new tenancy was created in 2013 when he began paying rent directly to the landlord, and therefore the ALJ's allowable rent increase calculation is incorrect.

MSF: To accept the appeal and remand the case to the ALJ to hold a supplemental hearing to determine when the initial tenancy of the master tenant began.
(Mosbrucker/Qian: 2-3; Gruber, Hung, Wasserman dissenting)

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

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E. 721 and 723 Baker Street

AT200057 & AT20058

The landlord's petition for a capital improvement passthrough to 2 of 3 units was granted in part and denied in part. The ALJ certified the cost of a replacement of water heater (unit #723 only); installation of security cameras; exterior painting of entire building; re-stucco brick foundation; replacement of windows (unit #723 only); replacement of gas wall heater (unit #723 only); dryrot abatement; replacement of sub panel (unit #721 only); replacement of sub panel and electrical upgrade (#723 only); and replacement of drain pipes. The cost of lead abatement in unit #721 was not certified. The tenants in both units appeal, arguing that the ALJ erred in granting the landlord's capital improvement petition, and objected to: certification of work performed without permits or inspections; work that was under-valued or under-permitted by the Department of Building Inspection; work that was performed by unlicensed contractors; misrepresentations in the initial petition; landlord negligence and deferred maintenance; the cost of one of the two security cameras; the cost to re-stucco the brick foundation; the cost of a new gas wall heater for unit #723; the electrical work for both units; the replacement of drain pipes; remodeling unit #719 even though those costs were not included in the petition; constructive eviction; and the rent increase notices because the Decision was issued during the rent increase moratorium.

MSF: To accept the appeal and remand the case to the ALJ for consideration of whether any of the work required permits, and if so, whether the work was a benefit to the tenants.

(Mosbrucker/Qian: 2-3; Gruber, Hung, Wasserman dissenting)

MSC: To deny the appeal.

(Wasserman/Gruber: 3-2; Mosbrucker, Qian dissenting)

IV. Remarks From the Public (continued)

A. Gordon Atkinson, the attorney for the tenant on 767 Jackson Street #8 (AT200061) asked the Board to reconsider. He said that the Ordinance provides for a broad definition of the term tenant and that the tenant was approved by the landlord by sufferance. Mr. Atkinson said that the tenant raised the issue of improper type of rent increase notice in her petition, but was informed by the ALJ that it was not properly raised, and an issue of state law and could not be considered. However, he said, it appears that the Board can consider issues regarding notices issued under Civil Code 827, and since it was a 30% increase that came without 90-day notice, and he asked the board to remand for consideration of the unlawful rent increase under Penal Code Section 396 and Civil Code 827, even though the issue was not properly raised in the petition.

B. Peter Brown, the tenant at 1423 McAllister Street (AT200056) told the Board that the email the ALJ relied on did not state when the original tenancy started nor the rental amount, and that it is cruel to force a tenant to track down an original lease when the landlord does not even have it. He said that while the burden of proof is on the tenant petitioner, the decisions have real world consequences. He said that trying to track down tenants that may have lived there and trying to track down the original master tenant during COVID is extremely difficult.

C. Tenant Martha Chavez at 3042 Sacramento Street #1 (AT200055) said that she understands that the Board upheld the decision, and that the format is not user-friendly.

VI. Communications

- A. Articles from the SF Examiner.
- B. Monthly workload statistics for October 2020.
- C. List of Rent Ordinance amendments.
- D. Amended Rent Ordinance.
- E. Updated litigation status report.

VII. Director's Report

A. Rent Board Operations Update During COVID-19 Health Emergency

Executive Director Collins told the Board that there were no major operational changes from the last report, and summarized the changes that have taken place recently, including that the department has a new VoIP call center, VoIP phones and phone system, and a new network for all computers. He noted that there have been residual difficulties with the fax machine. He told the Board that the department is still expecting to gain use of the suite next door to the office on March 1, 2021. In regards to legislation, Executive Director Collins explained that file number 201262, the ordinance amending the Administrative Code to require owners of residential dwelling units to report certain information to the Rent Board and to authorize the Rent Board to issue a license to owners who report the information, and to require that an owner have a license to impose certain types of rent increases, passed second reading unanimously at the Board of Supervisors and authorizes the Rent Board to add any other information it wants to collect, following a notice of public hearing, since any changes or additions may benefit from being part of the original design. He requested to schedule the item for discussion at the January 26, 2021 meeting, as it is intricately linked to the budget discussion. Executive Director Collins told the Board that Senior Administrative Law Judge Koomas was present at the meeting to answer any questions that the commissioners may have regarding the updated litigation status report.

President Gruber asked whether some of the information landlords will have to provide for the rental housing inventory would require the disclosure of confidential information. Commissioner Crow stated that the commissioners will likely want to create implementing Rules & Regulations. Executive Director Collins explained that these items are tied to the budget and the creation of a new database to administer the program, and the commissioners may want to discuss this at the January meeting.

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VIII. Old Business

A. Update on professional services for the Rent Board Fee (SA 29)

Executive Director Collins told the Board that the department is looking at instead possibly adding the Rent Board Fee function to the development of a new database, which would carry out both the housing inventory legislation, and administer the Rent Board Fee.

B. Commissioners' Resolution Regarding Racial Equity

Commissioner Isbell opened the discussion by acknowledging Commissioner Hung's amendments to the Resolution and had a question about the two large paragraphs that were removed. Commissioner Hung responded that those paragraphs were removed to ensure consistency. President Gruber questioned whether the Rent Board had to join with the Planning Commission in its Resolution, which Commissioner Isbell explained was part of the greater housing work in the City, and as the Planning Department acknowledged and apologized for inequitable housing policies, the Rent Board was joining with that acknowledgement and apology. President Gruber also asked a question regarding California Ballot Proposition 16, and Commissioner Isbell explained that there was nothing in the Resolution related to Proposition 16, but noted that while it failed statewide, it passed citywide. Commissioner Mosbrucker remarked that Proposition 16 was unrelated to what the Board has been tasked with doing by the legislation enacted by the Board of Supervisors by creating the Office of Racial Equity. Commissioner Wasserman made the following motion which the commissioners voted upon:

MSC: To adopt Commissioner Isbell's draft Resolution on Racial Equity with Commissioner Hung's edits.
(Wasserman/Qian: 5-0)

C. Proposed Amendments to Rules and Regulations Section 2.10 – Election of Board Officers

The Commissioners agreed to move this item for discussion as an Old Business item at the January 26, 2021 meeting.

D. Department Racial Equity Action Plan Draft Presentation

Deputy Director Varner and Rent Board counseling unit supervisor Rakowski, as the Rent Board's Racial Equity Team, presented a follow-up to the November 10, 2020 board meeting presentation of the department's Racial Equity Action Plan – Phase I. They again explained the seven areas of the department's Racial Equity Action Plan, and discussed the key goals for each of the areas. Particular areas of note as key goals for the Board would be to implement a commission resolution on racial equity, to attend racial equity and implicit bias training, and that Deputy Director Varner as the board secretary would support the commission in authoring an accessibility

protocol in the next year. They explained that the commissioners would not have to vote on the Plan, and that the Plan would be submitted to the Office of Racial Equity on December 31, 2020, and it would automatically be submitted to the Mayor's office and the Board of Supervisors, as well as being posted on the Rent Board's website. Deputy Director Varner thanked Commissioner Isbell for drafting, Commissioner Hung for editing, and the Commissioners for passing their Resolution on Racial Equity, which shows strong support for the ongoing departmental racial equity work.

IX. New Business

A. Proposed Amendments to Rules and Regulations Sections 1.10 and 2.11 Regarding Board Alternates

The Commissioners agreed to move this item for discussion as an Old Business item at the January 26, 2021 meeting.

B. Fiscal Year 2021-2022 Departmental Budget

Executive Director Collins opened the Fiscal Year 2021-2022 departmental budget discussion, inviting the commission to participate. He explained that funding would be added to the training budget to support the Racial Equity Action Plan, but the larger new budget item would be to support the rental housing inventory. He explained that the Legislative and Budget Analyst report estimated that first year implementation costs would include 7-14 new positions, and development of an inventory system, that total about \$1.4 million - \$3.3 million. The ongoing yearly expenditures would range from \$1.2 million - \$3.3 million for positions and for development and maintenance of the system. Executive Director Collins explained that there are very significant differences in functionality between an out-of-the-box solution and custom designed system, which would range between \$165,000 to \$899,000. He said that an out-of-the-box solution may meet the department's needs, but would still have to be customized, and would be split up into 3 different phases. There would be an initial 18-month focus of information technology, procurement, database design, hiring, and landlord outreach before the July 1, 2022 launch. In Phase 2, there would be an actual implementation of the inventory, and helping larger landlords through it. Later, there would be a March 1, 2023 deadline, which would involve closing helping smaller landlords through the process. Executive Director Collins explained the budget process steps for Fiscal Year 2021-2022 and then the following fiscal year, and trying to keep costs down.

Commissioner Mosbrucker said that the department should put a lot of money up front to have a robust inventory system rolled out at the beginning. Commissioner Isbell offered that the legislation itself did not define the amount and left it open to the needs of the department, and sees this as an opportunity to think outside the box and upgrade department technology. Executive Director Collins clarified that the budget process goes through the Mayor, and that the budget will be further discussed at the February 16, 2021 board meeting.

X. Calendar Items

January 26, 2021 – remote meeting via Webex Events

A. Consideration of Appeals

6 appeal considerations

B. Old Business

1. Fiscal Year 2021-2022 Departmental Budget
2. Proposed Amendments to Rules and Regulations Section 2.10 – Election of Board Officers
3. Proposed Amendments to Rules and Regulations Sections 1.10 and 2.11 Regarding Board Alternates
4. Racial Equity Action Plan and Ongoing Board Racial Equity Work

C. New Business

1. Rental Housing Inventory Legislation Implementation

XI. Adjournment

President Gruber adjourned the meeting at 8:59 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.