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Executive Director

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

Tuesday, February 14, 2023
at 6:00 p.m.

Remote Meeting via video and teleconferencing
<https://bit.ly/3Y5KYut>

Public Comment Dial In Number: (415) 655-0001
Access Code: 2493 197 3738 / Webinar Password: RENT (7368 from phones)

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 following that, numerous orders of the county health officer and supplemental Mayoral proclamations and directives were issued to slow and reduce the spread of COVID-19.

In several Mayoral proclamations and memorandums, the Mayor and City Attorney detailed emergency orders suspending select laws applicable to boards, commissions, and other policy bodies, and permitting boards and commissions to meet, so long as the meetings are held remotely. Additionally, at its January 17, 2023 meeting, the Rent Board Commission made findings to allow teleconferenced meetings under California Government Code Section 54953(e). 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 5:00 p.m. on February 13, 2023 to rentboard@sfgov.org. The meeting will be streamed live at 6:00 p.m. at <https://bit.ly/3Y5KYut>. The public comment call in instructions are available on the Rent Board's website at <https://sf.gov/public-body/rent-board-commission>.

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 6:06 p.m.

II. Reading of Ramaytush Ohlone Land Acknowledgment

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Commissioner Tom read the Ramaytush Ohlone Land Acknowledgment.

III. Roll Call

Commissioners Present: Crow; Gruber; Haley; Hung; Klein; Mosbrucker; Sawney; Tom; Wasserman.

Commissioners Appearing Late: Klein, 6:26 p.m.

Commissioners Departing Early: Klein, 8:45 p.m.; Wasserman, 8:45 p.m.

Commissioners Not Present: Qian.

Staff Present: Brandon; Flores; Koomas; Varner.

IV. Approval of the Minutes

MSC: To approve the minutes of January 17, 2023.
(Wasserman/Mosbrucker: 6-0; Crow, Hung abstaining)

V. Remarks from the Public

A. Christopher Smith, the tenant at 3830 Divisadero Street #204 (AT230003), asked the Board to remand his petition for a new hearing. He stated that he missed his hearing because he was out of state visiting family and did not receive the Notice of Hearing.

B. Edward Singer, the attorney for the landlord at 3830 Divisadero Street #204 (AT230003), told the Board that the tenant's appeal should be denied with prejudice. He stated that the initial hearing was continued for the tenant to obtain counsel, which he has still not obtained, and that the tenant received notice of the rescheduled hearing and did not appear.

C. Peter Braden, the non-attorney representative for the landlord at 839 Broderick Street (AL220066), stated in part that the owners contacted Rent Board staff on multiple occasions and were never informed that financing needed to be obtained before construction work began in order for loan costs to be passed through to tenants. He stated that the Rent Board applied an "unwritten rule" in this case, which makes it harder for landlords to maintain their properties and disadvantages both landlords and tenants.

D. Sam Wiggin, the representative for the landlord at 839 Broderick Street (AL220066), stated that Rent Board Rules and Regulations Section 7.14 does not require interest to be incurred prior to the performance of capital improvement work. Rather, he stated, the Rule is silent on timing and when he discussed the issue with Rent Board staff he was never informed of such a requirement. He also disagreed with the ALJ's assertion that the loan was obtained to replenish general operating funds and asked the Rent Board to follow "its own written rules."

E. Laura Campbell, the attorney for the landlord at 300 Buchanan Street (AT230008), stated that all of the claims raised by the tenants' appeal were already addressed in the decision or in the landlord's submissions, and asked that the decision be upheld.

F. Cynthia Smith, the tenant at 1700 Broadway Street #304 (AT230004), stated in part that although the scope of her appeal is limited, she hopes that the City will find a way to better protect the health and safety of tenants and create a system of accountability or certification for property owners.

G. John Bishop, a tenant at 300 Buchanan Street (AT230008), stated that he's not opposed to the landlord adding new units to the building, he's only opposed to the landlord's current construction plans. He stated that the tenants will have to exit from a different side of the building after the work is completed, which is not accessible to disabled tenants. He stated that he's worried he'll be trapped in his apartment and he doesn't understand how the landlord is able to take a building that is not "ADA compliant," and make it "less compliant."

H. Jake Fishman, a tenant at 300 Buchanan Street (AT230008), stated that it was error for the ALJ to rely on the landlord's construction diagrams, which he believes are inaccurate. He stated that the ALJ failed to fully consider the space occupied by his vehicles, and that the new parking spaces are inferior and will not be maneuverable for him. He stated that he has medical issues and is very concerned about his ability to maneuver his vehicles in the garage after the construction work.

I. Graciela Espinoza, the landlord at 315 Seneca Avenue (AL230005), stated in part that the tenant stole from her, and that he also harasses and abuses her. She stated that the tenant is angry because she took him to court and she is scared of him. She stated that she gave the ALJ all of her documents, but that she should have organized her documents in a more detailed way.

J. Brian Berger, a tenant at 300 Buchanan Street (AT230008), stated that he's lived in the building for 35 years and that the landlord's ADU plans will relocate his parking spaces to a different garage, which is not comparable. He also stated that the only ADA wheelchair accessible area of the building is going to be removed and that the building entrance will be on a steep hill, which will be inaccessible for tenants who are elderly or have mobility issues.

K. Spring Carver, the attorney for the tenant at 315 Seneca Avenue (AL230005), asked the Commissioners to deny the appeal. She stated that the ALJ correctly determined that the landlord's rent increases were unlawful, and that the landlord's appeal raises no issues that warrant a reversal of the decision.

VI. Consideration of Appeals

A. 400 Grafton Avenue

AL230002

The landlord's petition seeking a determination of whether the subject unit is exempt from the Rent Ordinance was dismissed due to the landlord's non-appearance at the hearing. On appeal, the landlord claims that they did not receive the Notice of Hearing because they were out of town, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

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

B. 3830 Divisadero Street #204

AT230003

The tenant's petition alleging an unlawful rent increase was dismissed due to the tenant's non-appearance at the hearing. On appeal, the tenant claims that they did not receive the Notice of Hearing because they were out of town, and attaches documentation showing their travel itinerary.

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

C. 1700 Broadway Street #304

AT230004

The tenant's petition alleging decreased housing services was granted in part and the landlord was found liable for rent reductions in the amount of \$9,859.65 for various conditions in the unit. On appeal, the tenant argues that a rent reduction should have been granted for the damage to her hardwood floors, and that a greater rent reduction should have been granted for the noise disturbances caused by the upstairs tenant.

Commissioner Wasserman recused himself from the consideration of this appeal because he is a part owner of the landlord's property management company.

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

D. 315 Seneca Avenue

AL230005

The tenant's petition claiming an unlawful rent increase was granted and the landlord was found liable for rent overpayments in the amount of \$8,850.00. On appeal, the landlord states that the tenant's rent included a variable cleaning fee, that prices have increased due to inflation, and that she wasn't properly served with legal documents.

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

E. 4107 California Street #1

AL230006, AL230007

The tenant's petition claiming an unlawful rent increase was granted and the landlord was found liable for rent overpayments in the amount of \$1,071.42. The ALJ determined that the tenant's initial monthly base rent was \$1,645.42, and not the higher amount stated in the lease. The landlord did not appear at the hearing. On appeal, the landlord contends that the

lawful rent is the amount stated in the lease and also appeals on the basis of financial hardship.

MSC: To deny the appeal on the merits (AL230006) and to accept the hardship appeal (AL230007) and remand the case to the ALJ to consider the landlord's claim of financial hardship.
(Mosbrucker/Wasserman: 5-0)

F. 300 Buchanan Street #303, 304 & 503

AT230008

The tenant's (#503) objection to the landlord's ADU Declaration was dismissed due to the tenant's non-appearance at the hearing. The tenant appealed, and the Board remanded the case for a new hearing. Tenants in six units appeared at the remand hearing and raised objections. In the remand decision, the ALJ denied the tenants' objections and found that the landlord's proposed ADU construction project would not result in a substantial reduction in housing services pursuant to Rent Ordinance Section 37.2(r). The tenants in three units now appeal the remand decision, and argue that the ALJ did not fully address the tenants' objections regarding parking maneuverability in the planned garages.

Commissioner Klein recused herself from the consideration of this appeal because her law firm represents the landlord.

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

G. 839 Broderick Street

AL220066

The landlord filed a petition seeking certification of capital improvement costs of \$196,149.74 for a mandatory seismic retrofit, including loan fees of \$16,712.74 and interest of 7.25% amortized over twenty years. The ALJ certified \$177,557.00 of the total petitioned amount, but disallowed the loan fees and found that the landlord was only entitled to the imputed interest rate of 1.4% because the loan wasn't obtained until after the work was performed and paid in full. The landlord appeals on the basis that the loan proceeds were specifically earmarked for the capital improvement work, that the Rent Board's policies are unclear and arbitrary regarding capital improvement financing, and that the actual interest rate of 7.25% should be certified for passthrough.

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

V. Remarks from the Public (cont.)

A. Sam Wiggin, the representative for the landlord at 839 Broderick Street (AL220066), told the Board that their discussion of his appeal included several inaccuracies. He stated in part that the loan was obtained before the construction work was completed; that there was no delay in obtaining the loan or speculation on interest rates; that the loan was specifically tied to the seismic construction work; and that the Rent Board's decision is "preposterous" and amounts to a "miscarriage of justice".

VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

- A. Articles from the SF Chronicle, SF Standard, and a press release from the Rent Board.
- B. Monthly workload statistics for December 2022.
- C. Draft amendments to Rules and Regulations §10.10.
- D. A memorandum from San Francisco Supervisor Connie Chan regarding the Board's draft amendments to Rules and Regulations §10.10.

VIII. Director's Report

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

Executive Director Varner thanked the Rent Board's Public Information Unit staff and the Housing Inventory and Rent Board Fee Unit staff who worked very hard with an increased number of public inquiries during the Rent Board Fee exemption request period and invoicing, and with the approaching first Housing Inventory deadline. She also thanked those units' supervisors, Anita Pandhoh, Jennifer Rakowski, and Catherine Xu for supporting their teams and working their hardest to streamline operations. She said that the department encourages the public to remain patient during this time, and to kindly understand that staff are working very hard to serve the public. Director Varner stated that departmental operations continue with phone counseling open and available to the public from 9:00 a.m. – 12 noon and 1:00 p.m. – 4:00 p.m., Monday through Friday, excluding holidays, and staff will continue to work on a hybrid basis.

Director Varner reminded property owners that both the Housing Inventory reporting deadline for owners of all properties, and the date to make timely payment of the Rent Board Fee is March 1, 2023. She said that in regard to the Housing Inventory, owners will need to report information on their units to obtain a license to increase their tenants' rent. She said that owners can go to the Rent Board's website at sf.gov/rentboard or directly to the Portal at portal.sfrb.org to report and for any issues with reporting, they should contact 311. Director Varner reminded property owners that if payment is late, they will incur a 5% penalty on March 2, and then a 10% penalty on April 1, and a 15% penalty on May 1. She said that owners can pay via the Rent Board Portal online at portal.sfrb.org, or by mailing a check into the Rent Board's PO Box or walking a check or cash payment into the Treasurer and Tax Collector's Office during business hours. Director Varner said that there has been a delay with the start of delinquent 21-22 Rent Board Fee obligations notification, so those notifications are now slated to go out in mid-March.

Director Varner stated that there was no legislative report. Referencing the issue of digital distribution of meeting material, she asked commissioners to provide any feedback, and stated that meeting materials would be distributed to the commissioners both electronically and on

paper. With regard to the department's ongoing racial equity work, Director Varner said, two commissioners have been scheduled to attend a DHR Managing Implicit Bias workshop on March 15. Director Varner reminded the Commissioners they will have until April 1 to file their Form 700s and complete the required Ethics and Sunshine training, and that if they do not timely file, a fine may be assessed for each day of non-reporting, and they would not be able to vote at the subsequent board meeting.

IX. Old Business

A. Future Rent Board Commission Meetings

Executive Director Varner informed the Board that beginning March 1, 2023, all Commissioners must attend Board Meetings in person, with exceptions for those requesting and being granted reasonable accommodations by the Department of Human Resources. Director Varner referred to a City Attorney memo discussing return to in-person policy body meetings and told the Board that technology is still being finalized for the March 14 meeting, which would be held in 25 Van Ness Avenue, Room 610. Director Varner explained rules around reasonable modification requests from members of the public and the need to provide the public the ability to appear remotely. She explained that the City is strongly encouraging City policy bodies to generally provide remote meeting participation opportunities at in-person meetings outside of reasonable modification requests. She acknowledged that after hearing the Commissioners' wishes to hold in-person meetings with the capability of remote participation, together with City guidance, staff are now working on making remote meetings possible for the March 14 meeting and all meetings going forward. Director Varner explained that since no City policy body will be allowed to hold fully remote meetings after March 1, there would be no need for the Commission to make findings under California Government Code 54953(e) that remote meetings continue to be necessary.

B. Fiscal Year 2023-2024 Departmental Budget

Executive Director Varner led the second discussion regarding the department's Fiscal Year 2023-2024 budget. She said that the major bulk of the budget this year is, as it is most years, wages and fringe benefits. She said that the move and associated tenant improvements is the second item, and one anticipated to no longer be a budget item in the department's Fiscal Year 2024-2025 budget, and that the third larger item for its first 1-2 years is a technology and business workflow modernization project.

Director Varner told the Board that the department has been steadily working on recruitment and hiring, and that currently, most unfilled positions are in active recruitment. She said that positions that were added into the budget at half or $\frac{3}{4}$ time in fiscal year 22 are now fully funded in fiscal year 23. She said that in the past year, the department has hired or transitioned staff into 19 different permanent positions, and that the department is now in a better position to assist the public, particularly in regards to the Housing Inventory and Rent Board Fee-related work. She explained that because hiring and recruitment takes some time, if estimated conservatively, the department will end the year with salary and fringe benefit savings of \$2.7M. With regard to revenue, Director Varner said, last year the department brought in about \$10.2M, and then collected about \$800,000 when we sent out our notice of delinquent Rent Board Fee this past fall. She said that the department retained about \$1.29M

in uncollected fees that it hopes to recover via collections, and that in fiscal year 23, the department anticipates bringing in about \$12.4M due to better data collection and acquiring more data over the course of the year around new construction.

Director Varner discussed the tenant improvements and work to the 6th and 7th floor office space that the department will soon occupy. She explained that decisions had been made to split up the work between the two floors as a cost-saving measure, engaging DPW's Bureau of Building Repair in finish work for the 6th floor for around \$250K, while allotting about \$2M on the tenant improvements for Suite 700. She explained that the new office would include creation of a true public space, where the public and the staff are separated, and the public can get all of their needs met. She also explained that the rent amounts for both the current suites and the future suites increased, but the increased rent would decrease in fiscal year 2025 once the tenant improvements and move are completed, and that any project funds existing in fiscal year 23 would be carried over to fiscal year 24.

Director Varner explained that FY22-23 saw increased clarity on the number of dwelling units and SRO guest units subject to the Rent Board fee, where, in FY22, the department ended the year with a count of 225,623 dwelling units, 15,638 SRO guest units, and 50,565 exempt units. She said that the department projects a FY23 count of 223,369 dwelling units, 15,231 SRO guest units, and 53,039 exempt units, with an added contingency increase of 250 units due to new construction or other reasons.

Director Varner told the Board that projected revenue from the main funding source, the Rent Board fee, would be at \$13,385,552, with a small amount of other revenue for a total projected revenue of \$13.4M. She said that this number accounts for a 5% deduction for uncollected fees plus increased revenue with a 250-unit contingency increase, and that the Controller will determine the actual per-unit fee this spring based on the final budget approved by the Board of Supervisors minus carry forward funds. Given the costs associated with the move and tenant improvements, she said, as well as the modernization project and ongoing wage and fringe and workorder increases, the department anticipates that the fee amount will be raised in FY23-24 to \$61/unit. She said that the department currently has significant savings of \$2.3M due to position vacancies in FY22-23 and the available fund balance should allow the department to continue operations without having to make dramatic changes in FY23-24.

X. New Business

A. Proposed Amendments to Rules and Regulations Section 10.10 Regarding Tenant Right To Organize Legislation

Commissioner Klein stated that following the passage of the Tenant Right To Organize legislation, she's been informed that there is some ambiguity in the law and it has become difficult for landlords to know how to communicate with tenant associations. She stated in part that procedures are needed for the certification of tenant associations; that tenant association materials are being put up in ways that may harm the building; and that the goal of enacting regulations is to put structures in place so that everyone has guidance on their respective responsibilities. President Gruber stated that he was supportive of legislation allowing people to meet and organize, but agreed that more guidance would be helpful.

Commissioner Mosbrucker stated that she started to prepare some edits to the draft regulations after receiving feedback from tenant groups, but needed more time before they would be ready for distribution to the Commission. Rent Board staff informed the Board that a number of multi-unit tenant petitions had been filed regarding the Tenant Right To Organize legislation, but that none had yet gone to hearing, so the tenants' specific claims were still unknown. After some discussion, the Commissioners agreed to continue this item as old business at the next Board Meeting.

XII. Calendar Items

March 14, 2023

A. Consideration of Appeals

9 appeal considerations

B. Old Business

1. Future Rent Board Commission Meetings

2. Proposed Amendments to Rules and Regulations Section 10.10 Regarding Tenant Right To Organize Legislation

Reader of the Ramaytush Ohlone Land Acknowledgment – President Gruber.

XIII. Adjournment

President Gruber adjourned the meeting at 8:59 p.m.