Minutes of the Special Meeting of the

Rent Review Advisory Committee

Monday, January 24, 2017

1. CALL TO ORDER AND ROLL CALL
   The meeting was called to order at 6:24 p.m.

   Present were: Chair Sullivan-Sariñana; and Members Griffiths, Friedman, and Schrader.
   Absent: Vice-Chair Landess
   Vacancy: None
   RRAC Staff: Claudia Young

2. AGENDA CHANGES
   a. Motion and second to add public comment as item 7-B (Schrader and Griffiths). Approved by unanimous consent.

3. STAFF ANNOUNCEMENTS
   a. Staff clarified that the Committee will not review cases at this meeting. Rather, this special meeting is held for Committee members to discuss Ordinance no. 3148 as it relates to the Rent Review Advisory Committee.

4. PUBLIC COMMENT, NON-AGENDA ITEMS
   a. No public comment.

5. CONSENT CALENDAR
   a. None.

6. UNFINSHED BUSINESS
   a. No unfinished business.

7. NEW BUSINESS
   a. Committee members to discuss Rent Stabilization Ordinance no. 3148 as it relates to the Rent Review Advisory Committee

Vice-Chair Landess had submitted questions prior to the meeting. The City Attorney responded to these inquiries and staff shared the input.

Q: Why is Base Rent Year defined as 2015?
A: Base Rent Year becomes relevant and important when calculating Net Operating Income because a Landlord's Net Operating Income in any particular year is compared to the Landlord's Net Operating Income in the Base Rent Year--2015--which was the year before rent control went into effect. That is, there is a presumption that if a Landlord's NOI say, in

2017, is the same as the NOI in 2015, then the Landlord is receiving a fair return on investment and no rent increase is necessary in order to receive a fair return on investment.

Q: Please explain the discussion of Debt Service?
A: Debt Service is referred to in 'Costs of Operation' and is excluded from a Landlord's Costs of Operation. Costs of Operation is part of the Net Operating Income formula, i.e., gross revenues less the Cost of Operation.

Q: Please provide more clarify that Notices and Materials to be Provided to Current and Prospective Tenants, (section 6-58.20) is a one-time requirement for existing tenants.
A: There is nothing in Section 6-58.20 to indicate or suggest that providing these materials to a current tenant must occur other than with the Landlord's first receipt of rent following March 31, 2016. Since presumably Landlords have now received rent from the tenants who were in the units at the end of March 2016, I am proposing to revise subsection B of Section 6-58-20 so that subsection A is applicable only for prospective tenants."

Committee members discussed the Ordinance following Member Friedman's suggested outline:

1. Should mediation remain part of the Rent Review Advisory Committee meeting?

Member Friedman stated that he does not consider the RRAC process to be mediation. Particularly, the Committee members are not professional mediators and the meetings are not private. He raised concern that the process may place pressure on a tenant to sign an unfavorable agreement. Friedman suggested that an advocate be present at meetings to inform tenants there is no obligation to sign agreements. He suggested that an option for mediation be offered prior to the Committee meeting.

Chair Sullivan-Sariñana acknowledged that the Committee's dual role as mediator and decision-maker is challenging. He noted that the Program Administrator is already offering private mediation and this service is helpful. He also expressed the difficulty that often parties attend the Committee meetings prepared to argue before a third-party decision maker and this dynamic can make compromise difficult. Sullivan-Sariñana also addressed that there is an uneven balance of power in a tenant and landlord relationship. He suggested that requiring mediation prior to the Committee meeting may provide the tenant more support in the situation.

Member Griffiths stated he believes the Committee's mediation role is useful. He expressed concern that a mandatory mediation may place an unwarranted burden on one of the parties. He recommended that private mediation prior to the Committee meeting remain optional.

Member Schrader stated that the Ordinance does not explicitly include the term "mediation." Schrader considers mediation during the RRAC meeting useful because the parties are often motivated to reach an agreement. He suggested that optional, professional mediation be offered prior to the Committee meeting. Additionally, the Committee should reduce the time

spent on mediation and focus more time on questions and determining the Committee's decision. He reiterated that Committee members are not professional mediators.

Staff explained the Program Administrator's role in processing rent increase submission through the scheduling of the rent increase review before the RRAC.

The Committee recommended that mediation and the RRAC process be defined in the Ordinance. Additionally, the Committee recommended that optional mediation prior to the RRAC meeting be encouraged.

2. Should rent increase criterion from Section 6-58.125 be included in the Committee's criteria when deciding a rent increase?

Member Friedman listed the criteria in Section 6-58.85 (B) under consideration by the Committee in determining rent increases. He stated that "just and reasonable rate of return" should be more clearly defined and that market rate should not be included in the Committee's consideration. He suggested adding "maintenance of Net Operating Income for the Base Year as adjusted by inflation over time provides a Landlord with a just and reasonable rate of return on property" to the Committee's criteria.

Member Schrader noted that the flexibility of the Committee's criteria is important; especially in cases when a landlord had not raised rent for many years. Member Griffiths agreed that more flexibility is better. Chair Sullivan-Sariñana stated that the Committee and the Hearing Officer play different roles. Hence, different criteria should be considered.

No recommendation from the Committee.

3. Should 5% remain the threshold for a Landlord Request for Rent Review? Should increases of 5% or less receive a binding decision from the Committee?

Chair Sullivan-Sariñana stated that 5% is an arbitrary threshold and has a significant impact on the negotiation. He expressed concern that this threshold limits discussion because many landlords expect at least a 5% increase.

Staff clarified that tenants can contest rent increases of 5% or less by contacting the Program Administrator.

Member Griffiths noted that many cities relate rent control to inflation. Member Schrader stated that the Bay Area's housing cost inflation is 4.8%. Member Schrader also noted that the 5% threshold affects what data is collected more than it affects whether or not a case comes before the Committee.

Member Griffiths noted 5% is a good threshold because it captures large rent increases, rather than every increase. However, he expressed concern that the Committee has not seen a tenant-initiated case for several months. He raised concern that the tenant may not believe

they have power to challenge increases of 5% or less because the Committee's decision is non-binding. He recommended that the Committee have binding authority for all non-exempt unit cases.

Member Schrader agreed and clarified that state law prevents municipalities from making binding decisions for certain units. He agreed it would be positive for the Committee to have binding authority on all non-exempt units, rather than being seen as a procedural process for increases of 5% or less.

Member Friedman agreed with the previous statements. He added that currently he believes a landlord can work around a Committee recommendation of less than 5%. He explained that if a landlord disagrees with a Committee recommendation of less than 5%, the landlord could rescind the current notice and serve a new notice equal to 5%, which would not receive a binding decision by the Committee.

Staff stated that removing the rent increase percentage threshold for binding decisions may increase the Committee's caseload and additional staffing may be necessary.

Member Schrader stated he would prefer to review those cases, even if it meant an increased caseload. Chair Sullivan-Sariñana agreed.

The Committee recommended that the Committee have binding authority for any non-exempt unit initiated by a tenant.

4. In some situations, two rent increases are offered simultaneously. This requires review if at least one offer is above 5%. Should lease options be limited?

Member Schrader stated that the RRAC should not limit lease options. Chair Sullivan-Sariñana noted that offering a large month-to-month rent increase option is a way to pressure tenants into accepting a 5% rent increase.

Staff clarified that multiple lease options are generally only seen at one property and month to month options are directed towards corporate leases. Staff explained that tenants receiving more than one rent increase offer are contacted by the Program Administrator. However, staff has found that most of these tenants do not contact staff back and usually accept one of the rent increase offers or chose to vacate the unit.

No recommendation from the Committee.

Motion and second to take a five minute break (Sullivan-Sariñana and Schrader). Unanimously approved.

5. Should the Ordinance allow short-term rentals without the offer of a one year lease option?

Member Schrader stated that this is not related to the Committee's role. Staff clarified that any Committee member can email their recommendations as a private citizen to the City Attorney's Office.

No recommendation from the Committee.

6. The Rent Review process and the Hearing Officer can be used to delay a rent increase as long as possible. Should we recommend changes?

Staff clarified that no case has been appealed and reviewed by the Hearing Officer.

No recommendation from the Committee.

7. Should language be added to clarify when a case is withdrawn from the RRAC process?

Member Schrader recommended that the Ordinance clarify there is no RRAC review of rent increase submissions when an agreement between tenant and landlord is reached prior to the RRAC meeting.

Member Griffiths and Chair Sullivan-Sariñana agreed it should be clear that the Committee does not make decisions on rent increases when the tenant and landlord have already reached an agreement.

The Committee recommended to add language to section 6.58-75 (D) that states a rent increase request is considered closed and withdrawn from the RRAC process when the Program Administrator receives an agreement between a tenant and landlord concerning the amount of the rent increase.

8. Should language be added to require all data on rent increase submissions to be shared publicly?

Member Friedman stated that the phrase "terms of agreement" in section 6.58-75 (D) indicates that the exact terms of an agreement must be reported to the Program Administrator. Member Schrader added that data collection is an important part of the Ordinance.

Staff clarified that currently any private agreement between tenant and landlord must state the terms of agreement by indicating a percentage range: 0-5%; 5.1-10%; or above 10%. Staff reports of all rent increase submissions are available on www.alamedarentprogram.org.

No recommendation from the Committee.

Staff summarized the Committee's recommendations:

- Professional mediation be offered and encouraged prior to the RRAC meeting

- RRAC decisions to be binding for tenant-initiated non-exempt unit cases
- Add language to Section 6.58-75 (D) that states a rent increase request is considered closed and withdrawn from the RRAC process when the Program Administrator receives an agreement between a tenant and landlord concerning the amount of the rent increase.

7.b. PUBLIC COMMENT

Erick Strimling: Speaker stated that he has never seen the mediation process work at a Committee meeting. He noted that many tenants and landlords are exhausted by the process. He explained that mediation is a well-defined term and should be facilitated by a professional prior to the Committee meeting. He stated many tenants feel pressure to sign rent increase agreements. He noted that tenants are often hesitant to submit requests for rent increase reviews before RRAC because they do not want to risk the relationship with their landlord. He suggested that staff always explain options to each tenant and landlord in separate meetings prior to any mediation. He stated that tenants should not be penalized for selecting a month-to-month option. Additionally, he emphasized that data is needed and the terms of agreements for all cases submitted to the Program Administrator should be public information.

Toni Grimm: Speaker stated that she appreciates the time and thoughtfulness of the Committee. She expressed disappointment that the Hearing Officer's criteria was not added to the Committee's criteria. She stated that the same criteria should be applied to each case.

Ed Paul: Speaker thanked the Committee for their work. He stated that the Committee process appears to be working. He noted that the process seems to be addressing the situation when an excessive rent increase is reported.

Motion and second for the following recommendations (Schrader and Griffiths). Approved by unanimous consent.

- Mediation be offered and encouraged prior to the RRAC meeting
- RRAC decisions to be binding for tenant-initiated cases with non-exempt units
- Add language to Section 5.58-75 (D) that if the Program Administrator receives an agreement between a tenant and landlord regarding a rent increase, then the case is considered closed and withdrawn from the RRAC process.

Staff clarified that these recommendations will be sent to the City Attorney and will be presented to City Council.

Motion and second for Chair Sullivan-Sariñana to present the Committee's recommendations at the City Council meeting. (Griffiths and Schrader). Approved by unanimous consent.

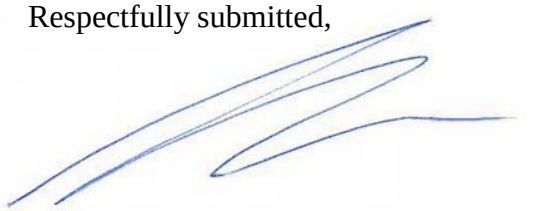
8. MATTERS INITIATED

a. None

9. ADJOURNMENT

The meeting was unanimously adjourned at 9:47 p.m.

Respectfully submitted,



RRAC Secretary

Claudia Young

Approved by the Rent Review Advisory Committee on June 5, 2017.