

**CITY OF EAST PALO ALTO
RENT STABILIZATION BOARD MEETING
WEDNESDAY, November 10, 2010
CLOSED SESSION – 7:00 PM
REGULAR SESSION – 7:30 PM
2415 UNIVERSITY AVENUE
City Council Chambers
EAST PALO ALTO, CA
Minutes**

RENT STABILIZATION BOARD CLOSED SESSION

1. CALL TO ORDER

The meeting was called to order by Chair Dorn at 7:08 p.m.

2. ROLL CALL

Board Members Present: Dorn, Randolph, Fremont, Hart, Ndegwa
Board Members Absent: Webster
Board Alternates Present: Allen
Board Alternates Absent:
Staff Present: Staff Ford, Staff Packard, Staff, ML Gordon, Deputy City Attorney Neelam Naidu

3. APPROVAL OF CLOSED SESSION AGENDA (Government Code § 54957.7(a))

Motion: It was moved (Randolph) and seconded (Fremont) to approve the agenda. Motion passed unanimously.

Chair Dorn: Mr. Allen is in the vacant seat.

4. CLOSED SESSION COMMUNITY FORUM

There were no comments from the public.

5. ADJOURNMENT INTO CLOSED SESSION

- 5.1 **Potential Litigation (Government Code § 54956.9)**
 - a. Rent Registration Fees

6. ADJOURNMENT FROM CLOSED SESSION

RENT STABILIZATION BOARD REGULAR SESSION

1. CALL TO ORDER

The meeting was called to order at 7:57 p.m.

2. ROLL CALL

Board Members Present: Dorn, Randolph, Fremont, Hart, Ndegwa
Board Members Absent: Webster
Board Alternates Present: Allen
Board Alternates Absent:
Staff Present: Staff Ford, Staff Packard, Staff, ML Gordon, Deputy City Attorney Neelam Naidu

3. APPROVAL OF AGENDA

Board Member Fremont asked that item 13, COMMUNITY FORUM, be moved ahead of item 6.

Motion: It was moved (Hart) and seconded (Fremont) to approve the agenda as amended.

4. ORAL REPORTS

4.1. Reports Out of Closed Session- (*Neelam Naidu, Deputy City Attorney*)

Deputy City Attorney Naidu reported that Rent Registration Fees were discussed in Closed Session, and the Board took action, with Randolph, Fremont, Dorn and Ndegwa voting in favor; Allen voting against; and Hart abstaining.

5. APPROVAL OF MINUTES

- Minutes not available for the October 13, 2010, regular RS Board meeting
- Minutes not available for the October 27, 2010, regular RS Board meeting

5.a. (old item 13). COMMUNITY FORUM

There were no comments from the public.

6. AGENDIZED ITEMS FOR POLICY AND ACTION

6.1 Report on and discussion of Rules and Regulations Committee meetings and update on progress of drafting Rules and Regulations Committee meeting minutes

Board Member Fremont reported that the Rules and Regulations Committee met last week and reviewed minutes from several prior meetings. The Committee discussed the registration regulations, exemption regulations, and change in procedure for promulgation of regulations. The Committee voted to approve changes recommended by staff with regard to registration regulations and voted to forward the exemption regulations and the change to regulation 627 regarding promulgation of regulations to the Board for a future meeting. He added that another meeting has not been scheduled.

Ms. Naidu reminded the Board to discuss the Exemption rules and, if desired, to direct staff to publish the notice in the newspaper to allow for the 20 days notice as well as scheduling the first and second reading to allow adoption of Exemption rules prior to January 1.

Board Member Fremont reported that the Rules and Regulations Committee discussed exemptions at some length. Draft regulations were presented to the Board which reflected the Committee's feedback. Key points include the issue of whether exemption is certified by the Board; the City will bill landlords and give them instructions for exemption. He called the Board's attention to Section B(9) which separated exemptions into two categories: categorical exemptions and use based exemptions. He pointed out that Appendix A of the Draft gave examples of the types of information that the City could use to determine whether a landlord met the criteria for exemption.

Board Member Hart expressed satisfaction with the Exemptions as drafted.

Board Member Fremont advised that taking prompt action by the Board was important because landlords, as part of the initial registration, needed to be provided notice of the exemption and the process for claiming exemption.

Board Member Allen thanked Mr. Baar for making changes to the Section 8 Housing language.

Board Member Fremont recommended that the Board direct staff to publish a notice for the public hearing.

Ms. Naidu pointed out that 20 days notice is required prior to the first reading.

Ms. Packard advised that the public hearing would be held on December 8 with the second reading on December 22.

Board Member Fremont reported that Rule 627 described the process for adopting new regulations and specifically set requirements for the public hearing notice as well as the interval between the public hearing and second reading. The recommendation given to the Rules and Regulations Committee by staff was reflected in the draft and was to reduce the notice period as well as change the second reading timeline to be no sooner than seven days after the first reading. The Rules and Regulations Committee discussed the fact that City ordinances do not require as much time between hearings and second readings.

Board Member Allen questioned whether there was any state law that determined the amount of time between the first and second readings.

Ms. Naidu explained there was no timing requirement for promulgation of regulations.

Chair Dorn asked that the public hearing be noticed on the promulgation of Board Regulations and the Exemption section of Rules and Regulations as soon as possible.

6.2 Discussion on distribution of Rent Stabilization Program brochures

Staff Ford reported that the Outreach and Education Committee discussed the brochures.

Board Member Hart reported that the brochures are at the printers and should be available within the next couple of weeks. The Outreach Committee discussed reviewing the new brochures when they arrive and looking at brochures for landlords. He added that Martha Packard's phone number is being added to the brochure.

6.3 Review and adoption of RSP January 1, 2011 – December 31, 2011 budget

Staff Packard advised that the budget is for the calendar year, January 1, 2011-December 31, 2011, and includes a summary budget, a detailed budget, and an addendum to the budget. Changes in the budget reflect changes in the program fees and the recommendation and comments of the Budget Committee. Funds are available to set up the administrative needs of the Program. Staff is recommending that the Board adopt the budget.

Chair Dorn asked for an explanation of the increase in City Manager and Fiscal Operations.

Ms. Packard explained that the Program has been moved to the City Manager's Office; the fiscal operations were done at her request because she believed the basic collection of fees should be done by the Finance Department, and unpaid fees should be aggressively pursued.

Board Member Hart advised that the Outreach and Education Committee has had a good relationship with Community Legal Services (CLS) but did not believe they should be automatically included in the budget; the budget should include fees for services for someone to help with the outreach.

Board Member Allen pointed out that the ad hoc Budget Committee requested that Ms. Packard expand out the items in order for the Board to discuss the items; the easiest way to talk about contracts in the past was to say that CLS was one of the contracts.

Ms. Packard indicated that all names for names should be removed for lobbyists and tenant outreach.

Board Member Fremont questioned the difference between the IT and Technical Oversight line items.

Ms. Packard responded that the IT line item was for the Redwood City staff who are currently providing IT services to the City with additional budget to be used for programmers.

Board Member Allen questioned the line item of \$40,000 for City Attorney, noting that \$74,000 was budget the prior year; Professional Services included a line for outside Legal Services. He questioned whether \$80,000 was anticipated for outside litigation expenses.

Ms. Packard explained that the \$74,000 was budgeted by the Council; the \$40,000 reflected the actual time the City Attorney's Office spent on the Rent Board Program directly. The "Outside Legal Counsel" was for special rent control legal services and was much less than the prior year's budget of \$150,000.

Board Member Allen assumed that "Management Consulting" included the contract for the writing the Rent Stabilization Program's software needs.

Ms. Packard explained that the "Management Consulting" was for technical oversight and IT services for software.

Board Member Allen recalled that that the Board initially discussed a quote from West Hollywood of \$45,000 and a quote from Redwood City of \$35,000. He questioned whether there was enough money in the event the Board wanted to go with the West Hollywood quote.

Ms. Packard noted there had been discussion about a Phase I and Phase II System; the Phase I would require transitioning from paper to computer, updating the website, and having a screen where registration and program information can be received, effective January 1.

Board Member Allen wanted to see the Technology Committee get together early in 2011 to push to have an RFP done for the software program.

Ms. Packard advised that if the Board wanted to go ahead with setting up the program and buying computers, that would replace the City's ability to transition at the current time from paper to computer and have the registration process set up beginning January 1.

Board Member Allen pointed out that staff has Excel and could prepare a template to enter information. He added that the \$50,000 in computer equipment seemed a high amount.

City Manager ML Gordon recalled that in 2009, the City Council approved \$30,000, and the Rent Board came back and asked for an increase to \$53,000, which the Council approved.

Board Member Fremont questioned whether the Hearing Examiner retainers were paid regardless of whether the Hearing Examiners actually did work on hearings

Mr. Gordon explained the Hearing Examiners were paid based on their service.

Ms. Naidu explained that all the Hearing Examiners had individual contracts that were signed with the City annually; and payment was hourly.

Board Member Fremont questioned whether the Clerical Support line item was for temporary support to help with processing registration certification.

Ms. Packard responded that the Clerical Support line item was for clerical help to do data input and for the person who would do the unit survey.

Board Member Fremont referred to the Advertising Services and questioned whether the amount listed included the fact that there would be a lot of regulation activity going on into the next year.

Ms. Packard explained that the amount was taken from the prior budget; she believed there were sufficient funds for all the noticing. She added that staff is trying to find a system for the Program's immediate needs which was to get rid of paper for billings, set up a system for petitions and registration, to have a user-friendly Program ready when the registration forms come back, and an ongoing program to monitor the Program needs.

Board Member Allen suggested that rather than setting a fee based on the budget, the Board leave it to the Rent Program office to do the calculations, divided by the number of units to be determined by the Rent Program office and come up with the fee.

Ms. Packard said staff recommends that the Board approve the budget and that the registration fee for the current year be \$284.

Motion: It was moved (Allen) and seconded (Hart) to accept the budget as prepared by staff in the amount of \$680,730 with changes to categories expressed by various Board Members. Motion passed unanimously.

6.4 Establishment of annual RSP Registration Fee (for January 1, 2011 – December 31, 2011)

Chair Dorn noted that the staff recommendation for the registration fee was \$284; she questioned why that amount was being collected, since the budget was \$40,000 more.

City Manager ML Gordon explained that in the past, the City had taken the fee and multiplied it by the number of units in the City; however, the full amount was never collected. He believed Ms. Packard's rationale was what was assumed to be collected. He noted that during his conversation with Ms. Packard, the Office would become more aggressive with landlords who had not paid their fees.

Ms. Packard explained that she would not assume that there would be units that would not pay; however, she conceded that there would be units that would pay late, perhaps at the end of the year.

Board Member Hart questioned whether Ms. Packard had any idea of the number of landlords that had not paid in the past. Ms. Packard responded that the number was quite high in the past. During the past year, there were 400 units that did not pay.

Board Member Allen advised that he had served on the Board since 2001 and explained that when the time came to determine the registration fee, the Board's policy was to take the budgeted amount and divide that by the known number of residential units that would be billed.

Ms. Packard pointed out that the Rent Stabilization Program was a fee-based program; the fees needed to support the Program which was outlined in the Budget.

Board Member Allen advised that the Board had authorized the City Attorney to send notices to landlords who had not paid their fees and to tell them that they were liable to have a lien attached to their property.

Board Member Fremont clarified that the recommendation for the fee of \$284 took into account the collection history of the Program in the past and building in a contingency, with the anticipation that the Program would collect close to the budgeted amount approved.

Ms. Packard responded that was correct.

Motion: It was moved (Fremont) and seconded (Hart) that the Board accept the staff recommendation to set the fee for the calendar year 2011 at \$284. Motion passed with Allen voting “no.”

6.5 Review and recommendations on formats of meeting minutes

Ms. Naidu reported that meeting minutes are not intended to record words and statements of what each Board Member said; however, if litigation were anticipated, the Board or Legal Counsel could direct staff to have certain items transcribed. She explained that the City Council uses Action Minutes which only include actions taken by the Council and a record of each member’s votes. She added that approval of meeting minutes should occur on the Consent Calendar, and only substantive changes to the minutes should be discussed. She included, with her staff report, minutes from the East Palo Alto City Council, the Berkeley Rent Board, and the Oakland Rent Board. Staff’s recommendation is for the Board to adopt Action Minutes and direct staff to include approval of the meeting minutes under the Consent Calendar. The suggestion was to simplify the meeting minutes to emphasize the action taken. She added if the Board chose to keep the minutes as they currently are written, the Board would need to allocate additional funds for staff time in correcting the minutes and for transcription costs.

Board Member Hart pointed out that Action minutes would result in a quicker turn around time and would eliminate detail in the minutes. He questioned whether that would be to the Board’s advantage or disadvantage.

Ms. Packard responded that Action minutes would be to the Board’s advantage because the Board would be able to spend more time on more important items.

Board Member Allen clarified that the Board, for some time, hired an outside transcriptionist to do the minutes.

Ms. Packard responded that the Board hires a transcriptionist to transcribe the tapes. She did not believe that the Council or Planning Commission hired an outside person to do minutes.

Board Member Allen recalled that the Board tried Action minutes at one time and then went back to the current minute format. He had no preference.

Chair Dorn wants to see the entire motion in the minutes but agrees that the staff and Board would be able to eliminate time spent on mistakes in the minutes.

Board Member Hart favored going with Action minutes in order to free up staff to spend time doing more productive work.

Ms. Packard pointed out that the Committee minutes were also very extensive. Board Member Allen recalled that at one time, minutes were not prepared for Committee meetings; tapes were made of the meetings; and reports were made at Board meetings.

Chair Dorn and Board Member Fremont favored the Oakland format.

Item continued to the next meeting to give the Board members an opportunity to review the samples of minutes that were provided in the Board's packet.

7. CONSENT CALENDAR

8. PUBLIC HEARING

8.1 Action on proposed revisions to Section 800. Introduce first reading and public hearing on Section 800 -- Registration Regulations

Chair Dorn advised that the recommendation is that the Rent Stabilization Board introduce, hold a first reading public hearing on the proposed Registration Rules and Regulations.

Deputy City Attorney Naidu reviewed the Registration Regulations, dated November 8, 2010, 3:35 p.m. and pointed out changes that were made.

Board Member Fremont referred to Section B, page 1, and read the last clause, "Unless the unit is exempt from registration pursuant to Section 5(b) or 5(c) of the Ordinance." He commented that 5(a) is the categorical exemption which was not mentioned; Section 5(b) is a partial exemption; and Section 5(c) is the exemption for Section 8 units. The text of the ordinance he has specifically starts with "exempt from Section 9-10," which suggests the units are not exemption from Section 8. He believed Section 5(c) should be dropped.

Ken Baar, consultant, agreed with dropping Section 5(c).

Board Member Fremont referred to page 2, subsection (r), he suggested changing the word, "varying" to "vary." He referred to page 2, D(1), Board Mailing of Registration Form, and recalled that the discussion was to specify December 1 rather than November 1. Board Members concurred. He referred to page 3, item 5, and recalled that the clause,

“within 30 days of the filing of the initial registration...” he believed it would state “annual registration.” He recalled discussion at the meeting describing the form as being “approved by the Board” versus “provided the Rent Stabilization Program.” He questioned whether page 3, section (f) should state, “a form provided by the Rent Stabilization Program.”

Chair Dorn referred to page 10, B(4), and made a correction, “...a decision within 30 days from the date of the public hearing.”

Ms. Naidu made a change on page 10, B (5), “the decision of the Administrator Board ” should be “the decision of the Administrator.”

Chair Dorn announced that the Board reviewed the first reading of the Registration section of the Rules and Regulations, as amended.

Motion: It was moved (Fremont) and seconded (Randolph) to open the Pubic Hearing. Motion passed unanimously.

Staff Ford read a written comment from Juan Gabriel, YUCA, suggesting there be a system set in place where the Administrator should update the Board as soon as possible of any inaccuracies of the Registration Statement. The importance of the individual’s keeping track of compliance should be made clear. Mr. Gabriel’s comments also requested that all records should be electronically stored in the database to ensure data will not be lost and can be backed up.

Motion: It was moved (Allen) and seconded (Fremont) to close the Public Hearing. Motion passed unanimously.

9. RESOLUTIONS or RULES

10. REPORTS OF COMMITTEES AND STAFF

- 10.1 Report out from RS Board Members and Committees:
 - a. Operational Excellence (**Allen & Fremont**) – No report
 - b. Outreach/Education (Dorn & **Hart**, Ndegwa)

Board Member Hart reported that the Outreach/Education Committee decided to discuss the notice of Board Meetings and directed staff to write a draft of the notice for the landlords to notify the tenants when they move in to let them know about the Rent Stabilization Ordinance.

- c. City Council Liaison (**Hart & Fremont**)

Board Member Hart reported that the City Council Liaison Committee is working on scheduling a meeting with the City Council members, possibly on November 23.

- d. Rules and Regulations (**Webster**, Fremont & Randolph) – No report

11. ADMINISTRATIVE ITEMS

12. WRITTEN COMMUNICATIONS

13. COMMUNITY FORUM

14. RECOMMENDATIONS FOR FUTURE ACTIONS AND AGENDA ITEMS

Chair Dorn advised that the second reading of the Registration Regulations will come back to the Board, as well as further discussion on the format of minutes the Board would like to have. Discussion of brochures will also be on the agenda.

15. ADJOURNMENT

Upon motion by Board Member Fremont, seconded by Board Member Allen, and passed unanimously, the meeting adjourned at 10:14 p.m.