



RENT BOARD
September 27, 2023
5:00 PM

ZOOM INFORMATION:

- a. Please click the link below to join the webinar:
<https://portlandmaine-gov.zoom.us/j/85197146617?pwd=UzNBeTkvcWNPUWFKeHNpWk1ScVpuQT09>
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II. ROLL CALL:

III. APPROVAL OF MINUTES

- a. August 23, 2023 Minutes

IV. COMMUNICATIONS:

Please note: Written public comment must be received via email (rentboard@portlandmaine.gov) by 12pm the day before the scheduled meeting. Please make sure that the subject line reads "Written Public Comment"

- a. Sec 6-234(a) - 2024 Annual Increase Percentage (AIP) - Public Comment

V. UNFINISHED BUSINESS:

- a. Rent Increase Application - Public Comment
Owner: Louis Christen
Agent: Bernstein Shur, Attorney Zachary Brandwein
Address: 164 Pearl St, Condo #C
CBL: 026-L-004-00C

VI. NEW BUSINESS

VII. ADJOURN

II. Roll Call

Elliott Simpson, Tenant, At-Large - Chair
Barbara Vestal, Landlord, At-Large
Patricia Jane Washburn, Tenant, District 1
Matthew Walker, Tenant, District 2
William Keefer, Homeowner, District 3
Antwane Mills, Tenant, District 4
Philip Mathieu, Tenant, District 5

Staff present:

Katlyn Sawyer, Licensing & Registration Coordinator
Zachary Lenhart Licensing & Housing Safety Manager
Benjamin Plante, Esq., Counsel for the Rent Board

III. Workshop - 00:01:13

A. Chapter 6 Buildings (City Code) - 10/18/2021 version

Attached is the previous version of the rent control ordinance. In November 2022, amendments were made.

New MNOI formula went into effect on 3/1/2023. The Port Property applications were submitted on 2/28/2023, meaning that these need to be viewed under the prior ordinance (attached).

00:04:30 - Zachary Lenhart, Licensing & Housing Safety Manager for the Housing Safety Office (HSO), reviewed the allowable increases that were in the previous ordinance.

00:08:10 - Benjamin Plante, Esq., Counsel for the Rent Board, read a summary of the ordinance that was drafted by the Cumberland County Superior Court after a case was challenged in court.

Most of the Port Property applications would be based upon Sec 6-234(b)(5)(c) - a rent board approved increase attributable to increased housing service costs.

Definition of Rent is located within Sec 6-232.

00:25:16 - Sec 6-234(b)(5) - *In addition to the above rent adjustments*, the Rent Board may approve additional rent increases properly demonstrated by the Landlord, attributable to..."

IV. Approval of Minutes - 00:44:17

A. July 26, 2023 Minutes

The Vice Chair makes a motion to approve as written, seconded by Patricia Washburn. Vote: 7-0

B. August 16, 2023 Minutes - 00:45:17

Patricia Washburn makes a motion to approve as written, seconded by the Chair. Vote: 7-0

V. Communications - 00:46:12

A. Written Public Comment

00:50:13 - David Bergeron with Port Property was given 3 minutes to present the public comment submitted regarding the amortization schedules in the MNOI application. This is located starting on page 108 in the agenda packet.

No action was taken on this item.

VI. Unfinished Business - 00:54:25

No items to be discussed

VII. New Business - 00:54:35

00:55:40 - Barbara Vestal makes a motion to recuse Matt Walker from participating in all applications where Port Property is involved (items A-I) due to the appearance of conflict of interest based on statements made about the applicant. Seconded by the Vice Chair. Vote: 6-0 (Matt Walker was not able to vote on this motion).

A. Rent Increase Application - Public Comment - 00:59:22

Owner: Grant Street Realty Group LLC

Agent: Caleb Normandeau with Port Property

Property Address/Unit #: 61 Grant St, Units 1-6 (Legal is 65 Grant St)

CBL: 048-E-016-001

Type of Increase: Increased Housing Service Costs

David Bergeron with Port Property will be presenting these applications (Items A-I).

01:07:21 through 01:12:43 - A current tenant, Martin Lodish with Portland Stage, who rents all 6 units from Port Property spoke in regards to the application.

01:13:02 through 01:16:03 - Public comment was received from Matt Walker

The applicant responds to comments made

01:21:56 through 01:24:17 - Martin Lodish responds to new information provided by the applicant

The applicant responds to comments made

Remote Rent Board Meeting Minutes - Wednesday, August 23, 2023

01:57:11 - Barbara Vestal makes a motion that as a straw vote, the Board agrees that it is the intent of the Board to approve an increase of \$80.82 per month per unit for increased housing service costs at 61 Grant Street pending the applicant providing more complete documentation of management fees with the final vote to be taken at the September meeting. Seconded by the Vice Chair. Vote: 4-2 (Washburn and Keefer voted NO, and Walker was recused).

This was approved tentatively.

02:01:50 - The Vice Chair provided additional information about the documentation he would like to see Port Property resubmit for the final vote in September

B. Rent Increase Application - Public Comment - 02:03:37

Owner: Shepley LLC

Agent: Caleb Normandeau with Port Property

Property Address/Unit #: 18 Casco St, all 62 units

CBL: 037-C-006-001

Type of Increase: Increased Housing Service Costs

No tenants spoke as objectors

02:07:52 through 02:10:15 - Public comment was received from Matt Walker

The Chair did confirm that the applicant did submit a rent increase application request under capital improvement costs in 2022

02:27:00 - Barbara Vestal makes a motion that the Board finds as a straw vote, that it is prepared to approve the application concerning 18 Casco Street for an increase of \$40.80 per unit per month based on increased housing service costs; subject the Board reviewing the draft decision at the next meeting and also the applicant providing additional information on the reasoning behind the management fee for review by the Board prior to approving the draft decision. Seconded by the Vice Chair. Vote: 4-1 (Washburn voted NO, Keefer was absent, and Walker was recused).

This was approved tentatively.

02:30:03 through 02:34:24 - The Board takes a quick break

C. Rent Increase Application - Public Comment - 02:36:15

Owner: Ambassador LLC

Agent: Caleb Normandeau with Port Property

Property Address/Unit #: 37 Casco St, all 92 units

CBL: 037-D-007-001

Type of Increase: Increased Housing Service Costs

No tenants spoke as objectors

02:38:07 through 02:40:22 - Public comment was received from Matt Walker

Remote Rent Board Meeting Minutes - Wednesday, August 23, 2023

02:58:33 - Barbara Vestal makes a motion that the Board finds as a straw vote, at this point with the intent that the Board would approve the rent increase for 37 Casco Street of \$56.78 per month per unit based on increased housing service costs; subject to the final decision being drafted for review by the Board in September. And also subject to the applicant providing the additional substantiation of the management fee calculation for review by the Board prior to approving the increase. Seconded by the Vice Chair. Vote: 4-1 (Washburn voted NO, Keefer was absent, and Walker was recused).

This was approved tentatively.

D. Rent Increase Application - Public Comment - 03:01:56

Owner: Forty Nine LLC

Agent: Caleb Normandeau with Port Property

Property Address/Unit #: 19 Parris St, Units 1-9

CBL: 033-I-005-001

Type of Increase: Increased Housing Service Costs

No tenants spoke as objectors

03:04:16 through 03:06:41 - Public comment was received by Matt Walker

03:12:38 - Barbara Vestal makes a motion that the Board agree that as a matter of a straw vote, that the Board would approve the rent increase for 19 Parris Street of \$94.22 per month per unit based on housing service costs; subject to a formal decision with findings being presented to the Board for review at the September meeting and that prior to that meeting the applicant provides additional documentation of the management fees for review before voting on the final decision. Seconded by Antwane Mills. Vote: 4-1 (Washburn voted NO, Keefer was absent, and Walker was recused).

This was approved tentatively.

E. Rent Increase Application - Public Comment - 03:15:23

Owner: Spar Inc

Agent: Caleb Normandeau with Port Property

Property Address/Unit #: 20 Melbourne St, all 7 units (Legal address is 18 Melbourne St)

CBL: 014-G-014-001

Type of Increase: Increased Housing Service Costs

No tenants spoke as objectors

03:17:24 through 03:19:36 - Public comment was received from Matt Walker

03:30:38 - Barbara Vestal makes a motion that the Board finds as a straw vote, that the Board would approve the rent increase for 20 Melbourne Street of \$93.37 per month per unit based on housing service costs; subject to a draft findings and formal decision to be reviewed in September and prior to that the applicant would submit supporting materials for the method of calculation for the management fees for review by the Board prior to voting. Seconded by the Vice Chair. Vote: 4-1 (Washburn voted NO, Keefer was absent, and Walker was recused).

This was approved tentatively.

F. Rent Increase Application - Public Comment - 03:32:50

Owner: West Street Partners LLC

Agent: Caleb Normandeau with Port Property

Property Address/Unit #: 40-42 West St, all 12 units (Legal address is 40 West St)

CBL: 063-H-004-001

Type of Increase: Increased Housing Service Costs

No tenants spoke as objectors

03:34:26 through 03:36:03 - Public comment was received from Matt Walker

03:39:00 - Barbara Vestal makes a motion that the Board finds as a straw vote, that the Board would approve the rent increase for 40-42 West Street of \$38.78 per month per unit based on increased housing service costs; subjected to review of a drafted decision memorializing these findings and subject to the applicant providing information to explain the management fee calculation with the Board's review prior to voting on the decision. Seconded by the Vice Chair. Vote: 5-0 (Keefer was absent and Walker was recused).

This was approved tentatively.

G. Rent Increase Application - Public Comment - 03:41:48

Owner: Market Milk Partners LLC

Agent: Caleb Normandeau with Port Property

Property Address/Unit #: 46 Market St, all 5 units

CBL: 032-E-010-001

Type of Increase: Increased Housing Service Costs

No tenants spoke as objectors

03:43:04 through 03:44:45 - Public comment was received from Matt Walker

03:51:50 - Barbara Vestal makes a motion that the Board table the application until the next regular meeting and request that the applicant provide additional information about the management fee for 2021 and 2022 and the basis for those numbers. Seconded by the Vice Chair. Vote: 5-0 (Keefer was absent and Walker was recused).

This application was tabled to the September meeting.

H. Rent Increase Application - Public Comment - 03:53:14

Owner: West Company

Agent: Caleb Normandeau with Port Property

Property Address/Unit #: 55 William St, all 12 units

CBL: 116-A-025-001

Type of Increase: Increased Housing Service Costs

No tenants spoke as objectors

03:54:25 through 03:55:50 - Public comment was received from Matt Walker

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04:01:31 - Barbara Vestal makes a motion that as a straw vote, the Board would approve the rent increase for 55 William Street of \$86.09 per month per unit based on increased housing service costs; subject to it coming back at the September meeting with a draft decision to be reviewed and prior to voting, the applicant provide additional information about the calculation and documentation about the management fee. Seconded by the Vice Chair. Vote: 5-0 (Keefer was absent and Walker was recused).

This was approved tentatively.

I. Rent Increase Application - Public Comment - 04:03:10

Owner: West Company

Agent: Caleb Normandeau with Port Property

Property Address/Unit #: 60 Carleton St, all 4 units

CBL: 063-D-013-001

Type of Increase: Increased Housing Service Costs

No tenants spoke as objectors

04:04:17 through 04:06:28 - Public comment was received by Matt Walker

04:12:45 - Barbara Vestal make a motion that as a straw vote, the Board would approve the rent increase for 60 Carleton Street of \$194.98 per month as an increased housing service cost; subject to a formal decision being drafted for review in September and prior to that the applicant provide additional documentation of the management fee and how it was calculated. Seconded by the Chair. Vote: 4-1 (Washburn voted NO, Keefer was absent, and Walker was recused).

This was approved tentatively.

J. Rent Increase Application - Public Comment - 04:15:19

Owner: Louis Christen

Agent: Bernstein Shur, Attorney Zachary B. Brandwein

Property Address/Unit #: 164 Pearl St, Condo C

CBL: 026-L-004-00C

The agent is speaking on the owner's behalf for this item.

This application is to be reviewed under the MNOI formula, as it was also submitted using the new application.

No tenants spoke as objectors

No public comment was received

04:45:38 - Barbara Vestal makes a motion to approve the application for 164 Pearl Street, Unit C to approve an increase of \$240.95 per month but subject to the ten percent (10%) cap per year and whatever rental agreement and landlord/tenant regulations apply. Seconded by Patricia Washburn.

Barbara Vestal gave permission for Board to seek comment from applicant

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04:52:31 - Barbara Vestal provided a minor clarification of her motion; that the approval for the \$240.95 is based on the MNOI application and that the Board find that the applicant had not carried the burden of proving special or peculiar circumstances under Section 19 of the MNOI analysis. Seconded by Patricia Washburn.

Barbara's motion has been withdrawn

04:57:43 - The Vice Chair makes a new motion that the Board table this application to the September meeting, and ask that the applicant provide receipts documenting the expenses shown in the application. Seconded by Patricia Washburn.

Barbara confirms withdrawal of her motion.

Vote on Vice Chair's motion: 6-0 (Keefer was absent).

This application will be first under Unfinished Business at the September meeting

VIII. Adjourn

04:59:40 - Patricia Washburn makes a motion to adjourn the meeting. Seconded by Matthew Walker.
Vote: 6-0 (Keefer was absent)

Meeting end time: 10:03pm

Under the old rules for rent control, the automatic increases are

6-234(b) A Landlord may only increase the rent charged for a Covered Unit once within a Rental Year, by an amount that conforms to the following specifications:

1. *Annual Increase Percentage.* Unless a Landlord qualifies for an additional increase as further described below, rent for a Covered Unit may not be increased by more than the Allowable Increase Percentage.
2. *Tax Rate Rent Adjustment.* If the mil rate within the City of Portland is altered for the subsequent fiscal year a Landlord may, in addition to the Allowable Increase Percentage, increase rent by the Tax Rate Rent Adjustment for the subsequent Rental Year.
3. *New Tenancy.* A landlord may increase the rent on a Covered Unit by five percent (5%) of the base rent in addition to any other allowable increases when a new tenant occupies a unit. This increase may be applied at most once per year, regardless of the number of new tenancies.
4. *Banked Rent.* If the Landlord has banked additional rent increases, in accordance with Section 6-235 below, this banked amount, in whole or in part, may be added to the increases permitted by subsections (i) and (ii) above.

And the Board increases are

6-234 (b) 5. *Additional Rent Board Approved Increases.* In addition to the above rent adjustments, the Rent Board may approve additional rent increases properly demonstrated by the Landlord, attributable to:

- a. Capital improvement costs, including financing costs;
- b. Uninsured repair costs;
- c. Increased housing service costs; and
- d. Any additional increase, within the opinion of the Rent Board, required to allow the Landlord to receive a fair rate of return.

All of these items are distinct, and any particular cost of business as a landlord should be able to fall into one, and only one, of these bins. The board should note that the additional board approved increases are only here for special circumstances which are not covered by the automatic increases.

A number of applications which the board has or will consider fall under the old ordinance language, specifically seeking to raise rent for "Increased Housing Service Costs". The board has seemingly struggled to interpret what "Increased Housing Service Costs" means.

The applicant is interpreting "Increased Housing Service Costs" to mean "Increased Costs of Housing Services", however this interpretation requires that the words be rearranged and is already covered by the Automatic Annual Increase Percentage. Inflation does and will always happen, thus the "costs of housing services" are always going to increase. The board needs to determine if inflationary costs are a special circumstance that 6-234 (b) 5 c actually targets, even though inflation is already covered in another section.

It is clear as can be, 6-234 (b) 5 c has nothing to do with normal cost increases due to inflation. This is already covered and considered in 6-234 (b) 1. No reasonable interpretation of this ordinance can come to the conclusion that the ordinance intends to award inflation increases twice; once automatically and a second time if you come to the Rent Board. Therefore "Increased Housing Service Costs" must mean something else.

It is easy to determine what “Increased Housing Service Costs” actually does mean. We do not need to rearrange the words, as the Applicant does and the Board would need to do in order to award these applications. Instead, 6-234 (b) 5 c obviously and specifically means “Increased Housing Service Costs” as it is written. If a landlord increases the housing services at any property this will incur a cost. Section 6-234 (b) 5 c seeks to allow a landlord to be able to recover the costs associated with “increased housing services”. No other category of increase under section 6-234 (b) considers this scenario, therefore 6-234 (b) 5 c must pertain to this special circumstance.

For example: Consider an applicant who installed a pool at their property. The installation of a pool is likely a Capital Expense under 6-234 (b) 5 a. However, having increased the housing services at the property, the landlord is likely to incur costs associated with maintaining that pool. Regular cleaning, chemicals, winterizing, and other tasks will be required of this new pool yet these are not considered a capital improvement. Thus to cover those “Increased Housing Service Costs” the applicant would obviously need to apply using the “Increased Housing Service Costs” provision in the ordinance.

This is different from the circumstance before the board. Here, an applicant is demonstrating that their costs of housing services have increased, not that they have increased the housing services and incurred a new cost.

Think about it this way - “Increased Housing Service Costs”.

What does the word “Increased” modify?

- Any reasonable view would determine that the word “Increased” modifies the words it is most immediately next to. That is, “Housing Service” is modified by “Increased”. The housing services are increased, thus resulting in costs.
 - In this interpretation an “Increased Housing Service Costs” application must describe and the board must determine the increases in housing services that were provided.
- In the Applicant’s, and possibly the Board’s, view the word “Increased” is being used to modify “Costs”. That is, the costs have increased for the current housing services.
 - Again, this is already covered by the automatic inflation increase.
 - It requires one to move the words around in the ordinance language in order to interpret 6-234 (b) 5 c this way. In the ordinance, the word “costs” is the word farthest away from “increased”.

Therefore it is obvious and clear that the only reasonable way to interpret “Increased Housing Service Costs” in 6-234 (b) 5 c is to apply it only in circumstances not already covered by another section of 6-234 (b) and furthermore do not require rearranging the words in an order which facilitates an alternative interpretation.

Do not rearrange the ordinance language just to give the largest landlord in town two inflationary increases per year, while no other landlord in town will ever be allowed this opportunity. Just read the ordinance as it is already written and enacted, without jumbling up the words to twist the language and determine if these applications do in fact merit rent hikes based on “Increased Housing Service Costs”.

Decide and be clear and specific - does “Increased Housing Service Costs” mean:

- “Increased Housing Service Costs”
Or
- “Increased Costs of Housing Services”

I urge the board to consider the option that does not require the rewrite of the ordinance language in order to double award inflation increases for those which are already automatic.

City of Portland – Housing Safety Division
LANDLORD APPLICATION FOR RENT INCREASE SUMMARY

Date of Hearing:

August 23, 2023 – Tabled to September 27, 2023

Owner Name and Address:

Louis Christen, 239 Cumberland Ave, Portland, ME 04101

Agent Name and Address:

Bernstein Shur, Attorney Zachary B. Brandwein, 100 Middle St, Portland, ME 04101

Property Address and Unit:

164 Pearl Street, Condo #C

CBL:

026-L-004-00C

Tenants/Interested Parties:

Yes