

Minutes

Remote Rent Board Meeting - Held Via Zoom
Wednesday, June 23, 2021

Start time: 5:02PM

II. ROLL CALL

Austin Sims, Homeowner, District 5 - Chair Pro Tem
Barbara Vestal, Landlord, At-Large - Vice Chair Pro Tem
Christopher "Buddy" Moore, Tenant, District 1
Michelle Dunham, Landlord, District 2
Elliott Simpson, Tenant, District 3
Ian McCracken, Landlord, District 4
*Elias Kann, Tenant, At-Large (arrived late)

Staff Present:

Michael Goldman, Corporation Counsel
Katlyn Sawyer, Licensing & Registration Coordinator
Zachary Lenhart, Licensing & Housing Safety Manager

III. MINUTES

Barbara Vestal moves to accept the minutes as written.

- Austin Sims had one amendment to the proposal; on page 8 where it says "Austin clarified a potential motion on the table is to visually adopt the draft.."
- Change the word visually to provisionally

Barbara accepted the amendment to her motion

2nd by Michelle Dunham

Vote: 6-0 (Elias Kann was absent)

IV. VOTE FOR CHAIR & VICE CHAIR

Austin Sims reviewed with the Board that during its first meeting, it was unanimously agreed upon provisionally electing a Chair & Vice Chair for the first two months to allow such time for Board members to come to know one another. The Board has reached the agreed upon time to nominate an elective Chair & Vice Chair who will hold their positions for the remainder of the Rent Boards' first year - from tonight's meeting 6/23/2021 until the regular meeting in April of 2022.

Ian McCracken made a motion to stick with the current Chair (Austin Sims) & Vice Chair (Barbara Vestal).

2nd by Elliott Simpson

Vote: 6-0 (Elias Kann was absent at time of vote)

*Elias Kann joined the meeting

V. RATE OF CALCULATION AND CAPITAL IMPROVEMENT COSTS

Elias Kann presented the document to the Board

Upon research, it was gathered that fair return on investment and fair rate of return were the same.

Examples were provided on how courts in Maine and on the Supreme Court level have defined fair rate of return as it's not clearly defined in other rent control ordinances.

- Best examples that were found in the context of Utility regulation

- Regulation that denies fair rate of return is a de facto way of taking. The minimum goal is to define fair rate of return so that it does not constitute a taking of someone's rights to their property to make money

- Case law from both the Supreme Court & Maine Supreme Court

- Talks about determinations involved for rate making in regards to public utility rates

The Maintenance of Net Operating Income (MNOI) method seems to be the most common and most fair.

- Accounts for increased operating expenses overtime

- Different ways that rent regulation can adjust that amount for inflation to make sure the Landlord is getting a fair rate of return

- Provides a dollar for dollar passthrough meaning that for every dollar the Landlord increases operating expenses by they are allowed to offset the increased operating expense

-Capital Improvement Costs-

Landlords should be incentivized to do necessary maintenance and improvements but to also protect tenants from rent increases that they cannot afford.

- Replacements should be operating expenses whereas improvements can be billed as capital improvements costs

Many jurisdictions have separate amortization schedules, meaning that there's a permitted rate for capital improvement costs. Portland does not have that, only the 10% cap which governs how much you can increase the rent each year for capital improvement costs

One of the major issues with capital improvement costs is whether they should expire or not.

- The rent increase should be permanent but not adjusted for inflation
- If it expires, rents will be fluctuating on a rolling period depending on what capital improvements people do and when they expire
- If no interest is included, it balances out the expiration and permanent rent increase

Another issue is how to define it - mentions the definition from the IRS.

- An example being that a small section of a roof being fixed is more of an expense versus replacing the roof as a whole would be an improvement.

*"Buddy" Moore made a few comments:

The implementation of this can't result in a person losing money. By using the Maintenance of Net Operating Income (MNOI), it will create a framework where everything is accounted for that is not already part of the law. So, if someone is still operating at a loss and they can prove that, then the Board can give them a higher rent increase.

*Barbara addressed some concerns -

Other ways that other people have calculated these things

Fair rate of return and utility comparison - difference between what is allowed for additional Board increases and the MNOI.

After 1983, there was a 1995 law in California - subject to vacancy decontrol.

*Ian McCracken suggested that the formula could be rewritten if it is a catchall to represent the forms that the Board has already created, to something such as:

Base Rent + Allowed Increases (already taken into account) -/+ Other Capital Expenditures (not discussed)

This formula is not meant to be used in replacement of, only after as consideration. This could be used as a general guide, not as a sole determinant of approval. Each case would be treated uniquely. To suggest using this as a benchmark for if someone comes to the Board that their net operating income is much lower and is essentially losing money - the Board could use this as a best practice starting point for deliberation.

Barbara Vestal directed the following questions to Michael Goldman, Corporation Counsel

-Sec 6-234 (b)(5) Additional Rent Board Approved Increases

Does the Board need to work toward a specific formulation for (d) or can the Board leave it vague for now?

-If the Board can look at some hypothetical examples to talk it through as a Board first vs practicing on live people. But to use live situations that may come about

Austin asked that Michael has Anne Torregrossa (who is absent at this meeting) email the Board before the next Board meeting so they can have it before the agenda packet gets published

Elliott Simpson motioned to move to the next agenda item. The motion was then temporarily held so that Buddy could speak.

Buddy Moore suggested that Board members could reach out to other municipalities who have gone through setting up a Rent Board. It might be informative for Board members to speak with someone who has been doing it for a while and working with the laws.

Elliott's motion to move to the next agenda item has been untabled
2nd by Buddy Moore
Vote: 7-0

VI. TENANT INTAKE FORM

A. TENANT COMPLAINT FORM CLEAN DRAFT

Buddy Moore presented the form

Added:

- Multiple contact lines for tenants with phone numbers and email addresses.
- Termination of Tenancies-At-Will
- Multiple tenant signatures
- Printed name of person assisting tenant & relationship (same thing for Landlord)

Moved the checkbox with "Please check this box if you wish to seek a Rent Board hearing, review, and decision regarding your complaint or dispute" towards the bottom of the form. Also made the checkbox bigger.

Will need to add a clause that if more than 5 tenant signatures, to attach another signature form

Buddy Moore moved onto the next subsection of this agenda item.

B. PROPOSED COMBINED TENANT COMPLAINT & RENT INCREASE APPEAL APPLICATION

Buddy Moore presented the form

The Board had discussed previously combining the Tenant Complaint Form with the Rent Increase Appeal Application as they can go hand in hand.

This form differs from the other in that it has space for the type of complaint. He had added extra lines for what the previous rent was, the proposed rent after rent increase, and the reason for increase.

Also added a note in parenthesis that if a tenant wishes to appeal a rent increase, that they must check the box at the bottom of the document

Barbara Vestal would like Anne Torregrossa to review the Termination of Tenancies-At-Will at the bottom of the disclosure page. There is still concern that a tenant would only file an appeal to the Rent Board and would think that they wouldn't need to show up in Court.

Suggested wordsmithing, so that it starts at -

"However, the State of Maine also has a statute that governs evictions other than for cause evictions. By statute, a Landlord must give a tenant-at-will a 30 days notice when terminating a tenancy. District Court will have jurisdiction over whether you will be evicted and if you are opposed, you should appear in District Court in accordance with any summons. The Rent Board will not have authority to reinstate a tenancy that was terminated by District Court.

Austin Sims summarized the items for consideration

Combining the two forms

A couple of small adjustments not captured in this version

Barbara's language having been verified by Anne Torregrossa

Zachary Lenhert made a comment that staff (Housing Safety office) may make clerical changes to the forms such as phone numbers, that won't require needing approval from the Board

Barbara Vestal made a motion to approve the second form being the Tenant Complaint Form/Rent Increase Appeal Application, subject to recognition of Zachary's statement that staff may make non substantive changes/corrections. Also subject to including the language on the Termination of Tenancies-At-Will.

2nd by Buddy Moore

Vote: 7-0

Michael Goldman sought clarification on what needs to be discussed with Anne Torregrossa

-Buddy will send the form with the changes

-Barbara will send Michael or Anne an email with the changes she wanted for the Termination of Tenancies-At-Will

-Anne will then send it to Zachary for final review

VII. MERGING OF HIGHER LEVEL RULES WITH RULES & EVIDENTIARY REQUIREMENTS FOR HEARINGS

A. DRAFT RENT BOARD RULES OF PROCEDURE - SUBSTANTIVE REDLINE

Barbara Vestal presented the form

Wanted to make it known that the redline is not a complete redline since sections were moved around, so not all changes are being show

Substantive changes are -

- Moved Buddy & Ian's draft to combine with Barbara & Elliott's draft. Buddy's draft became Article VI & Article VII
- Who the parties are and who is going to be participating, and how - in Section 2(e)
 - Applicant & Objector
 - Could be landlord & tenant
 - A specially interested party would be designated by the Chair. This person(s) would be able to present witnesses and cross examine witnesses.
 - If someone wanted to be a specially interested party but the Chair declined to name them as such - that person would still have the opportunity to participate as a member of the general public. They would not have the same powers as one who was a specially interested party, and would be limited to 3 minutes with the possibility of an extension of time with an additional 3 minutes
- Article VII - Deliberations, Voting, Decisions

Barbara mentioned that the following subsection is a clean version of the document without the redlining.

Article VII, Section 1 - will be reviewed by Anne Torregrossa to ensure that the Board is okay to have that on the document

Austin Sims proposed to adopt the rules with the stipulation that Article VII, Section 1 would be reviewed by Anne Torregrossa. If it contravenes the ordinance, that it be exercised.

2nd by Ian McCracken

Vote: 7-0

B. DRAFT RENT BOARD RULES OF PROCEDURE - CLEAN

See final discussion in Subsection A above.

VIII. PRESENTATION BY OPENMAINE

OpenMaine reached out to Austin Sims with an offer to build online tools to help guide Landlords and Tenants in interpreting and following this new ordinance. Caitlin Marshall and Arielle Morabito are present from OpenMaine to discuss what the group is, the work they do, and the specific project regarding Rent Control ordinance. 10 minutes was allotted for the presentation to the Board.

Caitlin Marshall started the discussion

OpenMaine is an all volunteer organization of bringing together coders and community members to try and build civic tech. How to create technology that makes the Government work well for everyone and make it more accessible. OpenMaine is a local chapter of a broader national network called Code for America, which is coders all across the country doing civic tech projects.

Examples of what OpenMaine has done:

- MaineBallot.Org

A website you can go to to find what's going to be on the ballot for every town in the State

- Food Bank Map

During pandemic

Arielle Morabito presented the site to the Board and did a walkthrough of "how to"

- The page brings forth a Rent Control Calculator where you can select if you are a Tenant or Landlord

- The next section leads to exemptions of the Rent Control ordinance. Depending on which button, it will alert them if it may apply to them or not

- If no exemptions apply, it will lead to a place where the tenant may input their monthly rent. It results in the tenant learning what % equals a new rent amount might be

The link will be emailed to Austin Sims for dispersion to Board members and City staff.

Austin Sims would like Board members to play around with the website to follow up for discussion at the next Rent Board meeting.

IX. ADJOURN

Austin Sims moved to Adjourn the meeting

2nd by Elias Kann

Vote 7-0

Meeting end time: 7:16pm