



CITY OF SOUTH PORTLAND

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James H. Gailey
City Manager

MINUTES

Affordable Housing Committee

Thursday, June 9, 2016

7:00 PM

City Hall - Council Chambers

Attendees:

Tiffanie Bentley
Richard Berman
Chris Kessler
Isaac Misiuk

Mike Duvernay
Kim Coit
Mike Hulsey

Tex Haeuser, Planning Director
Joshua Reny, Asst. City Manager
Mary Jo Elliot, Research Analyst

Absent: None

* Committee members Adrian Dowling and Kathy Bouchard have given notice that they are unable to attend the final two Committee meetings.

1. Committee Chair Isaac Misiuk called the meeting to order at 7:06 p.m.
2. Pledge of Allegiance
3. Motion by Hulsey seconded by Haeuser to approve the minutes of the May 25th meeting. Kessler requested to strike from the minutes a sentence that he believes suggests the Committee does not support rent control. The Committee has not taken a formal position on that proposal. The Committee discussed the sentence and a majority believed the sentence accurately captures a comment made by one Committee member and was not a statement made by the Committee as a whole. Vote to adopt the minutes as written was 7-1-1 (Kessler opposed, Berman abstained due to his absence at that meeting).
4. The next order of business was an update from the focus group that is reviewing consumer protection issues. Chris explained to the Committee that the group has met twice during the past week. There are two key issues where consensus has been achieved.

The first is related to Landlord/Tenant Education. Oftentimes tenants, and even some landlords, do not know their rights and responsibilities. A public education campaign could help with correcting some of the problems that currently exist in the rental market, issues between landlords and tenants.

The second item of consensus is the establishment of Rental Unit Registration Program. The program would require the periodic registration of rental housing units with the City and the proceeds would be used to pay for a rental housing database and inspection program. This concept has not been fully developed, and registration fees may also be eligible to pay for other housing related programs. Isaac asked what type of data would be collected, and Chris explained that landlord, contact information, unit pricing, code violations (if any), etc. Any type of tenant data may create privacy issues, so this would need to be vetted by attorney. Tex explained that some level of inspection already occurs under the Fire Department's life and safety inspection program. This is related to fire code. Chris suggested that the Committee understand more about what is already done before it makes any detailed recommendation. Richard believes that registering units and creating a database is good policy for several reasons. He suggested that perhaps the frequency of inspections would be on a sliding scale based on a risk assessment, i.e. is the building sprinkled? What is its age and condition? Etc.

Chris explained that focus group agreed to disagree on some of the remaining issues, including rent control, extending period of notice to quit, and an ordinance prohibiting discrimination of voucher holders. Regarding rent control, Chris believes that a fair compromise would be a policy that allows rent to increase by at least the rate of inflation, capital expenses, increases in taxes, and other fees could be passed on to renters, and when there is turnover in the unit the rent price can be adjusted up to market price. Mike D. clarified that those are Chris's proposals and there was no agreement amongst the people discussing the rent control issue.

The Committee briefly discussed how the process will come to a close in the coming month. The Committee's report to City Council is tentatively scheduled for July 25th. There is one more meeting currently scheduled on June 21st, and it would be possible to schedule one more meeting in July. Josh will have a rough draft of report to the Committee before June 21 meeting, and at that meeting he will facilitate a process to prioritize all of the recommendations the Committee has agreed on. Following the June 21 meeting the report will be further refined into a final draft.

The Committee refocused back to the proposal to extend notice to quit. The purpose would be to allow tenants more time to find alternate housing if their rental agreement is not renewed. The City's Attorney, Sally Daggett, had provided a written response to several questions, including whether City has ability to extend notice to quit. Chris

noted that the memo was not written as a formal legal opinion, but as a quick response to the questions highlighting some case law and concerns, and therefore should not be relied on as a definitive answer to these questions without further research. Tex expressed that he could support an extended notice to quit if for no cause. Mike H. explained that it needs to be put into context, considering its impact on both sides of the contract. As proposed, the tenant would be provided quite a benefit, but it is at the detriment of the landlord. Any proposal agreed on must be fair to all parties. Tex pointed out it may be that the relative benefit to the tenant exceeds the relative problems it may cause for the landlord. The Committee discussed at length the differences between an at-will tenancy and one where a lease agreement is in place. Mike D. suggested that smart landlords and smart tenants should both insist on a written lease agreement, this problem is mostly associated with at-will tenancy. He also pointed out that at the end of lease agreement if the landlord intends to raise rent then they must provide at least 45 days notice, which used to be 30 days under State law.

Kim proposed the creation of a Housing Board that would oversee a standard lease agreement that landlords could use voluntarily. If they agreed to the standard lease, which may include lengthened notice to quit, and notice to increase rent, then the City would provide a mechanism for mediation and binding arbitration. This could be a significant benefit to landlords. Several Committee members thought this was an interesting idea, but it would create another City Board that would need to be staffed, etc. Josh pointed out that such a committee would run the risk of being politicized. Chris pointed out that that is the case for all City boards and committees.

Mike H. explained that extending notice to quit to 60 days or more would likely result in more landlords insisting on collection of two months rent for security deposit, which is the maximum allowed under state law. This could create the unintended consequence of creating a barrier to housing for poorer people who do not have the cash savings to make such a deposit.

Kim believes it is important that the final report include a section explaining why government has a role to play in the housing market. It should given reasoning and justify why a public benefit exists and should be a matter of public policy.

Chris gave an overview of the final consumer issue that the focus group discussed, which is discrimination of housing voucher holders. Mike D. believes this is settled case law (*Dussault v. Coach Lantern*), and any attempt by the City to require landlords to accept housing vouchers would likely end up with a lawsuit. Chris disagreed, and believes that the City could articulate within an ordinance that landlords cannot discriminate against prospective tenants based on source of income. That is not to say the landlords could not identify some other reason not to offer tenancy, but it should

not be simply because a person has a Section 8 voucher. Source of income would become a protected class under City ordinance.

It was acknowledged that part of the problem is that landlords deny housing vouchers before they ever meet the prospective tenant and show the apartment. Perhaps part of the solution is public education, to encourage tenants to discuss whether the landlord will accept a voucher after the apartment is seen. In this case, there is a possibility that a landlord would choose to accept a voucher, when they hadn't before, because they believe the person would make a great tenant. Mike H. explained that during times when the market is hot voucher holders have a harder time finding housing, and it is the opposite when the market cools down. Richard believes that public education is very important when it comes to landlord/tenant issues. Mike D. noted that the Southern Maine Landlord Association is committing to a new initiative to promote tenant education, do's and don'ts, and they would be willing to partner with Pine Tree Legal and the municipalities to make it a success.

Josh noted that some of these issues discussed tonight are unlikely to be resolved in the coming weeks. The City of Portland will be working on these same issues through the Summer and there may be an opportunity to work collaboratively to determine what policies municipalities have authority to implement, and those they cannot. Perhaps the recommendations coming from this committee on the issues that need more vetting (i.e. extending notice to quit, extending notice of rent increase, anti-discrimination re: Section 8, etc.) are to pursue further research and analysis. The City Council will decide whether those are topics it will want to pursue.

5. The Committee opened the meeting to public comments. One landlord in the audience explained that the 30 day notice to quit oftentimes is a benefit to other tenants as much as it is to a landlord. For example, if a building has a problem tenant who is disturbing other tenants, but it does not rise to the level of a 7-day notice, then the landlord may send a 30 day notice to quit, and the other tenants in the building are very supportive of that decision.
6. The Committee discussed the merits of holding a public hearing before Council workshop presentation. It was agreed that a formal public hearing would have made more sense at the beginning, rather than the end of the Committee's work. There will also be an opportunity for public comments at the Council workshop itself.
7. The next meeting will be on June 21st at 7:00pm in City Council Chambers. An additional meeting was tentatively scheduled for Thursday, July 7th, if necessary.
8. Following a motion and second the meeting adjourned at 9:16 p.m.