

**MINUTES  
JOINT STUDY SESSION  
CITY COUNCIL AND RENT STABILIZATION COMMISSION  
TUESDAY, MAY 19, 1992  
COMMUNITY CONFERENCE ROOM  
8613 SANTA MONICA BLVD.**

**CALL TO ORDER:** Mayor Koretz called the meeting to order at 7:10 p.m.

**ROLL CALL:** COUNCIL:  
Present: Councilmembers Guarriello, Heilman, Land, Lang, and Mayor Koretz  
RENT STABILIZATION COMMISSION:  
Present: Commissioners Martin, Rebhuhn, Etezadi (arrived at 7:16 p.m.), Chairperson Routh  
Absent: Commissioner White

ALSO PRESENT: City Manager Brotzman  
City Attorney Jenkins  
Assistant City Attorney Hogin (Arrived 7:28 p.m.)  
Rent Stabilization Department  
Director Mark Johnson  
Department Analyst Wayne Zimmerman

**JOINT STUDY SESSION:** CONSIDERATION OF A PROGRAM FOR ADJUSTING HISTORICALLY LOW RENTS.

Mark Johnson, Director of Rent Stabilization Department, apologized for the late distribution of the staff report, and recommended deferring Item No. 2 on the agenda, consideration of a procedure for adjusting base rents in the rent increase application process, because of litigation (Klaparda) scheduled for Court hearing on June 8, which may resolve some of the issues.

Johnson then did a verbal review of the staff report, for the benefit of Council and the Commission.

**SUMMARY OF REPORT BY MARK JOHNSON:** Council had previously given direction to Rent Stabilization Department to make a proposal related to a threshold rent program--that is, a program that identified historically low rents and suggested thresholds for units that were historically low, to which the rents would be raised. Such a program has been adopted in Santa Monica. The impetus for a program in West Hollywood was partly an aftermath of the Simonson case--that such a program would decrease the likelihood of increase applications. The second impetus was

that the increase application process might not be an adequate remedy for a number of owners of historically low rent units, because of the nature of the hearing process and the application fee, and so on.

The concept of historically low rents is based on the presumption that some units did not provide a just and reasonable return or were unusually low, and rent control, by stabilizing those rents and only adjusting for inflation, would perpetuate the unusually low character of those rents. Since annual adjustments are based upon a percentage of the existing rent, the rents for low-rent units would increase by a smaller amount, whereas rents at the higher end would have greater increases.

In West Hollywood there is our rent increase application process: where an owner can apply by establishing that the rent on the base date is low because not established in an arms-length transaction or other peculiar circumstances, also by a showing that the operating expenses were unusually high or low in comparison to other years. In the Simonson case, the court required that base rents be adjusted to reflect general market conditions. We are currently applying that standard in NOI (net operating increase) in the rent increase application process. But Council apparently has indicated that process might not be sufficient in all cases, and therefore there should be consideration of a threshold rent program.

We contracted with a consultant, Dr. Paul Baum, to do a base rent study--it consisted of downloading our entire data-base of base rents and other characteristics of our rental housing stock, and uploading that into a statistical program that Dr. Baum used to provide various information about the data-base.

The second part of the study was for Dr. Baum to develop a scientific or statistical methodology for identifying which of those base rents might be disproportionately low and what the threshold levels would be--what line we should draw, if any, to determine which rents were uncharacteristically low and should possibly be adjusted.

Dr. Baum has prepared a base rent study (in the agenda packet). The Department has prepared a number of charts that are attached to the staff report, so that Council can consider both the propriety of a threshold rent program, and the scope of such a program. It would be appropriate for Council to consider to what extent their initial concerns still exist, and whether a threshold rent program is in fact necessary.

Both Berkeley and Santa Monica have adopted a threshold rent program; however, there are some different circumstances in West Hollywood. In Santa Monica and Berkeley, rent control went into effect in 1978 and 1979; it's fair to assume that rents frozen at that time were considerably lower than the rents that were

stabilized in 1985 in West Hollywood. Dramatic increases in rents had already occurred during 1975 to 1985. Secondly, unlike Santa Monica and Berkeley, West Hollywood doesn't have strict vacancy control. To a certain extent, vacancy increases that have occurred have possibly offset the historically low rents.

Another factor is turnover in ownership of buildings, the assumption being that purchasers of residential property have taken rent control into consideration in the purchase price of the building and have through negotiation, compensated for the low rents. Raising of low rents across-the-board would compensate those landlords for an apparent inequity for which they've already been compensated through the purchase arrangement. The Council and Commission may have some sense of the degree to which there's been turnover, and may want to include that as a factor.

Attachment "A" to the staff report provides information about current rents, broken down by census tract and number of bedrooms--and lists the mean or average rent, the 75th percentile, the median, and the 25th, 10th, 5th, and 1st percentiles. For example, looking at Census Tract 70002, the median is \$506 for zero bedrooms, so one-half of 577 units are at or below \$506 per month. The rent information is also provided for the City as a whole, in the last part of the chart.

Attachment "F" to the staff report is a map which shows that Census Tracts 70001 and 70002 are on the East Side; 70003 is the Fairfax area; 70004 and 70005 are west of La Cienega. Rents tend to be lower in 70001 and 70002, and lower in 70003 than in 70004 and 70005.

However, the Census Tract and number of bedrooms are not the only factors; without knowing the exact characteristics of a unit, it is not possible to tell whether the rent is disproportionately low or not.

Attachment "B" is a chart which reflects base rents, as opposed to current rents. This chart indicates two additional rent levels, potentially threshold levels, listed under the headings "Tukey 1.5" and "Tukey 1.0." "Tukey's Rule" consists of taking the "interquartile range" (the range of rents from 25th to the 75th percentile), and then subtracting that or a multiplier of that, from the level of the 25th percentile. It is a rule that has been accepted statistically as a means of determining an "outlyer" in any population. An "outlyer" is a value that is arrived at by some other mechanism than the mechanism by which most of the other values in the population were reached. My understanding is we're looking to identify units that have rents that were the result of something other than arms-length negotiating, or other circumstances that are part of the market; and therefore I think Tukey's Rule is an appropriate methodology for determining where the threshold level should be. Keep in mind that attachment "B" reflects base rents. There are two columns, Tukey 1.5 and Tukey

1.0, because it is possible to vary Tukey's rule depending on how conservative or liberal you want to be.

Attachment "C" is essentially the same as Attachment "B", but adjusted to bring those threshold levels to their current value, 1991-1992. The mechanism is simply to add in, annually, the general adjustments for each year that were available in those years. It's Attachment "C" we'll compare to the current rents. What is not included on Attachment "C" is vacancy increases, which could have the potential effect of offsetting some disproportionately low rents. What we're trying to address in a threshold rent program, is rents that are historically low.

The middle fifty percent is the guide for determining what's outside. The amount of variability within the middle fifty percent has a bearing on what you define as uncharacteristic. The more homogeneous the middle, the more likely you will choose a unit a little below that as disproportionately low but if there's a wide range in the middle, then you'll require something significantly below that 25th percentile to be considered uncharacteristic.

COMMENTS:

Councilmember Heilman commented that this should be a policy decision.

Mark Johnson replied that it is clearly a policy decision; however, he is trying to provide a logic to determine that rents are really historically low.

Commissioner Rebhuhn commented that he has researched predecessors, and peculiar circumstances, and has done a brief on this; and we should take the position, based on 50 cases predating Vega, that peculiar circumstances is a pre-condition to raising rents because they're disproportionately low; general market conditions exist "in the absence" of peculiar circumstances; anyone who wants an increase should apply and make a two-fold showing to get one. What we are doing is gratuitously offering increases.

Councilmember Heilman said that he disagreed; number one, that's what we're elected to do; and he thought we were talking about doing this only upon a vacancy, so it wouldn't necessarily impact any in-place tenants; part of the goal was to reduce the costly and time consuming applications for rent increases, and also to address fairness problems with owners who were stuck with units that were renting at \$175 because they didn't raise the rents for years and years.

Mayor Pro Tem Lang commented that we don't know what condition these buildings are in.

Commissioner Rebhuhn remarked that the application process is an extraordinarily good process for getting at the truth.

Councilmember Heilman said it is a time-consuming process, and ends up increasing the rent for the in-place tenant; increases should only be done on a vacancy.

Mark Johnson stated that one area he didn't discuss was implementation issues; Santa Monica has elected to implement on a vacancy-only basis. That's an option. The downside is, it's the units with no turnover in need of relief; another downside is that it is an incentive for evading just cause eviction laws.

Mayor Koretz said there are four issues: 1) the legal question; 2) threat at the State level; 3) reducing the number of (rent increase) applications; and 4) fairness. People that gouged were rewarded; people kind to their tenants were shafted. This will tend to equalize things.

Assistant City Attorney Hogin gave comments regarding the Simonson case and the Klaparda case. In her opinion, the Court was flat wrong in Simonson. The City is strongly committed to winning Klaparda. We reject Mr. Ellis's determination of what a comparable rent is; but we've got to find an alternative way of determining. There are two ways: case by case or Citywide. The purpose of this (study session) was to explore this alternative to a case by case basis. We need to separate the two issues; feel confident that the City is behind the litigation and we intend to succeed; and then just in good faith explore whether it makes sense to handle it legislatively instead of case by case.

Mayor Pro Tem Lang commented that the issue of fairness is not legitimate, legal reasons are; people who have lived twenty or thirty years in an apartment and can't afford to pay more will be chased out of the City.

Mark Johnson said that we've required that landlords go through the whole NOI process, even if base rents are low. However, once we know how to calculate base rent thresholds, landlords can come in if they believe their base rent is low due to peculiar circumstances and get an adjustment in base rent; not have to do the complex part. In 1985, the ordinance should have been written so that people could protest their base date rent; and there should have been a cut-off time in which they could do that.

Assistant City Attorney Hogin commented that the Commission has been hearing peculiar circumstances under the old rules; with the new ordinance, peculiar circumstances will be easier to determine.

Councilmember Heilman said that he recalled a joint meeting with the Commission, where it was agreed that the NOI process would be

kept very stringent; but we also talked about creating some kind of short form increase to adjust what we considered historically low rents, in some easier process, so it would be easier on the commission, staff, easier for the owner, and also only take place upon a vacancy. If there is a building where all the units are the same, all two-bedroom, all \$600, except for one, for \$125, there's got to be a way for that owner to get some kind of adjustment for that unit. Another thing, if we do it (rent adjustments), we should do it so that it is significant; otherwise, we shouldn't bother.

Mark Johnson commented that he doesn't think there'll be a significant reduction in the number of NOI applications; agree there needs to be a simpler process; maybe sever it, devise a system that still involves a hearing, still on a case by case basis, but more administratively simple. The next issue is, whether a threshold rent program should be effective on a vacancy or phased in. The question is, do we favor some impact on the tenant but mitigated by a phase-in process, or no impact on the in-place tenant, but have the risk of potential harassment (of tenants) and unlawful evictions. There are problems with enforcing the anti-harassment ordinance.

Commissioner Martin suggested that another way of addressing this would be for units in the lower 5 percent, give a 15 percent increase on vacancy instead of 10 percent.

Councilmember Heilman suggested a threshold rent for units in the lowest 5 percent; upon a vacancy the rent could be brought up (to the threshold rent).

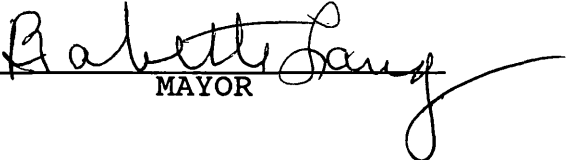
Mark Johnson said another option is a "floor", or an adjustment to the annual adjustment, which would be a more gradual process.

After further discussion, Councilmember Land suggested that the Council and Commission form a subcommittee, composed of two Councilmembers and two Rent Stabilization Commissioners. After meetings and further discussion of the issues, the subcommittee members could come back and make recommendations to their respective bodies (Council/Commission). Direction was given to the Deputy City Clerk to put an item on the next agenda for the Council to appoint two members to the subcommittee.

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The meeting was adjourned at 9:05 p.m. to the next regular meeting, June 1, 1992, for a closed session at 6:00 p.m. and the regular meeting at 7:00 p.m. at West Hollywood Park.

APPROVED BY MOTION OF THE CITY COUNCIL THIS 5TH DAY OF OCTOBER,  
1992.

  
MAYOR

ATTEST:

  
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CITY CLERK