



**DATE:** March 28, 2022

**TO:** Rental Housing Committee

**FROM:** Karen M. Tiedemann, Special Counsel to the Rental Housing Committee  
Nazanin Salehi, Special Counsel to the Rental Housing Committee  
Anky van Deursen, Program Manager  
Andrea Kennedy, Analyst II

**SUBJECT:** **CSFRA Enforcement and Compliance Mechanisms**

---

**RECOMMENDATION**

To provide direction regarding potential administrative compliance policy with regard to the Community Stabilization and Fair Rent Act.

**BACKGROUND**

As a reminder, the Community Stabilization and Fair Rent Act (CSFRA) empowers the Rental Housing Committee (RHC) to:

- “Establish rules and regulations for administration and enforcement of” the CSFRA. (Section 1709(d)(2).)
- “Publicize” provisions of the CSFRA, including rights and responsibilities of landlords and tenants. (Section 1709(d)(12).)
- “Establish a schedule of penalties that may be imposed for noncompliance with [the CSFRA] or with rules and regulations promulgated under [the CSFRA].” (Section 1709(d)(13).)
- Enforce the law by bringing legal actions, but such action must be approved by the City Council. (Sections 1709(d)(14) - (15), 1714(e), and 1715.)

The RHC first considered administrative compliance policies for enforcement of the CSFRA in October 2019. At that meeting, staff presented the RHC with two questions: (1) whether the RHC supported sending administrative courtesy compliance letters to landlords; and (2) whether the RHC wanted to explore additional administrative compliance policies. The RHC directed and authorized staff to send the administrative courtesy compliance letter to landlords who failed to

timely pay their annual rental housing fees but chose not to take any further action on additional enforcement tools at that time.

Since that time, staff has provided the administrative courtesy compliance letters to landlords who failed to timely pay their annual rental housing fees. While landlords have largely complied with the annual rental housing fee payment requirement, there have been lower levels of compliance with other requirements, including failure to register rental units, failure to file required notices, and failure to maintain properties in substantial compliance with State and local laws.

The CSFRA and its Regulations impose several compliance requirements on landlords of rental units in the City of Mountain View. In some instances, a landlord is barred from imposing a rent increase and/or filing a petition for upward adjustment if they have not complied with the requirements. The following criteria are used to assess whether a landlord is in substantial compliance with the CSFRA when the landlord files a petition for upward adjustment:

1. Whether the landlord rolled back the rent for the rental unit(s) to either the rate charged on October 19, 2015, or to the amount charged on the move-in date, if the tenancy commenced after October 19, 2015;
2. Whether the landlord has increased the rent for the rental unit(s) in accordance with the requirements of the CSFRA. If the landlord has ever charged more than the rent allowed under the CSFRA, whether the landlord has refunded the unlawful rent to the affected tenants;
3. Whether the landlord has paid all applicable rental housing fees;
4. Whether the landlord has registered the property with the City; and
5. Whether the condition of the rental property for which the rent adjustment is sought is in substantial compliance with all State and local health and safety laws, and with any RHC orders or regulations pertinent thereto and that there are no outstanding citations or notices of violation for the property.

In addition to those requirements outlined above, the following are requirements with which a landlord must comply under the CSFRA or its Regulations:

- Submit new lease/rent increase information sheet;
- File the following required notices/documents with the RHC:
  - Termination of tenancy notice(s);

- Termination of tenancy follow-up document(s);
  - Banked rent increase notice(s);
  - Tenancy buyout agreement documentation (if applicable); and
  - Voluntary Agreement to Temporarily Reduce Rent for Major Construction and Capital Improvements (if applicable); and
- Provide the Notice of Applicability of CSFRA;
  - Provide a tenant with a Notice to Cease prior to a termination notice; and
  - Comply with a final order of the Hearing Officer or Board.

Upon request of the RHC, staff researched and analyzed various administrative compliance policies in other rent-controlled jurisdictions used to enforce similar requirements. Outlined below are several policies that could be considered for compliance with the CSFRA.

## **ANALYSIS**

### **Option No. 1: Noncompliance Letter to Tenants**

As mentioned above, the RHC currently sends noncompliance letters to landlords who have not timely paid their annual rental housing fees. Some jurisdictions send copies of noncompliance letters to the tenants of landlords who have failed to pay their annual rental housing fees and/or failed to register their properties. Ideally, informing tenants of their landlord's noncompliance will help tenants better enforce their rights (e.g., refusing to pay any unlawful rent increases that a landlord tries to impose during a period of noncompliance).

### **Option No. 2: Noncompliance Website Listing**

Some jurisdictions list the addresses of properties where the landlord has failed to pay their annual rental housing fees and/or failed to register on their website. Similar to Option No. 1, this is intended to facilitate individual enforcement by tenants. The noncompliance list could be expanded to include properties where, for example, there are outstanding notices of violation related to habitability or maintenance.

**Option No. 3: Imposition of Late Fees**

Nearly every rent-controlled jurisdiction imposes late fees on landlords that fail to timely pay their annual rental housing fees, and some, such as East Palo Alto and West Hollywood, also impose penalties when a landlord fails to register their units. Currently, the RHC imposes a 1% late fee for each month that a landlord fails to pay their annual rental housing fees and does not impose any penalty on the failure to register rental units. Mountain View's 1% per month fee is significantly lower than the fees imposed by other jurisdictions. Table 1 below compares the fees assessed by other jurisdictions.

West Hollywood also requires that, even upon transfer or sale of a property, the new landlord assumes and remains responsible for past-due fees. Specifically, the West Hollywood policy states: "Unpaid balances from past billing periods could mean that the previous property owner(s) did not pay the outstanding fees. The new property owner(s) is/are now responsible for paying any outstanding balances." Staff recommends that the RHC consider adopting a similar policy that requires successor landlords to assume responsibility for any rental housing fees that were not paid by their predecessors.

**Table 1: Enforcement Fees in Rent-Controlled Jurisdictions**

<b>JURISDICTION</b>	<b>LATE ANNUAL FEE PAYMENT PENALTY</b>	<b>LATE REGISTRATION PENALTY</b>
<b>Mountain View</b>	1% per month (12% maximum)	None
<b>East Palo Alto</b>	15% if paid after January 1 30% if paid after January 31 100% if paid after March 31 100% every 3 months after	\$25/unit if paid by March 31; \$50/unit for each additional 60 days after March 31
<b>Richmond</b>	10% if paid within 30 days 25% if paid within 60 days 50% if paid after 60 days	None
<b>Santa Monica</b>	4% per month until balance paid	None
<b>Berkeley</b>	100% if paid after due date Additional 100% each 6 months thereafter	None
<b>Oakland</b>	10% if paid within 30 days 25% if paid within 60 days 50% if paid after 60 days (plus 1% interest per month)	None
<b>West Hollywood</b>	20% per month (100% maximum)	100% of registration fees

**Option No. 4: Tenant Rent Withholding Petition**

A rent withholding petition process allows tenants of properties where the landlord has failed to pay the annual rental housing fees and/or failed register the property and/or failed to comply with other requirements (e.g., filing notices of rent increases, changes of terms of tenancy, or

tenancy termination) to petition to withhold their rent payments until such time that their landlord complies with those requirements.

In Richmond, the Rent Board holds a hearing to determine if the landlord has “willfully and knowingly” failed to comply with any of the abovementioned requirements. If the Rent Board determines that the landlord’s noncompliance is willful and knowing, the Rent Board may authorize the tenant of the nonreporting unit to withhold all or a portion of the rent until the rental housing fee is paid or the notice is filed. Once the landlord has complied by either paying the fees or filing the notice, the Rent Board determines whether any of the withheld rent is owed to the landlord for the period during which the landlord was in noncompliance.

Similarly, in Berkeley, the Rent Stabilization Board allows a tenant to file a petition seeking authority to withhold rent where the landlord has failed to register the unit. The tenant must include a brief explanation of the basis of the petition, including a statement about why the rental unit does not qualify for an exemption. A hearing on the petition is scheduled before a hearing examiner. The Rent Stabilization Board may initiate the rent-withholding authorization process and/or continue with a proceeding initiated by a tenant if the tenant requests dismissal of the petition, fails to appear at the hearing, or otherwise fails to prosecute the petition.

If the hearing examiner determines that the landlord has “willfully and knowingly” failed to register the unit, the hearing examiner must issue an order authorizing any affected tenants to withhold payment of rent for their units until such time that the units are registered. Any rent withheld is paid into an escrow account maintained by the Rent Stabilization Board. Once a landlord registers the units, the hearing examiner must issue a decision finding the landlord in compliance, dissolving the rent withholding order, and ordering any rent held in escrow disbursed in accordance with the following rules:

- If the landlord registers the units within 35 days of the hearing examiner’s order, the landlord shall be entitled to 100% of the rent payments held in escrow;
- If the landlord registers after 35 days but within 60 days of the hearing examiner’s order, the tenants may keep 50% of the rent withheld; and
- If the landlord has not registered within 60 days after the hearing examiner’s order, the tenants may keep 100% of the rent withheld through the day on which the landlord registers.

This enforcement mechanism works well in combination with other enforcement mechanisms, such as those outlined in Option Nos. 1 and 2 above.

**Option No. 5: Administrative Citation**

The most comprehensive approach to enforcement is an administrative citation system. This system allows landlords to comply with various requirements without penalty so long as compliance occurs within a reasonable period of time as specified by the administrators of the rent program. Typical administrative citation systems provide for a series of increasing fines if violations are not cured within the time specified.

In Oakland, the administrative citation system allows the Rent Adjustment Program to issue, upon the request of any affected individual (including the city itself), notices of violation for the following:

- Failure to provide notice of the Rent Adjustment Law upon commencement of a new tenancy;
- Demanding payment of an unlawful rent increase;
- Failure to abide by the final order of a hearing officer or the Rent Board;
- Failure to pay annual fees or pass-through;
- Failure to file a notice that a unit is no longer exempt; and
- Failure to remove a capital improvement rent increase on the first month following the end of the amortization period.

Upon receipt of a notice of intent to issue citation, a landlord may: (1) cure the violation within 10 days and send evidence that the violation is cured; (2) deny the violation exists and send evidence that the violation does not exist; or (3) take no action. If the landlord takes no action within the 10 days or the landlord responds but does not provide sufficient evidence that the violation was cured or does not exist, the Rent Adjustment Program may issue a citation. A first violation that is cured is not subject to penalty. A first violation that is not cured or any subsequent violations are subject to a schedule of increasing penalties (ranging from \$100 to \$500). No more than \$5,000 may be assessed with a single landlord during a 12-month period starting from the date of the first violation.

A landlord that is issued a violation may request a hearing before a hearing officer. At the hearing, the City has the burden of proving the violation by a preponderance of the evidence. A decision of the hearing officer may be appealed to the Rent Board. Ultimately, five concurrent uncured administrative citations may be subject to a civil penalty. The procedures for issuing and appealing civil penalties are the same as for administrative citations. Table 2 below indicates the

mechanisms that may be used to enforce compliance with each requirement of the CSFRA or its Regulations. Table 3 shows the jurisdictions that have implemented the various policy options.

**Table 2: CSFRA Requirements and Potential Compliance Mechanisms**

	<b>Noncompliance Letter</b>	<b>Noncompliance Listing</b>	<b>Rent Withholding Petition</b>	<b>Late Fees</b>	<b>Administrative Citation System</b>
Notice of CSFRA applicability					X
Rent increase/ new lease information sheet		X			X
Notice to cease					X
Filing of notices and UD papers			X		X
Compliance with HO or Board order					X
Habitability issues		X			X
Payment of annual fees	X	X	X	X	X
Registration	X	X	X	X	X

**Table 3: Policy Options in Other Rent-Controlled Jurisdictions**

	<b>Noncompliance Letter</b>	<b>Noncompliance Listing</b>	<b>Rent Withholding Petition</b>	<b>Late Fees</b>	<b>Administrative Citation System</b>
Alameda				X	X
Berkeley				X	X
East Palo Alto			X	X	
Los Angeles			X	X	X
Richmond				X	X
Santa Monica			X	X	X
Oakland			X	X	X
San Jose	X			X	X
West Hollywood	X		X	X	

Staff is requesting that the RHC provide input on the following questions:

1. Is the RHC interested in pursuing implementation of the any of the five enforcement mechanisms outlined here?
2. Is the RHC interested in researching any other potential enforcement mechanisms for study at a future meeting?

**FISCAL IMPACT**

The adoption of enforcement mechanisms may increase revenue to the program by increasing compliance with the payment of annual rental housing fees and/or through the imposition of other fines and fees.

**PUBLIC NOTICING**—Agenda posting.

KMT-NS-AVD-AK/JS/6/CDD/RHC

814-03-28-22M