

DATE: September 25, 2023

TO: Rental Housing Committee

FROM: Patricia Black, Senior Management Analyst
Anky van Deursen, Program Manager

SUBJECT: Hearing Officer Remuneration Scale Update and Ongoing Methodology

RECOMMENDATION

1. Adopt an updated remuneration scale for settlement conference facilitators and Hearing Officers for Fiscal Year 2023-24 that incorporates prior cost-of-living adjustments (COLA) for Fiscal Year 2019-20 through Fiscal Year 2023-24 and sets an annual COLA increase every year thereafter at the start of the fiscal year, unless otherwise adjusted by the Rental Housing Committee.
2. Authorize the Program Manager or other designee to execute an amendment to the agreement with Project Sentinel to provide administrative and hearing process services for Fiscal Year 2023-24 to increase the line item amount for Hearing Officer services to an amount not to exceed \$180,000, resulting in the total amount of the contract not to exceed \$200,000, in order to adequately address the increase in petitions filed with the Division and the associated Hearing Officer increases.

BACKGROUND

On June 8, 2017, the Rental Housing Committee (RHC) adopted a structure for appointment of Hearing Officers. This included establishing qualification and experience requirements, contracting with Project Sentinel to provide Hearing Officer recruitment and administration services, and adopting a remuneration schedule.

During its March 25, 2019 meeting, the RHC received an update from Project Sentinel's Hearing Administrator regarding the recruitment and evaluation of Hearing Officers and Facilitators for the Program (see Attachment 1). During this update, the RHC adopted a revised remuneration scale (Table 1 below) for Hearing Officers based on an analysis of other jurisdictions (see Attachment 2 for reference).

Table 1: Current Hearing Officer Remuneration Scale (approved in 2019)

ACTIVITY	HOURLY RATE	HOUR CAP	FLAT RATE	NOTES
Uncontested Tenant Hardship Petition (stand-alone)	\$250 Hearing	4 hour*	N/A	* Unless prior express authorization.
	\$200 Prep and Writing			
Tenant Petitions A/B, Contested Hardship Petition (stand-alone)	\$250 Hearing, Prehearing, Site Visit	8 hour*	N/A	* Unless prior express authorization.
	\$200 Prep and Writing			
Landlord Petition	\$250 Hearing Prehearing; Site Visit \$200 Prep and Writing	20 hour*	N/A	* Unless prior express authorization.
Decision on Remand after Appeal (same Hearing Officer)	\$150	5 hour*	N/A	* Unless prior express authorization.
Decision on Remand after Appeal (new Hearing Officer)	\$200	10 hour*	N/A	* Unless prior express authorization.
Attending Trainings	\$100	N/A	N/A	N/A
Settlement Conference Facilitator	N/A	N/A	\$400	Assumes 4 hours (including preparation); \$50/hour if additional conferences or time, with express authorization.

ANALYSIS

City staff provides hearing administration-related support for the petition process while settlement conference facilitators and Hearing Officers assist in the decision portion of the process. Settlement conference facilitators act as skilled intermediaries to informally settle

petitions outside of the hearing process. Hearing Officers are independent adjudicators who decide the outcome of petitions based on a review of the evidence presented and testimony provided by parties during the petition and hearing process.

Hearing Officers review the forms, communications, and documentation provided by parties to a petition; determine the hearing record based on communication and documentation provided by all parties; issue orders; oversee and hold hearings; and write and issue a decision based on the record and testimony provided by the parties at the hearing. Hearing Officers have 30 days to issue a decision after the hearing is formally closed.

The Rent Stabilization Division contracts with Project Sentinel to provide settlement conference facilitators and Hearing Officers for the program. Project Sentinel oversees the contracts and recruitment and issues Requests for Qualifications (RFQ) when requested by City staff.

Hearing Officers are highly qualified attorneys with experience in adjudicating challenging and complex issues. The CSFRA and MHRSO regulations require that the petition process be adjudicated by Hearing Officers who meet the following criteria:

1. Hold a Juris Doctor or equivalent degree;
2. Have an active or inactive membership in the California State Bar in good standing or other state bar; and
3. Experience:
 - a. Served as a judge, commissioner, or other judicial officer for more than one year;
 - b. Served as a Hearing Officer or administrative law judge or equivalent position for a public entity for more than three years;
 - c. Served as an arbitrator and heard at least five arbitration proceedings that required hearing witnesses, examining evidence, and issuing a written decision; and
 - d. Served as a Hearing Officer or arbitrator for a binding rental dispute program and held that position for more than two years and issued written decisions in that position.

Hearing Officers perform the following duties for assigned petitions:

- Review the petition(s) and all submitted evidentiary documentation;
- Request clarification and/or additional documentation from affected parties, including the petitioner;

- Order and attend property inspections;
- Conduct prehearing telephonic conferences to prepare parties for their hearing;
- Adjudicate hearings;
- Perform complex mathematical calculations to determine petition outcomes; and
- Write and edit decisions based on the CSFRA and MHRSO, their Regulations, and the hearing record.

Settlement conference facilitators and Hearing Officers are crucial to the efficacy of the Rent Stabilization Division and its Petition Program. In order to retain highly qualified Hearing Officers and settlement conference facilitators, staff proposes adopting an updated remuneration scale based on the same Consumer Price Index (CPI) as the Annual General Adjustment of Rent (CPI-U All Items San Francisco Bay Area—February to February). The remuneration scale for settlement conference facilitators and Hearing Officers has not been updated since 2019. Staff recommends a one-time cost-of-living-adjustment of 9.9% to capture the prior fiscal year increases as well as a 5% increase for the current fiscal year for a total increase of 14.9% to become effective immediately and apply to all invoices received since the start of Fiscal Year 2023-24. Going forward, the remuneration scale will be automatically increased by the COLA increases at the start of the new fiscal year.

In Fiscal Year 2022-23, 45 petitions entered the hearing or settlement process. Three petitions settled for a total cost of \$3,225 (an average of \$1,075 per petition). Twenty-two (22) completed the hearing process for a total cost of \$71,834.50 (an average of \$2,873.38 per petition). Additional costs for trainings and Hearing Officer meetings are included above.

Twenty (20) petitions filed in Fiscal Year 2022-23 are currently in the hearing process; associated costs will be billed in Fiscal Year 2023-24 at an approximate total cost of \$57,500 without a remuneration scale increase and \$66,000 with the increase applied. The program receives, on average, 27 petitions per year. Assuming this average continues, the approximate total cost for petitions filed in Fiscal Year 2023-24 is \$77,600 without a remuneration scale increase and \$89,100 with the increase applied. Table 2 below shows the CPI increases from Fiscal Year 2019-20 through Fiscal Year 2022-23.

**Table 2: Consumer Price Index Increases:
 Fiscal Year 2019-20 through Fiscal Year 2023-24**

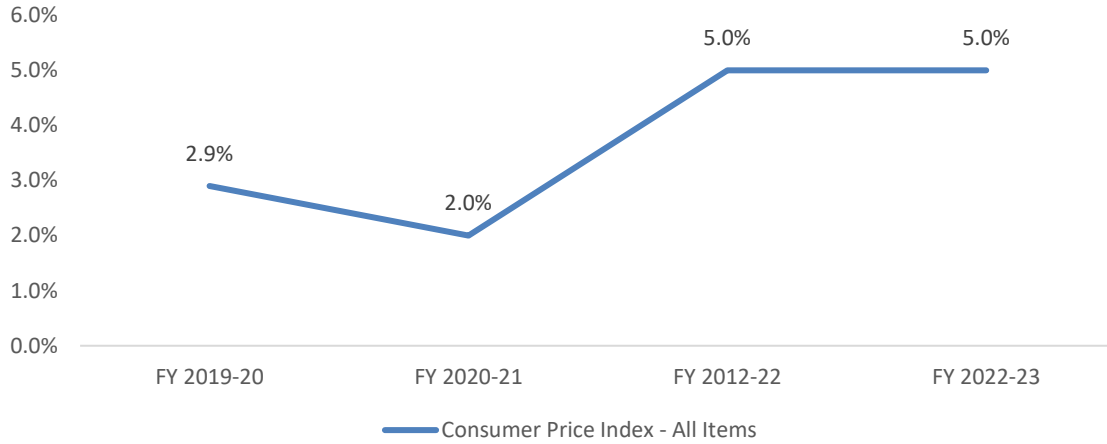


Table 3 (below) shows the proposed Hearing Officer remuneration scale with the 14.9% increase by type of activity and hourly rate.

Table 3: Proposed Hearing Officer Remuneration Scale (per July 1, 2023)

ACTIVITY	HOURLY RATE	HOUR CAP	FLAT RATE	Subject to Annual Increase	NOTES
Uncontested Tenant Hardship Petition (stand-alone)	\$287 Hearing \$230 Prep and Writing	4 hour*	N/A	✓	* Unless prior express authorization.
Tenant Petitions A/B, Contested Hardship Petition (stand-alone)	\$287 Hearing, Prehearing, Site Visit; \$230 Prep and Writing	15 hour*	N/A	✓	* Unless prior express authorization.
Landlord Petition	\$287 Hearing Prehearing, Site Visit; \$230 Prep and Writing	20 hour*	N/A	✓	* Unless prior express authorization.

ACTIVITY	HOURLY RATE	HOUR CAP	FLAT RATE	Subject to Annual Increase	NOTES
Decision on Remand after Appeal (same Hearing Officer)	\$172	5 hour*	N/A	✓	* Unless prior express authorization.
Decision on Remand after Appeal (new Hearing Officer)	\$230	10 hour*	N/A	✓	* Unless prior express authorization.
Attending Trainings	\$115	N/A	N/A	✓	N/A
Settlement Conference Facilitator	N/A	N/A	\$460	✓	Assumes 4 hours (including prep); \$57/hour if additional conferences or time, with express authorization.

FISCAL IMPACT

Based on estimated petitions for Fiscal Year 2023-24, total associated Hearing Officer costs would be \$135,100 without a remuneration scale increase and \$155,100 with the increase applied, both of which are above the Fiscal Year 2023-24 budgeted amount of \$100,000. Staff recommends the RHC approve a contract amendment of an additional \$80,000 to the Project Sentinel CSFRA Contract in order to adequately address the increase in petitions filed with the Division and the associated Hearing Officer increases for a total line-item amount of \$180,000. This would bring the CSFRA contract to a total not-to-exceed amount of \$200,000. The overall budgeted revenues and reserves for Fiscal Year 2023-24 for the Rent Stabilization Division are projected to cover the associated increase. The Project Sentinel Mobile Home Rent Stabilization Ordinance (MHRSO) Contract does not require an increase at this time.

PUBLIC NOTICING—Agenda posting.

PB-AvD/KG/1/HSN/RHC/897-09-25-23M-1

- Attachments:
1. RHC Memo—Hearing Officer Recruitment, Evaluation, and Remuneration Schedule Dated March 25, 2019
 2. Bay Area Rent Stabilization Jurisdictions Adjudicators Rates Dated March 25, 2019