



**MEMORANDUM**

CSFRA, Community Development Department

**DATE:** March 25, 2019

**TO:** Rental Housing Committee

**FROM:** Emily Hislop, Project Sentinel  
Anky van Deursen, CSFRA Program Manager

**SUBJECT:** Hearing Officer Recruitment, Evaluation and Remuneration Schedule

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**RECOMMENDATION**

To receive an update regarding the recruitment and evaluation of Hearing Officers and Facilitators for the CSFRA Program and to review the proposed remuneration schedule for Hearing Officers.

**BACKGROUND**

Pursuant to Section 1709(d)(4) of the CSFRA, the Rental Housing Committee (RHC) has the power and the duty to appoint hearing officers to conduct hearings on Petitions for Individual Rent Adjustments. City staff performed extensive policy research of, and held discussions with, rent stabilization jurisdictions throughout the state to analyze and determine best practices related to the hearing administration process, including the hiring and oversight of hearing officers. Staff presented this information, along with regulations for the Hearing Process (CSFRA Chapter 5) and provided recommendations for the RHC's consideration during the June 8, 2017 RHC meeting. At this meeting the RHC then provided direction to staff for the recruitment of hearing officers. After additional review and discussion during subsequent RHC meetings, the RHC adopted regulations on July 24, 2017 for hearing officer qualifications, compensation scales, and relevant experience.

Furthermore, and as stated in Chapter 5 of the regulations, the RHC decided to contract with an independent contractor or a third party service provider for Hearing Officers. The RHC has chosen to contract with Project Sentinel for hearing administration related services, including the hiring and training of hearing officers. It is Project Sentinel who then contracts with qualified Hearing Officers via the Request for Qualifications (RFQ) and interview process.

## ANALYSIS

### **Hearing Officer Recruitment and Selection**

In August 2017 Project Sentinel issued an initial Request for Qualifications (RFQ) for hearing officers based on the direction provided by the RHC. Below are examples of steps Project Sentinel took to widely distribute the RFQ:

- Project Sentinel researched the ADR panels for superior courts in the tri-county area and contacted members who appeared to meet the qualifications and had background in landlord-tenant matters or other matters financial in nature.
- Project Sentinel directly contacted qualified hearing examiners and arbitrators currently serving other local rent stabilization programs.
- The RFQ was distributed to various ADR organizations, Bay Area bar associations and other local legal groups.
- The RFQ was sent to the panels of mediators and arbitrators that Project Sentinel maintains for other dispute resolution programs.
- The RFQ was published on Project Sentinel's and City's website and an announcement was posted and promoted on social media pages.

As part of the selection process applicants were asked to submit resumes/CVs, writing samples, references and a cover letter detailing their relevant experience. Candidates who met the minimum criteria were invited to interview. Each applicant was asked to review the CSFRA and Chapters 4, 5 and 6 of the RHC regulations prior to being interviewed. The interviews were conducted by a panel of three interviewers. Each candidate was asked the same set of questions concerning their experience as a hearing examiner, arbitrator or Pro Tem judge, how they manage participants, their knowledge regarding rent stabilization laws and more technical questions about the CSFRA in particular.

The interview panel consisted of the Project Sentinel Hearing Administrator, a retired judge and an experienced mediator and arbitrator with expertise in landlord-tenant law and rental housing dispute resolution/stabilization ordinances. Each interviewer reviewed the submissions and evaluated each candidate using a rating sheet. Candidates were selected to be Hearing Officers if all interviewers deemed them qualified.



Ten candidates submitted responses to the RFQ and all were deemed qualified. Of the ten candidates:

- All are licensed attorneys – nine admitted in CA, one admitted in another State;
- Four served as Pro Tem Judges for more than one year;
- Four served as a hearing officer or Administrative Law Judge for a public Entity for more than three years;
- At least six conducted over five arbitrations including swearing in witnesses, hearing evidence and issuing decisions – consisting of a variety of matters, including some involving financial complexity and/or multiple parties;
- Three had extensive experience as Hearing Examiners, Officers or Arbitrators in other rent control Programs (EPA, Oakland and San Jose), having written dozens of decisions;
- At least two had served as arbitrators in binding rental dispute programs for over two years, including issuing writing decisions;
- None are members of a tenant or landlord advocacy group or trade organization or own Mountain View rental property covered by the CSFRA; and
- All are seasoned ADR professionals with mediation training and experience.

All candidates attended an extensive training in October 2017 and eight panelists decided to move forward and execute one-year independent contractor agreements with Project Sentinel. One candidate did not to join the panel citing concerns regarding the compensation structure.

### **Hearing Officer Evaluation**

Each year Project Sentinel enters into contracts with qualified Hearing Officers. These agreements are being evaluated for renewal upon expiration. Factors considered by Project Sentinel in reviewing a Hearing Officer's performance include the following:

- If qualifications are still met as set by the Regulations;
- Deadline adherence, both administrative as well as those set by the Regulations;
- Responsiveness to the Hearing Administrator requests, feedback and guidelines;
- Attendance at Hearing Officer Trainings;
- Use of templates and other tools as developed by administration;
- Record organization before, during and after the hearing;
- Management of parties and evidence at the hearing;
- Quality of written decisions and whether evidence presented in the petition, the response and at hearing is accurately reflected;

- Demonstration of a clear methodology for executing calculations, including use of tools provided by the administration;
- Thoroughness of legal analysis;
- Sound legal conclusions;
- Appeal issues and quality of decision on remand; and
- Feedback received from City Staff regarding Hearing Officers' written decisions, orders and management of the hearing process.

The Project Sentinel Hearing Administrator attends all hearings and prehearing teleconferences, hearings and appeals and evaluates Hearing Officers' performance.

If the Hearing Administrator has concerns regarding any of the above while a Hearing Officer is actively working on a petition, the Hearing Administrator provides feedback to the Hearing Officer. If a meaningful effort is not made by the Hearing Officer to adequately address those issues and/or further issues arise, Project Sentinel will not renew that Hearing Officer's contract.

Project Sentinel also worked with City Staff to adjust processes and procedures to help address issues that had been encountered during the petitions heard during the first half of 2018. These adjustments to timelines and procedures were communicated to the Hearing Officer panel and helped streamline the hearing process. Hearing Officers have each worked on several petitions and have become more efficient in hearing and deciding matters.

In addition to addressing issues as they arise, Project Sentinel conducts an annual assessment of performance by evaluating each Hearing Officer in light of the above listed factors. In December 2018, after reviewing all Hearing Officers, Project Sentinel elected not to renew three contracts. One Hearing Officer relocated out of the area without ever having been assigned a petition hearing. Another Hearing Officer was never able to accept an assignment due to a demanding workload in another jurisdiction, was not consistently responsive and was unable to attend recent trainings. The third Hearing Officer's contract was not renewed due to several issues including responsiveness to the Hearing Administrator, receptiveness to questions and concerns raised by the Hearing Administrator and City Staff, and feedback regarding their written decisions and management of the hearing process.

After this assessment, Project Sentinel chose to renew five Hearing Officer's contracts.



### 2019 Hearing Officer Recruitment

In January 2019, pursuant to its contract with the City, Project Sentinel published another RFQ utilizing the same methods and channels of distribution as described above. A couple of inquiries were received from individuals who did not meet the minimum qualifications. As a consequence they did not submit responses to the RFQ. Another qualified candidate was contacted who had attended the initial training in October 2017. This candidate elected not to join the panel at the time, and was now asked to reconsider since the petition process is now well established and the compensation schedule might be revisited. The candidate expressed interest in joining the panel and submitted a response to the RFQ. This candidate had been interviewed during the first recruitment and was deemed highly qualified by the interview panel.

With the addition of this new Hearing Officer, Project Sentinel now maintains a panel of six Hearing Officers. Two of the Hearing Officers are also on the East Palo Alto panel, two serve as arbitrators for Union City, four are on the panel for Hayward’s program, one is a hearing officer for Alameda and one is a hearing examiner for San Jose.

### Hearing Officer Remuneration Schedule

In addition to the evaluation of Hearing Officers, the compensation rates adopted almost two years ago were also evaluated. On June 8, 2017, the 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. The compensation schedule detailed below was adopted on June 8, 2017. This rate schedule reflected compensation in similar rent stabilization jurisdictions that did not directly employ hearing officers. Furthermore, the schedule was adopted prior to the adoption of regulations implementing details of the hearing process and without much detail as to what adjudicating petitions under the CSFRA would entail.

**Table 1: Current Hearing Officer Remuneration Schedule**

TENANT PETITION	PER HEARING
<ul style="list-style-type: none"> <li>• Covering 1 to 4 Units</li> </ul>	\$600
<ul style="list-style-type: none"> <li>• Covering 5 to 9 Units</li> </ul>	\$750
<ul style="list-style-type: none"> <li>• Covering 10+ Units</li> </ul>	\$900
<ul style="list-style-type: none"> <li>• Issues of Habitability and/or Service Reduction</li> </ul>	Additional \$250
<ul style="list-style-type: none"> <li>• Pre Hearing Meeting</li> </ul>	Additional \$250

• Complex (w/ approval)	Additional \$75/hour
LANDLORD PETITION	PER HEARING
• Covering 1 to 4 Units	\$750
• Covering 5 to 9 Units	\$1000
• Covering 10+ Units	\$1250
• Issues of Habitability and/or Service Reduction	Additional \$250
• Pre Hearing Meeting	Additional \$250
• Complex (w/ approval)	Additional \$75/hour

After adjudicating a total of 46 petitions, applying the above schedule is inelegant at best and also leads to Hearing Officers being undercompensated in light of their expertise and the amount of time invested in each hearing. Upon review of Hearing Officer time spent on each petition or consolidated petitions, it turns out that Hearing Officers spent an average of 5 hours each Tenant petition and an average of 30.5 hours on each Landlord Petition. This resulted in an average of \$161 per hour.

Comparison to Other Rent Stabilization Jurisdictions

Surveying other Bay Area rent stabilization jurisdictions shows that for the most part adjudicators are compensated on an hourly or salaried basis. Contracted adjudicators' hourly rates range from \$200 to \$260 per hour. Some jurisdictions cap compensation to a certain amount of hours and allow further payment with prior express authorization and some have a tiered fee schedule based on type of activity.

As detailed in Attachment 1, San Jose, East Palo Alto, Alameda and Union City all entered into independent contractor relationships with their hearing examiners/arbitrators and hourly compensation ranges from \$200 to \$260. East Palo Alto caps the rate at 10 hours, absent express authorization for additional compensated hours due to the complexity of a particular case. Hayward and Los Gatos both contract with Project Sentinel to provide hearing administration services. Arbitrators for these programs are compensated on an hourly basis, with caps imposed. Other local rent stabilization programs, such as Oakland, Berkeley, Richmond and San Francisco, hire hearing examiners as salaried employees and compensation ranges from \$100K to \$200K a year with benefits.



Proposed Remuneration Schedule

In light of the needed expertise to hear petitions under the CSFRA and the challenge in recruiting qualified Hearing Officers, the program will benefit from adjusting the compensation to be commensurate with the work performed and in-line with other local jurisdictions. The following adjusted remuneration schedule is proposed:

**Table 2: Proposed Hearing Officer Remuneration Schedule**

ACTIVITY	HOURLY RATE	HOUR CAP	FLAT RATE	NOTES
Uncontested Tenant Hardship Petition (stand-alone)	\$250 Hearing \$200 Prep and Writing	4 hr*	n/a	*unless prior express authorization
Tenant Petitions A/B, Contested Hardship Petition (stand-alone)	\$250 Hearing, Pre Hearing, Site Visit \$200 Prep and Writing	8 hr*	n/a	*unless prior express authorization
Landlord Petition	\$250 Hearing Pre Hearing, Site Visit \$200 Prep and Writing	20 hr*	n/a	*unless prior express authorization
Decision on Remand after Appeal (Same Hearing Officer)	\$150	5 hr*	n/a	*unless prior express authorization
Decision on Remand after Appeal (New Hearing Officer)	\$200	10 hr*	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 prep); \$50/hr if additional conferences or time, with express authorization

The flat rate for a Settlement Conference Facilitator remains unchanged, with an addition of an hourly rate with prior approval when the conference exceeds 4 hours total prep and conference time.

An evaluation of Hearing Officers' time spent indicates that the majority of time is devoted to tasks that do not require an in-person appearance or meeting and could warrant a slightly lower hourly rate. Therefore, a proposed two-tier rate is given into consideration with \$250 per hour for Hearings, Pre Hearings and site inspections, and \$200 per hour for preparation, analysis, research and drafting of orders and decisions. In order to avoid any incentive for "over-billing" and to be mindful of the CSFRA budget, caps are suggested, absent prior express authorization.

For drafting Remand Decisions after appeal of a petition decision an hourly rate of \$150 is proposed with a 5 hour cap. Hopefully this encourages thoroughness of analysis and decision making by a Hearing Officer during the initial petition hearing process. However, if a new Hearing Officer is assigned to address a decision on remand, \$200 per hour is suggested, since they are not yet familiar with the hearing record.

In summary, Project Sentinel's experience with the current panel of Hearing Officers has been that each is a consummate professional, provides excellent services and engages in honest billing practices. As the CSFRA Program continues and new Hearing Officers join, it would be beneficial to have these fair compensation policies in place.

The proposal also includes remuneration for attending trainings, similar to San Jose's policy. Trainings are a valuable opportunity to review the law, pertinent issues that have come up in petitions and changes in regulations. This also provides the Hearing Officers a chance to share experiences and techniques. The more knowledge a Hearing Officer has about pertinent issues dealt with on appeal and how challenging questions are being analyzed, the less likely decisions are to be appealed or remanded.

### **FISCAL IMPACT**

For Fiscal Year 1819 to date, the total Hearing Officers' remuneration, including 43 petitions and 2 decisions on remand, amounts to \$43,323. Applying the proposed compensation schedule to the hours spent on the 43 petitions and 2 decisions on remand would result in a total of \$65,775 or an average of \$201.45 an hour. This would be an approximate 34% increase in costs for Hearing Officers. This is still well below the Fiscal Year 1819 budgeted amount of \$215,000.

**PUBLIC NOTICING** – Agenda posting.

### **ATTACHMENTS**

1. Bay Area Rent Stabilization Jurisdictions Adjudicators Rates