

DATE: August 22, 2022

TO: Rental Housing Committee

FROM: Nazanin Salehi, Special Counsel to the Rental Housing Committee
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SUBJECT: Study Session: CSFRA and MHRSO Compliance and Enforcement Mechanisms

RECOMMENDATION

To provide direction regarding potential administrative compliance and enforcement policy regarding the Community Stabilization and Fair Rent Act and Mobile Home Rent Stabilization Ordinance.

AUTHORITY

The Community Stabilization and Fair Rent Act (CSFRA) empowers the Rental Housing Committee (RHC or Committee) to:

- “Establish rules and regulations for administration and enforcement of” the CSFRA (Section 1709(d)(2).)
- “Publicize” provisions of the CSFRA, including the rights and responsibilities of landlords and tenants under the CSFRA. (Section 1709(d)(12).)
- “Establish a schedule of penalties that may be imposed for noncompliance with [the CSFRA] or with the 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 Mountain View City Council.” (Sections 1709(d)(14), 1714(e), and 1715.)

Similarly, the Mobile Home Rent Stabilization Ordinance (MHRSO) authorizes the RHC to:

- “Establish rules and regulations for administration and enforcement of” the MHRSO. (Section 46.9(a)(3).)
- “Publicize” the MHRSO “through reasonable and appropriate means.” (Section 46.9(a)(12).)
- “Establish a schedule of penalties imposed for noncompliance.” (Section 46.9(a)(13).)
- “Pursue civil remedies in courts of appropriate jurisdiction, subject to city council approval.” (Section 46.9(a)(14).)

BACKGROUND

The RHC first considered administrative compliance policies for the enforcement of the CSFRA in October 2019. At that time, the RHC directed and authorized staff to send administrative courtesy compliance letters to landlords who failed to timely pay their annual rental housing fees. The RHC chose not to take any further action on additional enforcement mechanisms. Since then, staff has provided administrative courtesy compliance letters to landlords who have not paid their annual rental housing fees. For instance, staff sent compliance letters in early April 2021 for the annual rental housing fees for 2021; as a result, the program collected \$43,148 in outstanding fees from 22 properties and 16 additional properties were registered with the program. Staff has noted increased responsiveness to the compliance letters where copies are sent not just to the property management company but also to the owner.

The CSFRA, the MHRSO, and their implementing Regulations impose several compliance requirements on landlords of covered rental units/spaces in the City. While landlords have largely complied with the annual rental housing fee requirement, there have been lower levels of compliance with other requirements, such as registering rental units and filing required notices with the City. For other requirements, such as maintaining properties in a condition that substantially complies with the requirements of State and local laws, staff has limited information. **Table 1** below lists the various requirements with which landlords must comply pursuant to either the CSFRA, the MHRSO, and its Regulations. Some of these requirements are considered substantial, meaning that if these requirements are not being met, the landlord is not allowed to raise rents or file a petition for upward adjustment of rent.

Table 1: Requirements Pursuant to CSFRA and/or Regulations

REQUIREMENT	CSFRA	MHRSO	SUBSTANTIAL COMPLIANCE REQUIREMENT?
1. Landlord must roll back rent to either the rent charged on October 19, 2015 (or March 16, 2022, for Mobile Homes and Mobile Home Spaces), or the amount charged on the move-in date, if the tenancy commenced after October 19, 2015 (or after March 16, 2022, for Mobile Homes and Mobile Home Spaces).	CSFRA § 1702(b)(2)	MHRSO § 46.2(c)	Yes
2. Landlord has increased the rent in accordance with requirements of the CSFRA/MHRSO.	CSFRA §§ 1706; 1707	MHRSO §§ 46.5; 46.6	Yes
3. Landlord has paid all applicable annual rental housing fees.	CSFRA Regulations, Chapter 4, Section L	MHRSO § 46.9(c); MHRSO Regulations, Chapter 5, Section L	Yes
4. Landlord has registered the property with the rent stabilization program.	CSFRA Regulations, Chapter 11	MHRSO Regulations, Chapter 4	Yes
5. Landlord has maintained the property in substantial compliance with all State and local health and safety laws, and with any RHC orders or regulations, and there are no outstanding citations or notices of violation for the property.	CSFRA §§ 1707(f); 1710(b); 1714(a)	MHRSO §§ 46.10(b)	Yes
6. Landlord has submitted new lease and rent increase information sheet to the program.	CSFRA Regulations, Chapter 11	CSFRA Regulations, Chapter 4	No
7. Landlord has filed the following required notices and documents (as applicable) with the rent stabilization program: Termination of Tenancy notice(s), Termination of Tenancy follow-up document(s), Banked Rent Increase notice(s), Tenancy Buyout Agreement document, and Voluntary Agreement(s) to Temporarily Reduce Rent for Major Construction and Capital Improvements.	CSFRA Regulations, Chapter 7, Sections B, D, and E; Chapter 8, Section D; Chapter 10, Section C	MHRSO § 46.8(g); MHRSO Regulations Chapter 10, Section C	No

REQUIREMENT	CSFRA	MHRSO	SUBSTANTIAL COMPLIANCE REQUIREMENT?
8. Landlord has provided tenants with the Notice of Applicability of the CSFRA or MHRSO, and where applicable, Notice of Rent Concession.	CSFRA Regulations, Chapter 2	MHRSO Regulations, Chapter 2; Chapter 11, Section C	No
9. Landlord has provided tenants with a Notice to Cease prior to a termination notice.	CSFRA § 1705	MHRSO § 46.8	No
10. Landlord has complied with any final order of a Hearing Officer or the Rental Housing Committee.	CSFRA §§ 1707(f); 1710(a)	MHRSO § 46.11(e)	No

Upon request of the RHC, staff researched and analyzed various administrative compliance policies in other rent-controlled jurisdictions used to enforce similar requirements. (**Attachment 1** provides an overview of the enforcement mechanisms employed by other rent-stabilized jurisdictions in California.) Staff presented five potential enforcement mechanism options to the RHC at the March 28, 2022 meeting. The six enforcement mechanisms included: (1) sending noncompliance letters to landlords with copy to tenants; (2) posting a listing of noncompliant properties on the rent stabilization program website; (3) imposing additional late fees; (4) creating a tenant rent-withholding petition process; (5) creating an administrative citation system. After staff's presentation, the RHC heard public comments and conferred amongst themselves. Thereafter, the RHC conducted a straw poll to direct staff in further researching the following enforcement options:

- **Option 1** (noncompliance letters to landlords with a copy to affected tenants): **6-0 in favor.**
- **Option 2** (posting noncompliant properties to the City website): **6-0 in favor.**
- **Option 3** (late fees for failure to pay the Rental Housing Fee or failure to register): **6-0 in favor.**
- **Option 4** (petition to withhold rent for noncompliant landlords): **2-4 against.**
- **Option 5** (administrative citation program): **3-3 (3-2 in favor without alternate's vote).**

EXISTING ENFORCEMENT MECHANISMS

The options outlined above are intended to supplement the enforcement mechanisms that are already built into the CSFRA and MHRSO. The existing mechanisms for ensuring Landlord

compliance with the provisions of the CSFRA and the MHRSO are outlined in **Table 2** and **Table 3**, respectively.

Table 2: CSFRA Enforcement Mechanisms

Enforcement Mechanism	Authority	Requirement
Landlord must plead compliance in unlawful detainer.	CSFRA § 1704(f)	<ul style="list-style-type: none"> • Failure to comply with any requirement of the Act.
Landlord's noncompliance is affirmative defense to unlawful detainer.	CSFRA §§ 1704(h); 1714(d)	<ul style="list-style-type: none"> • Failure to comply with any requirement of the Act.
Landlord may not impose rent increase.	CSFRA § 1707(f)	<ul style="list-style-type: none"> • Failure to comply with any requirement of the Act. • Failure to maintain habitable premises. • Failure to make repairs ordered by Hearing Officer, Committee or City.
Landlord cannot file petition for or receive upward adjustment of rent.	CSFRA § 1710(a)(1)	<ul style="list-style-type: none"> • Failure to comply with any requirements of the Act (after receiving order of the Committee or other authority). • Failure to maintain a habitable premises (after receiving order of the Committee or other authority.)
Tenant may file downward adjustment of rent petition.	CSFRA § 1710(b),(c),(d)	<ul style="list-style-type: none"> • Failure to maintain habitable premises. • Decrease in housing services or maintenance. • Demand or retention of unlawful rent.
Tenant may file civil action in court.	CSFRA § 1715(a);(b)	<ul style="list-style-type: none"> • Failure to maintain habitable premises. • Demand or retention of unlawful rent. • Other violations of the Act.
The Committee or the City Attorney may file civil action in court.	CSFRA § 1714(e)	<ul style="list-style-type: none"> • Failure to comply with any requirement of the Act.
Tenant or the Committee may seek injunctive relief.	CSFRA § 1715	<ul style="list-style-type: none"> • Failure to comply with any requirement of the Act.

Table 3: MHRSO Enforcement Mechanisms

Enforcement Mechanism	Authority	Requirement
Mobile Home Landlord must plead compliance in unlawful detainer.	MHRSO § 46.8(f)	<ul style="list-style-type: none"> • Failure to comply with any requirement of the Act.
Mobile Home Landlord's noncompliance is affirmative defense to unlawful detainer.	MHRSO §§ 46.8(h), 46.11(b)	<ul style="list-style-type: none"> • Failure to comply with any requirement of the Act.
Mobile Homeowner or Tenant may file downward adjustment of rent petition.	MHRSO § 46.10(b)	<ul style="list-style-type: none"> • Failure to maintain habitable premises. • Decrease in housing services, communal facilities, or maintenance. • Demand or retention of unlawful rent.
Mobile Homeowner or Tenant may file civil action in court.	MHRSO § 46.11(c)	<ul style="list-style-type: none"> • Failure to maintain habitable premises. • Demand or retention of unlawful rent. • Other violations of the Act.
Mobile Homeowner or Tenant may seek injunctive relief.	MHRSO § 46.11(e)	<ul style="list-style-type: none"> • Failure to comply with any requirement of the Act.

While these mechanisms provide a solid foundation for enforcement of the requirements of the CSFRA and MHRSO, there are barriers preventing the efficient utilization of these mechanisms. The first major barrier is informational. Many of these mechanisms require tenant initiation or cooperation, and tenants currently do not have access to several key pieces of information about whether their landlord is or is not in compliance with the CSFRA and MHRSO. For instance, a tenant is unlikely to know whether their landlord has paid the annual rental housing fees or registered the property with the rent stabilization program. A second barrier is the RHC's lack of affirmative tools to enforce the requirements of the CSFRA and MHRSO short of filing a lawsuit. For example, while the RHC may refuse to accept a landlord petition in case a landlord failed to substantially comply with the requirements of the CSFRA or MHRSO, this becomes a useful tool for ensuring compliance only after the landlord has taken the affirmative step of filing a petition. The RHC needs additional tools to help proactively enforce the requirements of the CSFRA and MHRSO without having to resort to litigation. The mechanisms outlined below are intended to fill either one or both gaps in enforcement.

ANALYSIS

Option No. 1: Noncompliance Letter to Landlords and Tenants

At the March 28, 2022 meeting, staff presented the option of sending copies of noncompliance letters to tenants. The RHC currently sends noncompliance letters to landlords for failure to timely pay their annual rental housing fees (see **Attachment 2** for a copy of a current sample letter). Staff's recommendation is this practice be expanded to include:

- Failure to pay annual rental housing/space fees.
- Failure to register the property with the rent stabilization program.
- Failure to comply with rent roll-back provisions.
- Failure to comply with the allowable rent adjustment.
- Failure to comply with health and safety codes.

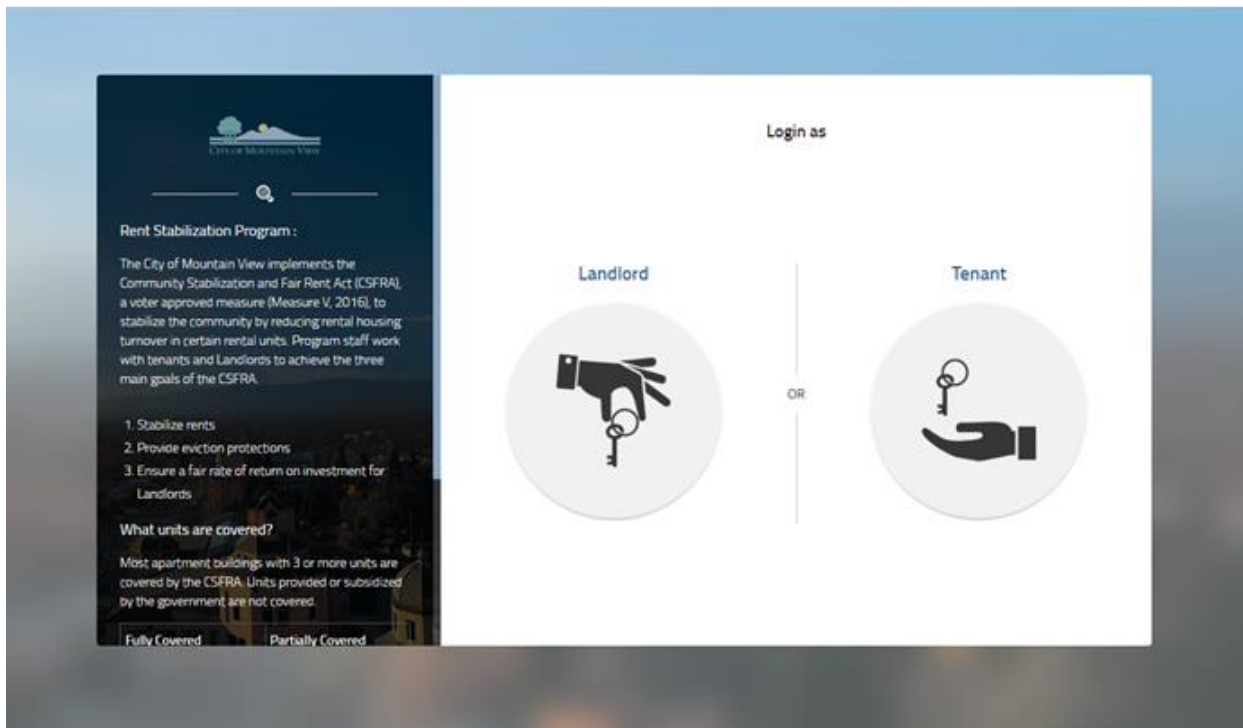
Moreover, staff recommends that a copy of these letters be sent to every tenant of landlords who have failed to comply with these requirements along with a notice that explains the tenant's rights in each of these situations.

This will help to bridge the informational gap that prevents tenants from enforcing their rights, such as refusing to pay any rent increases imposed while their landlord remains out of compliance with the requirements of the CSFRA, the MHRSO, and their implementing Regulations or filing petitions for unlawful rent.

Option No. 2: Noncompliance Website List

At the March 28, 2022 meeting, the RHC also asked staff to explore further the possibility of creating a publicly accessible database of properties that are not in compliance with the requirements of the CSFRA or the MHRSO. Again, the purpose would be to make publicly available this type of information necessary to enforce tenants' rights under the CSFRA and the MHRSO. By providing more ready access to this information, tenants will be better informed of the noncompliance issues and are able to address the issues. It would also help prospective purchasers of rent-stabilized properties make more informed decisions. Sometimes, new owners of CSFRA-covered properties learn about outstanding rental housing fees or other violations only after they have completed the purchase of the property. By providing more ready access to this information, potential buyers will be better informed of the risks associated with the property and can motivate noncompliant landlords to comply with the requirements of the CSFRA and the MHRSO, if for no other reason, than they want to sell the property.

After discussions with the current vendor of the registration database, the online portal could be updated to create a public search box. A member of the public would be able to type an address in the search box and an overview of the property and key fields would appear. Below are images of the current front page of the portal, as well as the dashboard that shows up once the landlord or tenant has logged into the portal. To shift to a public database, the frontpage would be modified to add a search bar that allows anyone to access certain information about a CSFRA or MHRSO covered property.



Additionally, staff would be able to customize the informational fields to the specific needs of the desired publicly accessible program. Some of the field information is already available in the system, while other fields would require manual staff labor to input the data. Below is a list of potential/proposed fields for public access to CSFRA and MHRSO properties:

- Number of Units—Information available in system.
- Year Built—Information available in system.
- Partially or Fully Covered—Information available in system.
- Property Registration Complete—Information available in system.
- Annual Rental Housing Fees Paid—Staff would manually update.
- Code Violations—Staff would manually update.
- Outstanding RHC/HO Orders—Staff would manually update.

Additional fields can be added but may require additional staff time in case the information is not readily available in the database.

Option No. 3: Imposition of Late Fees

The RHC also requested that staff research the option of imposing late fees on landlords that fail to timely pay their annual rental housing fees or of imposing penalties when a landlord fails to register the property. Currently, the RHC imposes a late fee of one percent (1%) for each month that a landlord fails to timely pay their annual rental housing fees and does not impose any penalty on the failure to register rental units/spaces. As a reminder, **Table 4** below demonstrates how Mountain View's late fees and penalties compare to other jurisdictions.

Table 4: Enforcement Fees in Rent-Stabilized Jurisdictions

JURISDICTION	REQUIRES REGISTRATION?	LATE ANNUAL FEE PAYMENT PENALTY	LATE REGISTRATION PENALTY
Mountain View	Yes	<ul style="list-style-type: none"> 1% per month (12% maximum) 	<ul style="list-style-type: none"> None
East Palo Alto	Yes	<ul style="list-style-type: none"> 15% if paid after January 1. 30% if paid after January 31. 100% if paid after March 31. 100% every three months after. 	<ul style="list-style-type: none"> \$25/unit if paid by March 31. \$50/unit for each additional 60 days after March 31.
Richmond	No	<ul style="list-style-type: none"> 10% if paid within 30 days. 25% if paid within 60 days. 50% if paid after 60 days. 	N/A
Santa Monica	No	<ul style="list-style-type: none"> 4% per month until balance paid. 	N/A
Berkeley	No	<ul style="list-style-type: none"> 100% if paid after due date. Additional 100% each 6 months thereafter. 	N/A
Oakland	No	<ul style="list-style-type: none"> 10% if paid within 30 days. 25% if paid within 60 days. 50% if paid after 60 days (plus 1% interest per month). 	N/A
West Hollywood	Yes	<ul style="list-style-type: none"> 20% per month (100% maximum). 	<ul style="list-style-type: none"> 100% of registration fees.
San Jose	Yes	<ul style="list-style-type: none"> 25% if paid 30 or more days after due date. 50% if paid 60 or more days after due date. 	<ul style="list-style-type: none"> \$500 per unit (administrative citation).
Alameda	Yes	<ul style="list-style-type: none"> 10% per month (60% maximum). 	<ul style="list-style-type: none"> \$250 first offense, \$500 second offense, \$1,000 third offense within a one-year period.
Culver City	Yes	<ul style="list-style-type: none"> 20% per month (100% maximum) 	<ul style="list-style-type: none"> 100% of registration fees.
Inglewood	Yes	<ul style="list-style-type: none"> Registration is not complete until all fees are paid. 	<ul style="list-style-type: none"> \$100/unit within 30 days. \$200 total after 30 days. \$500/unit after 60 days and each month until paid.

Pursuant to their police power, cities may impose penalties for late payment or nonpayment of fees. See Cal. Const., Art. XI, § 7; see also Cal. Const., Art. XIII, § 1(e)(5) (providing that a “fine, penalty, or other monetary charge imposed by...a local government, as a result of a violation of law,” is not a tax). The penalty imposed must not be “excessive,” as determined on a case-by-case basis. Cal. Const., Art. I, § 17; *City & County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1310; *Hale v. Morgan* (1978) 22 Cal.3d 388, 404.

Option No. 5: Administrative Citation System

Finally, the RHC requested that staff provide additional information about a potential administrative citation system, though it indicated it was unlikely to take action to adopt such a system at this time. In essence, the adoption of an administrative citation system would allow for the RHC to address any violation of the requirements outlined in **Table 1** above.

As an example, as noted in the last meeting, the City of Oakland has adopted an administrative citation system. The administrative citation system relies not only on requests from affected individuals, but also permits the City of Oakland to act proactively. Under Oakland's system, notices of violation may be issued for any of the following reasons:

- Failure to provide notice of the rent stabilization 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.
- Failure to file a notice that a unit is no longer exempt.
- Failure to remove a capital improvement rent increase on the first month following the end of the amortization period.

An administrative citation system imposes penalties for uncured violations of city ordinances (and charter provisions). Before a city may impose a fine or a penalty, it must give notice to the violating party and give the party an opportunity to be heard and present any facts or arguments on which the exercise of the discretion may be predicated. *Merco Constr. Eng'rs, Inc. v. Los Angeles Unified Sch. Dist.* (1969) 274 Cal.App.2d 154, 166. Only after providing the violating party with notice and an opportunity to be heard may the city impose the penalty.

While charter cities have greater latitude when adopting penalties, these penalties cannot exceed the maximum limits set by the city charter. *County of Los Angeles v. City of Los Angeles* (1963) 219 Cal.App.2d 838, 844. The Mountain View Charter provides that the maximum penalty for a violation of a City ordinance or the City Charter shall be the maximum fine or penalty set forth in the Government Code. MV Charter, Art. V, § 520 (Violation of ordinances; penalty); MV Charter, Art. XVI, § 1604 (Violations).

As required for due process, Oakland's citation system provides landlords with an opportunity to cure any violations or challenge any notice of violation prior to imposing the first penalty. A first

violation that is cured is not subject to a 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), with a maximum of \$5,000 for a single landlord during a 12-month period starting from the date of the first violation. Oakland's system also allows landlords to 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 is appealable to the Rent Board. **Table 5** below demonstrates the amount of the citations under Oakland's system.

Table 5: Oakland Administrative Citations

TYPE OF VIOLATION	CITATION AMOUNT
First cured violation	None
First uncured violation	\$100
Second violation of same requirement	\$100
Second uncured violation	\$250
Third violation of same requirement	\$250
Third uncured violation	\$500
Each violation after third violation	\$500

The City of West Hollywood and the City of San Jose also employ an administrative citation system. While West Hollywood's system is not specific to violations of their rent stabilization law, **Table 6** outlines housing-related violations for which they administer citations and the amount of those citations. Lastly, **Attachment 3** highlights the administrative citations adopted by San Jose relating to violations of their Apartment Rent Ordinance, Tenant Protection Ordinance, and Ellis Act Ordinance.

Table 6: West Hollywood Citations

PROVISION	DESCRIPTION	1st Cite	2nd Cite	3rd Cite
17.24.010(d)	Failure to disclose exempt property status	\$100	\$200	\$500
17.32.090(d)	Failure to disclose prohibition of side agreements	\$100	\$200	\$500
17.28.060, 17.56.010(h)(3) & (4)	Posting of mandatory notices	\$250	\$500	\$1,000
Chapter 17.30	Tenant Habitability Plans	\$1,000	\$2,000	\$5,000
17.52.110	Temporary Repossession for Authorized Corrections (Tenant Relocation)	\$1,000	\$2,000	\$5,000
17.28.050	Registration of nonstabilized properties (effective 1/1/23)	\$1,000	\$2,000	\$5,000
17.56.010(h)(1)	On-site manager requirement (16+ unit properties)	\$1,000	\$2,000	\$5,000

NEXT STEPS

Staff is requesting direction from the Rental Housing Committee on the following:

1. Are there any compliance and enforcement mechanisms that the RHC would like staff to move forward with immediately? If so, which one(s)?
2. Are there any compliance and enforcement mechanisms that the RHC would like staff to move forward to stakeholder input? If so, which one(s)?
3. Are there any compliance and enforcement mechanisms that the RHC would like to table for now? If so, which ones?

FISCAL IMPACT

The discussion of compliance and enforcement mechanisms does not have any fiscal impact. The adoption of certain compliance and enforcement mechanisms may increase revenue to the program by increasing compliance with the payment of annual rental housing fees, but also will increase the workload of staff.

PUBLIC NOTICING—Agenda posting.

NS-AvD-AK/8/CDD/RHC

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- Attachments:
1. Comparison Enforcement Mechanisms of Peer Jurisdictions in California
 2. Current Sample Letter to Noncompliant Landlords
 3. San Jose Chart of Administrative Citations