



MEMORANDUM

CSFRA, Community Development Department

DATE: November 26, 2018

TO: Rental Housing Committee

FROM: Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
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SUBJECT: Draft Revisions to Regulations Regarding Petition and Hearing Procedures and Presumptive Vega Adjustments

RECOMMENDATION

Consider the proposed revisions to the regulations modifying the petition and hearing procedures, and the optional Vega adjustment presumption.

BACKGROUND

At its October 22, 2018 meeting, the Rental Housing Committee ("RHC") discussed two topics: (A) the timeline and schedule to address a fair return petition, and (B) the Vega adjustment. The RHC instructed staff to draft revisions to sections of Chapters 4, 5, and 6 to clarify the petition and hearing procedures and provide additional guidance to petitioners, respondents, and hearing officers regarding the optional Vega adjustment presumption.

Accordingly, staff has prepared two documents identifying revisions to select sections of the regulations. Attachment 1 provides the proposed text for the petition and hearing procedures; Attachment 2 is a redline comparison of the existing regulations with the proposed changes. Attachment 3 provides the proposed text for the optional Vega adjustment presumption; Attachment 4 is a redline comparison of the existing and proposed Vega adjustment regulations.

The purpose of this staff report is to summarize the revisions as drafted, providing the RHC with adequate information to consider and potentially adopt the revisions shown

in Attachment 1 (Petition and Hearing Procedures) and Attachment 3 (Optional Vega Adjustment Presumption).

ANALYSIS

A. Scheduling and Processing Petitions and Hearings

Attachments 1 and 2 show changes to ten sections of the regulations that reorganize and provide greater clarity regarding petition and hearing procedures. The revised sections reflect the order in which they appear in the regulations and are summarized below.

1. "Untimely Submissions" - Chapter 4 § D(4)

Draft revision deletes this subsection, with submission deadlines addressed in a revised Chapter 5, Section C ("Notice and Prehearing Procedures").

2. "Acceptance of Response" - Chapter 4 § K(2)

Draft revision deletes this subsection, with submission deadlines addressed in a revised Chapter 5, Section C ("Notice and Prehearing Procedures").

3. "Acceptance of Petition for Upward Rent Adjustment - Fair Rate of Return" - Chapter 4 § L

Draft revision clarifies that two Petitions for Upward Adjustment involving the same rental unit cannot be submitted within one year of one another if the first petition was decided (as opposed to withdrawn and resubmitted). Likewise, new petitions generally cannot be submitted if previous decision about the unit is the subject of ongoing litigation. Finally, the revision clarifies technical language to distinguish between submission of petition by petitioner and acceptance of petition by the RHC.

4. "Summary of Petition Processing" - Chapter 4 § O

Draft revision moves this section to Chapter 5 and expands it to include a summary table of the Petition and Hearing schedule.

5. "Notice and Prehearing Procedures" - Chapter 5 § C

This section includes the most significant and substantive changes. Subsection C(2) provides that a hearing must be scheduled within 30 days of a prehearing settlement conference or within 45 days of acceptance of the petition (if no prehearing settlement conference is requested).

Subsection C(4) provides the notice and prehearing procedures, including the process by which hearing officers may request additional evidence. First, any request for additional evidence must be in writing. Second, the regulation distinguishes between requests for evidence and opportunities to provide written arguments or "briefing," and clarifies that hearings should not be delayed for additional briefing. Third, the revisions provide that if a hearing officer requests additional evidence, then the party with the burden of proof (generally the petitioner) may choose one of the three following options:

- Proceed with the hearing as scheduled, regardless of whether new evidence is submitted;
- Withdraw the petition (with opportunity to revise and re-submit); or
- Request to postpone the hearing in order to submit additional evidence or address code violations.

The default response will be to proceed with the hearing as scheduled if the petitioner does not respond to a written request for additional evidence. Subsection C(4) also formalizes the telephone conference, where hearing officers will inform parties about the hearing procedure and burden of proof.

6. "Ex Parte Communications" - Chapter 5 § E(3)

Draft revision cleans up technical language and allows for telephone conferences so long as all parties may communicate directly with one another.

7. "Closing and Opening of Hearing Record" - Chapter 5 § E(10)

Draft revision formalizes process of closing the hearing record of evidence, ensuring parties are aware if new evidence may be admitted into the record.

8. "Time for Issuance" - Chapter 5 § F(1)(a)

Draft revision clarifies that the Decision will be issued within thirty days of closing the hearing record, which may not occur on the date of the in-person hearing.

9. "Rental Housing Committee Ruling on Appeal" - Chapter 5 § H(5)(d)

Draft revision creates a new deadline: if the RHC remands any aspect of a decision to a hearing officer, then the hearing officers must provide written revisions within forty-five days.

10. "Summary of Petition and Hearing Process" - Chapter 5 § I

Draft revision moves the former summary table for the petition process from Chapter 4 to Chapter 5 and includes additional deadlines, summarizing both procedures.

B. Optional Vega Adjustment Standard

Attachments 3 and 4 show changes to subsection G(3) of the regulations, which refines the existing Vega adjustment standard that can be used instead of submitting a professional appraisal.

First, the draft revision adds a new "purpose" subsection. The purpose subsection clarifies that the optional Vega adjustment standard is optional and describes how the presumption may impact net operating income calculations.

Second, the draft revision clarifies that any tenant challenge of the presumptive recalculation of base year gross income must ensure that the base year rents reasonably reflect general market conditions applicable to the units and property for which the Vega adjustment is sought.

Third, the draft revision requires hearing officers follow a specific format when deciding petitions requesting use of the optional Vega adjustment standard. The revision limits hearing officer discretion by identifying specific factors for hearing officers to consider when determining whether the presumptive recalculation of base year gross income reasonably reflects general market conditions applicable to the unit and/or property. The draft factors are copied below.

- the Rent for other comparable units on the property or in other comparable properties;
- the physical condition of the unit(s), relative to other units on the property and/or comparable properties, which physical condition may reference the age, state of repair, or functionality of the structure including walls, flooring, and ceilings, the relative size and number of rooms in the unit(s) relative to other units on the property or comparable properties, unit appliances and amenities such as heating, air conditioning, and ventilation, laundry facilities, cooking and food preparation facilities, windows and screens, electrical and plumbing systems, security, the relative location of the unit(s) on the property, and any other physical aspect of the unit(s);
- shared services and amenities available to tenants of the unit(s) such as elevators, laundry or recreational facilities and equipment;
- the location of the property relative to other properties and/or community assets; and

- any other relevant information that may impact the Rent received or receivable for one or more units on the property during the Base Year.

Fourth, hearing officers are given authority to modify the HUD Rents used to recalculate base year gross income when units have unusually low rents. The draft revision includes an example where a hearing officer uses the average of the monthly HUD Rents for efficiency and one-bedroom units in the scenario summarized in the table below.

Unit Type	Square Footage	Most Similar HUD Unit Type & Rent (per number of bedrooms only)	Sample Rent Recalculation
Studio	400	Efficiency \$1,213	\$1,213
Jr. 1-Bedroom	600	Efficiency \$1,213	\$1,316
1-Bedroom	800	1-Bedroom \$1,419	\$1,419

Finally, the draft revision moves all of the example calculations to a new subsection and cleans up some technical language.

FISCAL IMPACT – None.

PUBLIC NOTICING – Agenda posting.

ATTACHMENTS

1. Draft revisions to Regulation Chapters 4 & 5 regarding Petition and Hearing Procedures
2. Redline showing proposed changes to Regulation Chapters 4 & 5
3. Draft revisions to Regulation Chapter 6 regarding Optional Vega Adjustment Presumption
4. Redline showing proposed changes to Regulation Chapter 6
5. Draft Resolution adopting Attachments 1 and 3