

DATE: December 18, 2023

TO: Rental Housing Committee

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SUBJECT: **Draft Regulations Chapter 13, Utility Charges Regulations, Clarifying Rent and the Treatment of Utilities in the CSFRA and Ratio Utility Billing Systems**

RECOMMENDATION

Adopt CSFRA Regulations Chapter 13, Utility Charges, as provided in Attachment 1, to:

1. Clarify that all rental charges, directly or indirectly charged by landlords, including charges for shared or master-metered utilities, including, but not limited to, water, sewer, or trash, are part of the definition of rent as stipulated in the Community Stabilization and Fair Rent Act, and the cost of such services must be established as part of the initial rental rate and specified in the rental agreement at the commencement of the tenancy; and
2. Provide a one-time Utility Adjustment Petition process that:
 - a. Allows landlords currently using a Ratio Utility Billing System or similarly calculated and billed utility charges to transition from separately charged utilities to including utility costs in the rental amount, thereby bringing rental properties into compliance with the CSFRA; and
 - b. Establishes the process for submissions and review of Utility Adjustment Petitions.

BACKGROUND

Summary of the Issue

- The purpose of the Community Stabilization and Fair Rent Act (CSFRA) is to promote neighborhood and community stability, healthy housing, and affordability for renters in the City of Mountain View by controlling excessive rent increases and arbitrary evictions to the greatest extent allowable under California law while ensuring landlords a fair and

reasonable return on their investment and guaranteeing fair protections for renters, homeowners, and businesses.

- To protect tenants from excessive and unreasonable rent increases, the CSFRA limits annual rent increases and is intended to regulate rent as a single charge inclusive of all housing services, such as utilities, associated with the use or occupancy of a rental unit as defined in the CSFRA.
- The CSFRA includes utilities in its definition of “Rent.” The CSFRA: (1) allows only one rent increase in any 12-month period; (2) limits rent increases to the increase in the Consumer Price Index—All Urban Consumers (CPI-U) (2023 Annual General Adjustment (AGA) = 5%); and (3) requires that any rent increases be preceded by at least 30 days’ written notice.
- Almost all CSFRA-covered rental units in Mountain View are master-metered for water and/or other utilities. Many, if not most, landlords bill tenants a varying monthly charge separate from rent to cover the cost of these shared or master-metered utilities. Landlords who unbundle utility charges typically use a Ratio Utility Billing System (RUBS) via a third-party entity to handle the separate billing, such as Conservice. These monthly fluctuating utility charges constitute a monthly change of rent. **Therefore, the use of RUBS is inconsistent with the CSFRA for two reasons: the frequency of the resulting changes in rent (more than once a year) and the extent of the changes (utility-driven rent increases can exceed CPI and AGA limits for allowable rent increase).**
- The CSFRA differs from some other rent-stabilized jurisdictions in that the CSFRA expressly includes utility charges in the definition of Rent, thereby regulating increases in utility charges. Some other rent-stabilized jurisdictions allow the continued use of RUBS either because there are specific exemptions in their ordinances or because the definitions of Rent and Housing Services in their ordinances do not include utility charges.
- The result has been confusion for both landlords (about how to comply with the CSFRA) and tenants (about the legality of the monthly fluctuations in the cost of utility charges resulting from the use of RUBS, as well as misunderstandings about determining Base Rent and the proper amount of Annual General Adjustments).
- In 2023, the Rental Housing Committee (RHC) directed staff to evaluate this issue and bring back options to clarify the definition of Rent under the CSFRA and address utility charges and the use of RUBS.

Rental Housing Committee Study Sessions

The CSFRA empowers the RHC to establish rules and regulations for administration and enforcement of the CSFRA (Section 1709(d)(2)). On January 31, 2023, August 21, 2023, and October 16, 2023, the RHC conducted Study Sessions (see Attachments 2, 3, and 4), on the treatment of utilities in the CSFRA and the impacts of using RUBS or similar systems.

At the January 2023 Study Session, the RHC requested staff organize stakeholder meetings to better understand the issues in the community. In February and March 2023, stakeholder meetings were conducted with landlords, tenants, and interested parties.

The August 2023 Study Session was held to summarize the issues related to rent, utilities, and the use of RUBS under the CSFRA, to provide a summary of the stakeholder meetings, and to request the RHC's initial input on and parameters for developing regulations to address the use of RUBS for shared or master-metered utilities in CSFRA-covered properties.

At the October 2023 Study Session, the RHC deliberated on options and staff recommendations to address the issue and provided direction to staff on drafting regulations, to include:

- Predictable monthly costs for tenants (to provide housing stability); and
- A one-time process for landlords to recuperate reasonable costs for utilities to be included in rent (to provide fair and reasonable return on their investment).

The RHC also provided input to include four specific items in the regulations:

1. Clarify the prohibition of using RUBS or similar systems to charge tenants utility charges which are billed directly or indirectly to the landlord associated with the use and occupancy of CSFRA-covered units, including a statement that, for new tenancies, a landlord cannot impose a separate fee or charge for any utility service which is billed to the landlord by the utility provider. This includes, but is not limited to, the use of RUBS or a similar system that is not based on a tenant's actual usage. If landlords choose to install submeters, they may recover the cost of this installation through the existing capital improvement petition process.
2. Include an administrative petition process to transition noncompliant practices into compliance with the CSFRA, including the following elements:
 - A methodology to calculate each tenant's share of the utilities which consists of the landlord determining and charging the lesser of: (a) the monthly average utility costs per room based on the actual utility costs for the entire property for the prior

12 months; and (b) the sum of all applicable Santa Clara County Housing Authority Utility Allowances.

- A sample review examination by staff of the Utility Adjustment Petitions for each property to ensure that the rent adjustments are properly calculated, after which a confirmation letter is issued to the landlord and all affected tenant(s).
 - Deadlines for submission of Utility Adjustment Petitions as follows:
 - a. >20 Units: Within six months of release of the Petition process.
 - b. 6 to 20 Units: Within nine months of release of the Petition process.
 - c. 1 to 5 Units: Within 12 months of release of the Petition process.
3. Clarify that if landlords have timely filed a Utility Adjustment Petition, they will not be liable for prior overpayment of rent due to RUBS utility charges by the tenant. If landlords do not timely file a Utility Adjustment Petition, a tenant has the right to file a Downward Adjustment of Rent Petition based on prior overpayment of rent due to RUBS utility charges.
 4. Include a provision in the Regulations pausing the filing and processing of any tenant petitions related to utilities/RUBS until after the deadline for submission of the Utility Adjustment Petition has expired.

ANALYSIS

This section provides a summary of the proposed draft regulations to implement the above direction from the RHC. The proposed regulations in a new Chapter 13 include two sections: Section A (Utility charges Paid Directly or Indirectly to Landlord is Considered Rent) and Section B (Utility Adjustment Petition Process).

Section A: Utility Charges Paid Directly or Indirectly to Landlord is Considered Rent

Attachment 1 includes the full draft text of Section A. Section A.1 clarifies that utility charges paid directly or indirectly to a landlord (whether through RUBS or other systems) are considered Rent for the purposes of the CSFRA. It further explains the types of Rent increases that apply to these charges, and it provides an exemption for individually and/or submetered utilities which are paid directly to the utility provider.

Section A.2 prohibits the use of RUBS for Covered Rental Units. Landlords can no longer use the RUBS or similar systems to distribute utility charges to tenants in the following manner:

- a. For tenancies with a start date prior to March 1, 2024, landlords can continue to use RUBS until the Utility Adjustment Petition is implemented in accordance with the requirements and timelines in the Regulations. Proportionate shares of utility charges for vacant or newly rented units may not be allocated to existing units through RUBS or any similar system.
- b. For tenancies with a start date on or after March 1, 2024, the landlord cannot use RUBS and must specify in the initial rental agreement the fixed dollar amount of initial Rent and specify which Utilities and any Housing Services are included in the initial Rent (such as water, garbage, sewer, parking, or pet rent).

The introduction date of March 1, 2024 allows staff to conduct outreach and education. For any new tenancies beginning between December 18, 2023 and March 1, 2024, landlords are encouraged to use the new system of including utility costs in the rent as a fixed amount to avoid having to file a Utility Adjustment Petition later on.

Section B: Utility Adjustment Petition Process

Attachment 1 includes the full draft of Section B, which details the Utility Adjustment Petition process landlords may use one time to transition from RUBS to inclusion of Utility Charges in the Rent through a one-time adjustment of Rent. This process will help bring landlords into compliance with the CSFRA.

Section B.2 explains how to calculate the utility adjustment amount to be included in Rent. The adjustment amount is based on the lesser of the pro rata share per room of a propertywide utility bill or the sum of applicable utility allowances per rental unit as published by the Santa Clara County Housing Authority (published every year in October; see Attachment 5 for 2024 allowances). The calculation is based on the following steps:

Step 1: Determine the amount of utility charges for the entire rental property for the 12-month period preceding submittal of One-Time Utility Adjustment (OTUA) Petition.

Example: The total water utility charges for a rental property with 10 two-bedroom rental units over a period of 12 months is \$15,000.

Step 2: Determine the Common Area Deduction (CAD) percentage and deduct that amount from the total 12-month property utility charges determined in Step 1.

Following up per RHC directions in the last meeting, staff will propose the deduction of certain percentages for common areas before calculating the pro rata share per rental unit. In previous stakeholder meetings, landlords indicated that it was common practice within used RUBS methodologies to deduct a percentage of total utility costs for common areas. The use of utilities in common areas are considered not under the control of the tenants and part of general maintenance of the property. In private meetings with landlords and a RUBS provider, it was discussed that implemented CAD percentages could vary between 0% and 50%, with an average of 25%, depending on the type of facilities/amenities provided on the property. The following amenities were most commonly used to determine CAD deductions: the amount of landscaping and the presence of a pool and laundry facilities. Staff will propose CAD of no more than 25%, with a 10% CAD for all properties, plus additional percentages for each of the following amenities/facilities:

Table 1: Common Area Deduction Percentages

Common Area Amenities	CAD Percentage
All Properties	10%
Pool	5%
Landscaping	5%
Laundry Facilities	5%

Example: The property has landscaping but no pool, so the CAD is determined to be 20%, or \$3,000. $\$15,000 - \$3,000 = \$12,000$.

Step 3: **Determine the average monthly utility charges excluding CAD for the property.**
Divide the total 12-month utility bill minus the CAD (as done in Step 2) by 12 months.

Example: The average monthly utility charges for the property are $\$12,000 / 12 = \$1,000$.

Step 4: **Determine the total number of rooms in the entire property** using the following schedule (bathrooms and separate dining areas are not counted for purposes of room count).

Divide the average monthly utility charges as calculated in Step 3 by the total amount of rooms on the property to get the monthly utility charge per room.

Table 2: Calculation of Rooms in Rental Units

Type	Kitchen	Living Room	Bedroom	Count
Single Room (SRO)				1 room
Studio	Kitchen	Living/Bedroom		2 rooms
1-Bedroom Unit	Kitchen	Living Room	1 Bedroom	3 rooms
2-Bedroom Unit	Kitchen	Living Room	2 Bedrooms	4 rooms
3-Bedroom Unit	Kitchen	Living Room	3 Bedrooms	5 rooms

At a prior meeting, the RHC directed staff to calculate each unit’s proportionate share of the total Utility Charges for the property based on the total number of rooms in the rental unit. The RHC determined that this was the preferred methodology because it resulted in more equitable outcomes (when compared with RUBS-type formulas, such as those based on number of household members), and it would be easier and more accurate to implement than Utility Charges per square footage.

Example: The total number of rooms on the property (according to the above schedule) is 40 (10 two-bedroom units, count as four rooms per unit). The monthly utility charges per room on the property are $\$1,000 / 40 = \25 .

Step 5: Calculate the allowable monthly utility charge per rental unit. Determine the number of rooms in each rental unit (in accordance with the above schedule) and multiply that by the Monthly Utility Charge per Room as calculated in Step 4.

Example: Each rental unit is a two-bedroom unit, counting as four rooms per the above schedule, resulting in a monthly utility calculation per rental unit of $4 \times \$25$ (the per room charge) = \$100 utility charge for each rental unit.

Step 6: Determine the sum of applicable utility allowances per rental unit as published by the Santa Clara County Housing Authority (published every year in October; see Attachment 5 for 2024 allowances).

Example: The water utility allowance for a two-bedroom unit is \$79 in the 2024 Santa Clara County Housing Authority Utility Allowances schedule.

Step 7: Compare the amount in Step 5 (monthly utility charges per rental unit) with the sum of Step 6 (the sum of applicable Utility Allowance per rental unit) and determine the lesser amount for the OTUA.

Example: The water utility allowance for a two-bedroom unit is \$79 in the 2024 Santa Clara County Housing Authority Utility Allowances schedule, which is less than the calculated amount in Step 5 of \$100. As a result, the allowed OTUA for water is determined to be \$79 for each two-bedroom unit.

Petition Process and Requirements

Section B.3 provides filing deadlines for the Utility Adjustment Petitions, in accordance with RHC direction, whereby properties larger than 20 units must file within six months, properties of six to 20 units must file within nine months, and properties of one to five units must file within 12 months of the release date of the Petition Process forms.

To allow staff time to set up the petition process properly and efficiently, including forms, guidelines, and outreach documentation and webinars, the release date of the Petition Process forms is targeted for the third quarter of 2024 (first quarter of Fiscal Year 2024-25). Regular updates will be provided on the Rent Stabilization Division website, communications to landlords and tenants, and at RHC meetings.

Sections B.4 through B.11 detail the actual process of submitting the Utility Adjustment Petition, the review of the Petition by Rent Stabilization Division staff, and the administrative decision on the Petition as per RHC feedback in a previous meeting.

Section B.12 explains how landlords can incorporate the upward Utility Adjustment in their next 12-month Rent Increase since the CSFRA only allows for one Rent Increase per year. Any annual rent increase will be calculated, adding the allowed AGA percentage to the current rent amount and then add the one-time Utility Adjustment amount on top of the newly calculated rent amount.

Section B.13 clarifies that no tenant hardship petitions can be filed related to a Utility Adjustment Petition.

Section B.14 clarifies that a landlord is not liable for prior overpayment by a tenant of rent related to utility charges billed through RUBS as long as the landlord completes a timely Utility Adjustment Petition.

Section B.15 clarifies the tenant petition process, which includes an issue of utility charges:

- Prior decisions on Tenant Petitions, including utility charges, will not be overturned.
- Current Tenant Petitions in progress will continue and be heard before March 1, 2024.
- Tenant Petitions, including utility charges, will be paused from December 18, 2023 until the date of the deadline, by which the landlord is supposed to file a Utility Adjustment Petition.
- Future Tenant Petitions, including utility charges, can only be filed after the deadline has expired for a landlord to complete a Utility Adjustment Petition in accordance with the schedule above.
- Future Tenant Petitions, including utility charges, for new tenancies commencing on March 1, 2024 or later (compliance with Section A.2.b) be filed at any time.

Section B.16 allows for an extension of the statute of limitations for Tenant Petitions related to Utility Charges in case the landlord fails to timely complete a Utility Adjustment Petition.

FISCAL IMPACT

The implementation and administration of the proposed regulations and the resulting processing of petitions will require more staff hours and may require hiring temporary and/or permanent staff. The Rent Stabilization Division continues to refine its processes to increase compliance with the CSFRA, thereby continuing to be as effective and streamlined as before. Staff will report back to the RHC in a later meeting and include this in the budget discussions for Fiscal Year 2024-25.

PUBLIC NOTICING—Agenda posting and email to distribution list.

AVD-KMT-NS/KG/6/HSN/RHC
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- Attachments:
1. Resolution to Adopt Chapter 13 of CSFRA Regulations, Utility Charges Regulations
 2. Rental Housing Committee Memo Dated January 31, 2023
 3. Rental Housing Committee Memo Dated August 21, 2023
 4. Rental Housing Committee Memo Dated October 16, 2023
 5. 2024 Santa Clara County Housing Authority Utility Allowances