

DATE: October 17, 2022

TO: Rental Housing Committee

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**SUBJECT: Amendments to CSFRA Regulations Chapter 5, Hearing Procedure, and to
MHRSO Regulations Chapter 6, Hearing Procedure**

RECOMMENDATION

1. To review and adopt amendments to the Community Stabilization and Fair Rent Act Regulations Chapter 5, Hearing Procedure, to provide processes for determining compliance with final decisions of Hearing Officers or the Rental Housing Committee.
2. To review and adopt amendments to the Mobile Home Rent Stabilization Ordinance Regulations Chapter 6, Hearing Procedure, to provide processes for determining compliance with final decisions of Hearing Officers or the Rental Housing Committee.

BACKGROUND

Section 1710 of the Community Stabilization and Fair Rent Act (“CSFRA”) provides that landlords or tenants may file petitions with the Rental Housing Committee (“Committee” or “RHC”) seeking adjustments, either upward or downward, of the rent for any tenancy. Section 1711(a) of the CSFRA directs the Committee to appoint Hearing Officers to conduct hearings on the petitions and provides the Hearing Officers with “the power to administer oaths and affirmations, and to render [a] final decision on the merits of the Petition.” Section 1711(j) of the CSFRA allows any party to a petition to appeal the Hearing Officer’s decision to the full Committee for review. Lastly, Section 1709(d)(2) of the CSFRA grants the RHC broad authority to “[e]stablish rules and regulations for administration and enforcement” of the CSFRA.

Similarly, Section 46.10 of the Mobile Home Rent Stabilization Ordinance (“MHRSO”) provides that a park owner, mobile home landlord, mobile home owner, or mobile home tenant may file a petition with the Committee seeking adjustments, either upward or downward, of the rent for any mobile home space or mobile home tenancy. Section 46.9(a)(5) provides that the Committee may appoint Hearing Officers to conduct hearings on the petitions for individual rent

adjustments. The Committee is also authorized to “[a]djudicate Petitions and issue decisions with orders for appropriate relief” and “[a]dminister oaths and affirmations and subpoena witnesses and relevant documents” pursuant to MHRSO Sections 46.9(a)(6) and (7), respectively. The Committee has delegated these powers to Hearing Officers in subsection (4) of Section B of Chapter 5 of the MHRSO Regulations. Subsection (c) of Section 46.10 requires the Committee to “develop regulations to facilitate prompt resolution of Petitions.”

ANALYSIS

Currently, Chapter 5 of the CSFRA Regulations and Chapter 6 of the MHRSO Regulations outline the procedure for hearings on individual rent adjustment petitions. Section F.1 of both chapters of regulations state that a Hearing Officer must issue a written decision within thirty (30) calendar days after the date the hearing record is closed, and the decision becomes final unless a party to the petition files an appeal within 10 calendar days after the mailing date of the decision. Similarly, Section H.5.c provides that decisions of the Committee on appeals of Hearing Officer’s decisions “shall be final unless a party files a timely judicial action to challenge the ruling.”

If a Hearing Officer determines that a tenant¹ is entitled to a downward adjustment of rent, the Hearing Officer’s decision (or the decision of the RHC after an appeal hearing) will provide the amount of the rent reduction. Moreover, the Hearing Officer’s decision (the decision of the RHC after an appeal hearing) will provide that the rent reduction is effective until the landlord corrects the issue or issues on which the rent reduction is based. The rent is restored only after the landlord demonstrates that they have adequately addressed the issues indicated by the applicable decision. The current regulations do not provide details about what happens when a decision on a petition for downward adjustment becomes final but there is an ongoing dispute between the parties about compliance with the decision.

For instance, a tenant may allege that their landlord has failed to comply with a decision that orders the landlord to register the rental unit(s), pay back rent to the affected tenant(s), perform maintenance or repairs, restore housing service(s), and/or otherwise comply with some requirement of the CSFRA or its implementing Regulations within a reasonable amount of time after the decision became final. On the other hand, a landlord may allege that they have complied with the decision by performing the required maintenance or repairs or restoring housing services while the tenant contests that the issues have been corrected. The proposed amendments to Chapter 5 of the CSFRA Regulations and Chapter 6 of the MHRSO Regulations would add Section J, Compliance Determinations and Hearings, to address these issues.

¹ The term “tenant” is used throughout this memorandum to refer to tenants of rental units, mobile home tenants, and mobile home owners. The term “landlord” is used to refer to Landlords of CSFRA-covered properties, mobile home landlords, and mobile home park owners.

Subsection 1 of the proposed Section J would outline how any party to a downward adjustment of rent petition may request a compliance hearing be scheduled before a Hearing Officer. The party would be required to submit their request, in writing, to the Committee or its designee on a form provided by the Committee. The request must set forth all the areas of disagreement. In addition, the requesting party would have to provide documentation evidencing its position.

Within 10 days of the receipt of a request for a compliance hearing, the Committee or its designee would have to provide notice to all other affected parties. Thereafter, within 10 days of the date of the notice, any affected Party could file a written statement objecting to the request and providing any documentation to support their bases for objection. If no objection is filed, then the Committee would be required to assign the request to a Hearing Officer, who would make determination based on the documentation. If any objection is timely filed, then the Committee would have to schedule a hearing before a Hearing Officer in accordance with the procedures set forth in Sections C through F of Chapter 5 of the CSFRA Regulations and Chapter of the MHRSO Regulations.

At the hearing, the landlord would have the burden of demonstrating compliance to the final decision as issued by the Hearing Officer or RHC by preponderance of the evidence. Thereafter, the Hearing Officer would issue a new decision setting forth the extent and date of compliance (if any), any adjustments to the original decision in light of the compliance, and/or any other equitable remedy. Under the proposed amendment, any affected Party would be able to appeal the compliance determination by the Hearing Officer to the Committee in accordance with the procedures set forth in Section H of Chapter 5 of the CSFRA or Chapter 6 of the MHRSO. Other rent-controlled jurisdictions with compliance hearing procedures include Richmond and East Palo Alto.

In addition, the proposed amendments would make two minor changes to require Hearing Officers to include the following in any decision issued in a downward adjustment of rent petition:

- A requirement that the landlord provide at least 30 days' notice to any affected tenants prior to the restoration of rent. State law requires that tenants be provided with at least 30 days' written notice prior to a rent increase of 10% or less. (See Civil Code Section 827.)
- Information regarding the availability of the compliance hearing process as set forth in Section J of Chapter 5 of the CSFRA Regulations or Chapter 6 of the MHRSO Regulations.

FISCAL IMPACT

The adoption of the proposed amendments to Chapter 5 of the CSFRA Regulations and Chapter 6 of the MHRSO Regulations may increase the usage of the petition process and increase the costs for Hearing Officers. The budget of the Committee as adopted has anticipated fluctuations in this area and, as such, the budget has some capacity to absorb these costs.

PUBLIC NOTICING—Agenda posting.

KMT-NS-AVD/JS/6/CDD/RHC
814-10-17-22M

- Attachments:
1. Draft Resolution to Adopt Amendments to Chapter 5 of the CSFRA Regulations
 2. Draft Resolution to Adopt Amendments to Chapter 6 of the MHRSO Regulations