

DATE: September 19, 2022

TO: Rental Housing Committee

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SUBJECT: **CSFRA and MHRSO Compliance and Enforcement Mechanisms**

RECOMMENDATION

1. Review and adopt amendments to the Community Stabilization and Fair Rent Act Regulations to add Chapter 12, Compliance and General Remedies.
2. Review and adopt amendments to the Mobile Home Rent Stabilization Ordinance Regulations to add Chapter 12, Compliance and General Remedies.

AUTHORITY

Of relevance here, 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, subject to City Council approval. (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 CSFRA, MHRSO, and their implementing Regulations impose compliance requirements on landlords of rental units, mobile homes, and mobile home spaces in the City of Mountain View.

Some of the requirements imposed by the CSFRA, the MHRSO, and the Regulations are considered substantial (see Table 1 below). A landlord’s failure to comply with one or more of these requirements means the landlord has not substantially complied with the CSFRA or the MHRSO and, therefore, cannot raise rents and/or file a petition for upward adjustment.

Table 1: CSFRA and MHRSO Substantial Compliance Requirements

REQUIREMENT	CSFRA	MHRSO
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 Section 1702(b)(2)	MHRSO Section 46.2(c)
2. Landlord has increased the rent in accordance with requirements of the CSFRA/MHRSO.	CSFRA Sections 1706 and 1707	MHRSO Sections 46.5 and 46.6
3. Landlord has paid all applicable annual rental housing fees/rental space fees.	CSFRA Regulations, Chapter 4, Section L	MHRSO Section 46.9(c); MHRSO Regulations, Chapter 5, Section L
4. Landlord has registered the property with the Rent Stabilization Program.	CSFRA Regulations, Chapter 11	MHRSO Regulations, Chapter 4
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 Sections 1707(f), 1710(b), and 1714(a)	MHRSO Section 46.10(b)

While these mechanisms provide a solid foundation for enforcement of the requirements of the CSFRA or MHRSO, there are barriers preventing the efficient utilization of these mechanisms. Consequently, there are low levels of compliance with some of the requirements, such as registering rental units and filing required notices with the City. To date, only 40% of CSFRA-covered properties have registered at the online CSFRA database portal. There is a high compliance with the payment of annual rental housing fees, but 10% of the fees still have not been paid six months after the due date. The main barriers are as follows:

1. The first major barrier is informational. Many of these mechanisms require tenant initiation, 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/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.
2. A second barrier is the RHC's lack of affirmative tools to enforce the requirements of the CSFRA/MHRSO short of filing a lawsuit. For example, while the RHC may refuse to accept a landlord petition for a landlord's failure to substantially comply with the requirements of the CSFRA/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/MHRSO without having to resort to litigation. The mechanisms outlined below are intended to fill either one or both gaps in enforcement.

Upon request of the RHC, staff researched and analyzed various administrative compliance policies in other rent-stabilized jurisdictions used to enforce similar requirements. At the March 28, 2022 meeting, staff presented five potential enforcement mechanism options to the RHC. 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).

At the August 22, 2022 meeting, staff provided additional information and presented details about Options 1, 2, 4, and 5. Staff requested that the Committee provide guidance on the following questions:

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?

After public comments and RHC deliberation, the Committee directed staff to bring back draft regulations for the adoption and implementation of Compliance Options 1, 2 and 3 (as they are detailed below). The Committee further directed staff to hold off on conducting stakeholder meetings but did not foreclose the possibility that stakeholder meetings would be held after the Committee's review of the draft regulations.

Compliance Policy 1: Noncompliance Letters to Both Landlords and Tenants

The Rent Stabilization Program currently sends noncompliance letters to landlords who have not timely paid their annual rental housing/space fees. The RHC directed staff to draft regulations expanding this practice to include not only noncompliance with nonpayment of annual rental housing/space fees, but also for noncompliance with any of the other substantial requirements. The RHC also directed staff to include in the regulations that a copy of the noncompliance letter would be sent to the affected tenants of a noncompliant property and to inform these tenants of their rights after having given the landlord a reasonable opportunity to bring the property into compliance. This will help to bridge the informational gap that prevents tenants from enforcing their rights, such as challenging any rent increases imposed while their landlord remains out of compliance with the requirements of the CSFRA, MHRSO, and Regulations or filing petitions for unlawful rent.

Compliance Policy 2: Publicly Accessible Database of Noncompliant Properties

The rent stabilization database is currently only accessible by landlords/property managers of CSFRA-covered properties. Making certain information of this database accessible to tenants would make it possible for tenants to gain information regarding timely payment of annual fees, completion of registration, etc. The purpose would be to provide tenants with the information necessary to enforce tenants' rights under the CSFRA/MHRSO. It would also help prospective purchasers of rent-stabilized properties make more informed decisions, gaining knowledge about

potential outstanding rental housing/space fees or other violations before the purchase of a CSFRA-/MHRSO-covered property.

Staff has contacted the developer of the rent stabilization database, who confirmed that the database can be updated to include a public search feature. This publicly accessible search feature would allow an individual to enter an address to view key information of the property. Key property information could include address, year built, number of units, and registration status (already available in the system) as well as outstanding rental housing/space fees (which would require staff time to input the data). Additional fields can be added but may require additional staff time if the information is not readily available in the database.

At the August 22, 2022 meeting, some members of the RHC expressed concern that landlords could be considered noncompliant if, for instance, one registration field was incidentally not completed. Concern was also expressed that these landlords would then show up as noncompliant in the public database. Staff has confirmed that the setup of the database would prevent this from happening.

Explanation of the Landlord Registration Process in the Database

First, upon initial registration, the property owner must create an account using their email address and create a password. Once the account is created, a property owner/manager must claim the property in the database via the Assessor's Parcel Number (APN) and a unique PIN as provided to the owner in the annual fee invoice.

After creating an account and claiming the property, the owner will be prompted to complete three categories of information: (1) owner information; (2) property management information; and (3) information regarding each unit at the property. The database contains the total number of units associated with each property and requires unit information be submitted for each of the units.

After completion of all three sections, the owner can press the Submit button, upon which the registration status changes to Registration Submitted. Thereafter, staff will review the information submitted and flag the registration as accepted/completed. If any information in each of the three sections is not fully completed, the Submit button remains greyed out and cannot be pressed. The Submit button only becomes active once all required information, including information for each unit, is completed. If the Submit button is not activated and remains greyed out, this indicated to the owner that certain fields are missing, and the registration is not yet complete.

Once the registration has been reviewed by staff and deemed complete, the property owner can continue to edit information in the database throughout the year to update any information that may change in the course of the year. These changes are tracked by the database but do not

affect the registration accepted/complete status of a property. During each annual registration cycle, the owner can review their property information, make edits, and resubmit for completion.

Compliance Policy 3: Late Fees for Untimely Payment of Annual Fees or Registration

Currently, the RHC imposes a late fee of one percent (1%) for each month that a landlord is late in paying their annual rental housing/space fees. The RHC does not impose any penalty on the failure to timely register rental units/spaces. After reviewing penalties of other rent-stabilized jurisdictions, the Committee directed staff to model late penalty regulations based on the policies adopted by the cities of Santa Monica (for failure to pay annual rental housing fees) and East Palo Alto (for failure to timely register).

Table 2: Enforcement Fees in other Rent-Stabilized Jurisdictions

JURISDICTION	LATE ANNUAL FEE PAYMENT PENALTY	LATE REGISTRATION PENALTY
Mountain View	1% per month (12% maximum)	None
East Palo Alto	15% if paid after January 1 30% if paid after January 31 100% if paid after March 31 100% every three months after	\$25/unit if paid by March 31 \$50/unit for each additional 60 days after March 31
Santa Monica	4% per month until balance paid	None

ANALYSIS

The attached draft amendments to the CSFRA and MHRSO Regulations add a Chapter 12, Compliance and General Remedies, to reflect the chosen policies as described above.

- **Section A**

This Section outlines the purpose of the chapter: to establish mechanisms for the enforcement of and compliance with the substantial requirements of the CSFRA and the MHRSO and the Committee’s authority to adopt the proposed regulations.

- **Section B**

This Section enumerates the substantial requirements imposed by the CSFRA and the MHRSO and their implementing regulations. The substantial requirements outlined in Section B are the requirements that the Committee would be enforcing via the mechanisms described in the Sections that follow.

- **Section C: Noncompliance Letters**

Section C provides the procedures for issuance of noncompliance letters. Noncompliance letters would be issued when a landlord has failed to timely comply with any of the substantial requirements.

The RHC or its designee would issue an Initial Letter of Noncompliance to a landlord upon learning of a potential violation of a substantial requirement. The Initial Letter of Noncompliance will provide the landlord with a thirty (30) day period to cure the violation.

If a landlord fails to correct the violation within thirty (30) days from the date of the Initial Notice of Noncompliance, a Second Notice of Noncompliance will be issued. A copy of the Second Notice of Noncompliance will be sent to any affected tenants of the noncompliant property along with a copy of the required CSFRA/MHRSO information sheet as provided and published by the RHC or its designee explaining the tenant's rights.

Since code inspections for residential properties are administered by the City's Code Enforcement Division, Rent Stabilization Program staff will work in close collaboration with the City's inspectors to monitor code violations and update landlords of potential CSFRA noncompliance implications. Code inspections for mobile home parks are the responsibility of the California Department of Housing and Community Development (HCD), and Rent Stabilization Program staff will regularly issue public record requests to obtain any inspection reports and update mobile home park owners/landlords of potential MHRSO noncompliance implications.

- **Section D: Compliance Database**

Section D provides for the creation of a publicly accessible compliance database. The public section of the database will show the following information: property address, APN, the year the property was built, the number of units on the property, if the property is fully or partially covered by the CSFRA, the annual rental housing/space fee payment status, and the annual registration status.

The annual rental housing fee status would be indicated as one of the following:

1. Payment Period Open: This indicates that an invoice has been sent to the landlord, and the landlord still has time to pay the fees.
2. Fees Paid: This indicates that an invoice has been sent to the landlord, and the landlord timely paid their annual rental housing fees.

3. Fees Not Paid: This indicates that an invoice has been sent to the landlord, the deadline to pay the invoice has passed, and the landlord has failed to pay.

Similarly, the annual registration status would be indicated as one of the following:

1. Registration Open: This indicates that the annual registration period is open. This period ends on February 1 of each year. If the status remains “Registration Open” after February 2 of each year, the property has failed to timely complete their annual registration.
2. Registration Submitted: This indicates that the landlord has completed their annual registration, and staff is reviewing for completeness.
3. Registration Accepted: This indicates that the landlord has completed their annual registration. A landlord’s status may update to “Registration Accepted” while the registration period is still open.
4. Registration Not Submitted: This indicates that the annual registration period has closed, and the landlord has not completed the registration.

Staff does not recommend including information on code violations in the database but instead be directly requested from the Rent Stabilization staff for the following reasons:

- It is the City’s goal to provide residential multi-family housing inspections every five years, which may be extended to every eight years if no previous serious violations were recorded. Providing this information in the database might give a false sense of accuracy and timeliness.
- Code inspections for mobile home parks are the responsibility of the HCD, and inspection reports can only be accessed through a public record request.

- **Section E: Late Fees**

Section E outlines a schedule of late fees that will be imposed when a landlord fails to timely pay their annual rental housing/space fees or fails to timely complete their annual registration.

The proposed amendments provide that if a landlord fails to pay their annual rental housing/space fees within 30 days of the due date, a late fee in the amount of four percent (4%) per month will be assessed on the unpaid balance for each property for which the landlord is noncompliant. For the purposes of the late fee, the “unpaid balance” includes annual rental housing/space fees and late fees from prior years. Any new or subsequent

property owner shall assume and become responsible for any unpaid balances from prior billing periods. The four percent (4%) will be charged for each month that the landlord fails to pay their annual rental housing/space fees after the due date. No late charges will be assessed after the landlord's entire unpaid balance for the property is paid.

The proposed regulations would also include a late fee if a landlord has failed to timely register. If the landlord fails to complete their annual registration by February 1 of each year, they will be assessed a Twenty-Five Dollar (\$25) per unit late fee on February 2. Every thirty (30) days thereafter that the landlord remains out of compliance with the annual registration requirement, they will be assessed an additional Twenty-Five Dollar (\$25) per unit monthly late fee.

- **Section F: Effective Date**

Section F provides that the provisions of Chapter 12 shall become effective on December 1, 2022 and will be implemented for the 2022-23 annual rental housing fee and registration period.

ALTERNATIVE ACTIONS

The Committee may choose to proceed with staff's recommendation to review and adopt the proposed Chapter 12 regulations or take one the following alternative actions:

1. Review and adopt the proposed Chapter 12 regulations with amendments.
2. Direct staff to revise the proposed regulations for consideration at a future meeting.
3. Direct staff to hold stakeholder meetings on the proposed Chapter 12 regulations.
4. Choose to table the adoption of one or more of the enforcement mechanisms.

FISCAL IMPACT

The adoption of compliance and enforcement mechanism regulations may increase revenue to the program by increased payments of annual rental housing/space fees and/or late fees. On the other hand, the addition of a public-facing section of the database will increase expenditures. Additionally, implementation of the proposed compliance and enforcement mechanisms will increase staff time and program costs.

PUBLIC NOTICING—Agenda posting.

KMT-NS-AK-AVD/JS/6/CDD/RHC

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- Attachments:
1. Draft Resolution to Adopt the Addition of Chapter 12 to the CSFRA Regulations
 2. Draft Resolution to Adopt the Addition of Chapter 12 to the MHRSO Regulations