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TO: Rental Housing Committee

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SUBJECT: Study Session: Rent and the Treatment of Utilities in the CSFRA and Ratio Utility Billing Systems

RECOMMENDATION

That the Rental Housing Committee:

- Receive a presentation on the definition of “rent” and the treatment/inclusion of utilities as part of the rent as stipulated in the Community Stabilization and Fair Rent Act.
- Receive information about the use of Ratio Utility Billing Systems by landlords to separately bill utilities for Community Stabilization and Fair Rent Act tenants, causing monthly fluctuations in rent.
- Provide initial input on and parameters for developing a potential strategy to address the use of Ratio Utility Billing Systems in order to increase compliance with lawfully imposed rents and rent increases under the Community Stabilization and Fair Rent Act.

BACKGROUND

In early 2022, the Rental Housing Committee (RHC) and staff received multiple inquiries from tenants during the COVID-19 state of emergency about the legality of monthly fluctuating utility bills. Tenants explained that instead of receiving one bill and one cost that is inclusive of both rent and utility costs, they receive two separate charges from the landlord, one for rent and another for utility costs. While the charge for the “rent” in these dual-billing situations did reflect the rent as stipulated in their lease agreement and remained constant for the term of the lease, the separate charge for utilities was a cost in addition to the rent bill and typically fluctuated (sometimes widely) from month to month. Often, these utility costs are calculated and charged through Ratio Utility Billing Systems (RUBS), which will be discussed later in this memorandum.

In some situations, lease agreements include requirements for the tenant to pay separate utility charges without stipulating a specific amount in the lease itself. In some instances, these monthly utility charge fluctuations are significant, causing hardship for lower-income tenant households and housing instability. These situations run counter to the requirements in the Community Stabilization and Fair Rent Act (CSFRA), which defines “rent” to include utility charges. Rent, including utilities charges that are paid to or for the benefit of the landlord, are subject to limited rent increases as allowed by the CSFRA.

In March 2022, the RHC directed staff to analyze the issue of fluctuating monthly utility charges and to return to the RHC at a later date to discuss the issue.

Payment of Utilities

CSFRA units in Mountain View are commonly serviced by a combination of utility and/or housing service billings. Typically, there are three methods for the payment of utilities. The first scenario involves tenants paying utility services directly to the utility provider (such as gas and electricity to PG&E). Utilities are individually metered for each unit. In this case, the utilities are not considered part of rent in the context of the CSFRA.

The second way is for utilities to be included in the rent and paid directly to the landlord with a single fixed monthly amount of rent that includes utilities as well as any other housing services. In this scenario, the landlord then pays the property bill to the utility and/or service provider.

The third scenario is for landlords to use RUBS, where the landlord or a vendor hired by the landlord bills the tenant separately for monthly utility charges. Monthly costs for utilities are not fixed but fluctuate from month to month. RUBS uses a calculation methodology to distribute propertywide utility costs among tenants. The distribution is not based on actual usage by each unit but rather by an algorithm of factors, such as square footage of the unit, number of bedrooms in the unit, or how many members of the household live in the unit as well as vacancy rates in a building or on the property.

Therefore, RUBS typically includes two components: (1) a billing system; and (2) a methodology for allocating propertywide utility costs to individual units. RUBS is a common and established national industry practice, especially in cases where no submeters or individual meters are installed. However, the monthly fluctuations of utility costs, which are considered part of rent, can run counter to the requirements of the CSFRA.

This memorandum explores the requirements in the CSFRA regarding rent and the treatment of utilities as well as commonly used methodologies for charging utilities in Mountain View. The information contained herein is intended to be a starting point to discuss potential strategies for addressing current issues related to the use of RUBS, largely arising out of questions that have been posed by tenants.

ANALYSIS

Rent and Treatment of Utilities Under the Community Stabilization and Fair Rent Act

Purposes

The CSFRA is contained in Article XVIII of the Mountain View City Charter. Sections 1700 and 1701 of the CSFRA establish the purpose of and findings supporting the CSFRA. Specifically, CSFRA Section 1700 provides as follows:

“This Amendment shall be known as the Mountain View Community Stabilization and Fair Rent Charter Amendment. The purpose of this Amendment 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.”

Thereafter, Section 1701 identifies findings that support the CSFRA’s purpose as established in Section 1700. In summary, Section 1701 includes findings about the high cost of housing in Mountain View, the prevalence of low-income households in the City, the affordability gap, the concern about excessive rent increases, the concern regarding the housing and economic conditions that create a detrimental effect on a substantial number of renters in the City, and the concern about evictions and displaced tenants.

CSFRA Definition of “Rent” and Rent Increases

The CSFRA’s definition of rent (codified at Section 1702(p)) regulates all periodic payments for the use and occupancy of a covered unit, including housing services (Section 1702(h)), and including, but not limited to, utility charges paid to the landlord:

“All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises and attendant Housing Services, including all payment and consideration demanded or paid for parking, Utility Charges, pets, furniture, and/or subletting.”

Utility Charges are defined in the CSFRA Section 1702(v) as:

“Any charges for gas, electricity, water, garbage, sewer, telephone, cable, internet, or other service relating to the use and occupancy of a Rental Unit.”

CSFRA Section 1702(h) provides:

“Housing Services include, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, Utility Charges that are paid to the Landlord, refuse removal, furnishings, telephones, parking, the right to have a specified number of occupants, and any other benefit, privilege or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.”

To protect tenants from excessive rent increases, the CSFRA generally limits rent increases to:

- a. The Annual General Adjustment (AGA) of rent, which is equal to 100% of the percentage increase in the Consumer Price Index (CPI) of the Bay Area Region; or
- b. Those imposed pursuant to a Petition for Upward Adjustment of Rent.

In either case, no more than one rent increase per 12 months is permitted (CSFRA Section 1707(b)).

The inclusion of utility charges in the CSFRA’s definition of rent means that if the landlord charges utility costs to the tenant, whether separately billed through a third-party service provider for the benefit of the landlord, or through a billing process implemented by the landlord themselves, the utility charge is considered part of the rent and is subject to the limitations for rent increases in the CSFRA as outlined above.

Ratio Utility Billing Systems

RUBS are used by landlords to charge tenants a portion of the propertywide utility costs. Landlords choose the RUBS method if only one meter is installed on the property (i.e., the property is master-metered) for a particular utility, which displays the usage of that utility for the entire building. Such properties do not have individual meters or submeters to track actual usage in each unit.

RUBS typically distribute propertywide utility charges to individual units by using an algorithm that may include one or more of the following factors: square footage of the unit, number of

bedrooms in the unit, or how many members of the household live in the unit or the number of units occupied in a building. It can be used to recover water, gas, electricity, trash, or any other cost involved in the operation of a property. The charges to the tenants fluctuate as the total property bill changes from month to month.

Landlords often choose to use a third-party service provider to process the propertywide invoice and allocate and bill the property utility charges among the tenants. Third-party service providers typically charge tenants, not the landlords, a service fee for the utility allocation and billing service.

RUBS and the CSFRA

As outlined in the prior section, using RUBS causes monthly utility charges to fluctuate. The result is a monthly change of rent, as defined by the CSFRA. Since the CSFRA only allows rent increases once in any 12-month period and limits those increases to the increase in the CPI, the use of RUBS can be inconsistent with the CSFRA.

Although the charging of utilities through RUBS may not comport with the CSFRA, many landlords have continued to use RUBS even after the effective date and implementation of the CSFRA. The result has been confusion for both landlords and tenants about the legality of RUBS utility charges as well as misunderstandings about the calculation of base rent and imposition of the AGA.

As reported to staff, the monthly fluctuations in utility charges may also be inconsistent with the rent increase limitations imposed by the CSFRA. For instance, the RHC set the AGA for Fiscal Year 2022-23 at 5%. However, utility charges within a 12-month period have been reported to fluctuate in excess of this allowed percentage from one month to the next. As such, even if the CSFRA did permit more than one rent increase per 12-month period, use of RUBS would still be inconsistent with the CSFRA because increases in monthly utility charges often exceed the amount permitted by the established AGA.

Finally, the fluctuations of rent that inherently arise out of the use of RUBS methodology also seemingly violate the noticing requirements in the CSFRA. Specifically, Section 1707(c) of the CSFRA requires that rent increases pursuant to the AGA only become effective “after the Landlord provides written notice to the Tenant in the manner prescribed by law, with at least thirty (30) days’ advance written notice.” Tenants who are billed for utilities pursuant to RUBS are provided no notice. In fact, they are unaware of what their utilities charges will be in any given month until they receive the bill from the landlord or the third-party service provider.

Although staff does not have an exact number of master-metered properties for all types of utilities in Mountain View, the following table shows that, for water utilities, almost all CSFRA properties are being master-billed. This gives a sense how widespread RUBS potentially may be.

Table 1: City of Mountain View Master-Metered (Water) CSFRA Properties

Property Size	3-5 Units	6-10 Units	11-20 Units	>20 Units	Total
Number of Properties	233	150	103	156	642
Number of Units	912	1,106	1,518	10,931	14,467
Properties with Multiple Master-Meters	9	12	10	14	45

To help landlords comply with the CSFRA, staff recommends outlining a clear, transparent, and consistent framework in the CSFRA regulations that will serve to increase understanding of lawfully imposed rent increases, including utilities. Having regulations might also help tenants better understand that the total annual rental costs include utility charges and are subject to rent increase limitations under the CSFRA.

RUBS in California and Treatment of Utilities in Other Rent-Stabilized Jurisdictions

The State of California does not prohibit the use of RUBS. The California Public Utilities Commission has reviewed the issue and determined it lacks jurisdiction to regulate landlords’ activity regarding utility billing of tenants.

Recognizing the need for water conservation in the State of California and submetering as an effective methodology to achieve that, the California State Legislature adopted Senate Bill (SB) 7 (California Water Submeter Requirements for Multi-Family Housing), requiring all new multi-family construction to include water submeters. SB 7 went into effect on January 1, 2018. However, installing individual meters for existing rental properties may be cost-prohibitive.

Staff reviewed the treatment of utilities and RUBS in the following rent-stabilized jurisdictions in California. The table below shows an overview of rent stabilized jurisdictions and how utilities and RUBS are treated. For a more detailed overview of these jurisdictions, see Attachment 1.

Table 2: Rent-Stabilized Jurisdictions in California and Treatment of Utilities

Jurisdiction	RUBS Allowed	Provisions
Mountain View	TBD	Utilities are part of rent and subject to rent increase limitations.
Alameda	Yes	Utilities are part of rent but using RUBS is exempt from rent increase limitations.
Berkeley	Yes	Utilities not mentioned in rent or housing services.
Culver City	No	Utilities are part of rent and subject to rent increase limitations.
East Palo Alto	No	Utilities are part of rent and are subject to rent increase limitations, with the exemption of submeters, tracking actual usage.
Hayward	Yes	Utilities are part of rent but using RUBS, if included in the lease, is exempt from rent increase limitations.
Los Angeles	No	Utilities are part of rent but charging 1% of rent for each gas and electricity is allowed and exempt from rent increase limitations.
Oakland	No	Utilities are part of rent and subject to rent increase limitations.
Richmond	No	Utilities are part of rent and subject to rent increase limitations, with the exemption of submeters, tracking actual usage. Landlords must state in the lease a fixed amount for rent, including utilities at the start of a tenancy. Mandatory registration of utilities amount as part of the base rent for the tenancy.
San Francisco	Yes	Utilities are part of rent but using RUBS, if included in the lease, is exempt from rent increase limitations.
San Jose	No	Utilities are part of rent and subject to rent increase limitations.
Santa Monica	No	Utilities are part of rent and subject to rent increase limitations. Landlords must state in the lease a fixed amount for rent, including utilities at the start of a tenancy. Mandatory registration of utilities amount as part of the base rent for the tenancy.
West Hollywood	No	Utilities are part of rent and subject to rent increase limitations.

INITIAL CONSIDERATIONS AND POTENTIAL APPROACHES

In conclusion, utility charges are part of the definition of rent and are subject to the rent increase limitations in the CSFRA. The CSFRA limits rent increases to the AGA and limits rent increases to one time per 12 months. Based on staff's evaluation of the CSFRA and best practices in other rent-stabilized jurisdictions, RUBS practices that do not adhere to these limitations violate the CSFRA. Staff would like to provide the following for consideration to bring properties using RUBS utility charges into compliance with the CSFRA.

1. Develop regulations to clarify that utility charges passed through to the tenants are subject to the CSFRA rent increase limitations. The maximum monthly utility cost amount must be included in the lease and is considered part of the base rent for purposes of calculating the AGA.
2. Allow in regulations options to bring noncompliant practices into compliance, using any of the following options:
 - a. When noncompliant RUBS or similar methods are being used, landlords would be allowed a one-time rent adjustment to partially offset previous utility pass-throughs to tenants by determining the lesser of the average of charged utility costs over the past 12 months or the sum of the Santa Clara County Housing Authority Utility Allowances. For an overview of the Santa Clara County Housing Authority Utility Allowances, see Attachment 2.

Certain parameters could be included, such as exclusion of pass-throughs for common areas, or, if common areas are not separately charged, a specified percentage to be excluded for common areas. This option could be achieved either through an expedited petition process or directly by landlords using a formula approved by the RHC, allowing tenants to file an unlawful rent petition to challenge the rent increase if the tenants disagree with the landlord's calculation of the rent increase.

If the landlord's utilities costs increase at a rate greater than what they are permitted to recover from their tenants pursuant to the AGA such that the landlord is not receiving a fair rate of return, the landlord can file a petition for upward adjustment of rent. Landlords would be able to comply with the CSFRA and incorporate utility charges into rent.

- b. Continue to allow RUBS methodologies in such instances where the lease states both the amount of rent and a maximum amount charged separately for utilities. Separate utility costs per month can be less than the maximum amount stated in the lease, but

not more. Certain parameters could be included, such as a certain percentage of common area utility costs to be excluded.

- c. Other approaches that the members of the RHC direct staff to explore.

NEXT STEPS

Staff provides the following recommendations for the RHC to consider as next steps:

1. Organize public outreach meetings to receive input from a wide range of stakeholders.
2. Return in a subsequent RHC meeting with input from stakeholder meetings and receive further input from the RHC with regard to potential strategies.
3. Return to the RHC in a subsequent meeting with detailed options in accordance with RHC recommendations by June 2023.

PUBLIC NOTICING—Agenda posting.

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

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- Attachments:
1. Overview of Rent-Stabilized Jurisdictions in California and Treatment of Utilities
 2. 2022 Santa Clara County Housing Authority Utility Allowances