



MEMORANDUM

Rent Stabilization Program,
Community Development Department

DATE: December 19, 2022

TO: Rental Housing Committee

FROM: Patricia Black, Senior Management Analyst
Anky van Deursen, Rent Stabilization Program Manager

SUBJECT: Update on Petitions, Petition Process, and Hearing Officers

PURPOSE

Provide the Rental Housing Committee with an update regarding petitions processed to date pursuant to the Community Stabilization and Fair Rent Act and the Mobile Home Rent Stabilization Ordinance, including an update on Hearing Officers and prehearing settlement conference facilitators for the Rent Stabilization Program.

BACKGROUND

At the direction of the Rental Housing Committee (RHC), this presentation was agendized to provide an overview of experiences to date with the petition and hearing process.

On November 8, 2016, Measure V, otherwise known as the Community Stabilization and Fair Rent Act (CSFRA), was passed by the voters. The stated purposes of the CSFRA are “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” (Section 1700).

The CSFRA created an entirely new program in the City of Mountain View and required dedicated resources for its development, implementation, and administration. To that regard, the RHC is tasked with a number of duties, including the establishment of rules and regulations regarding the implementation of the CSFRA. Section 1710 of the CSFRA permits a landlord or a tenant to file a petition with the RHC seeking adjustment, either upward or downward, of the rent for any given tenancy in accordance with the standards set forth in the CSFRA and using the procedures set forth in Section 1711.

After the CSFRA was passed, City staff performed extensive policy research of, and held discussions with, rent stabilization jurisdictions throughout the State to analyze and determine best practices related to hearing and petition administration process, including the hiring and oversight of Hearing Officers. Staff presented this information, along with regulations for the Hearing and Petition Processes (CSFRA Chapters 5, 6, and 7), and provided recommendations for the RHC's consideration during the June 8, 2017 RHC meeting. On July 24, 2017, the RHC adopted regulations governing the petition and the hearing process and the fair return standard of individual rent adjustment petitions under the CSFRA.

At this meeting, the RHC then provided direction to staff for the recruitment of Hearing Officers. Pursuant to Section 1709(d)(4) of the CSFRA, the RHC has the power and the duty to appoint Hearing Officers to conduct hearings on Petitions for Individual Rent Adjustments. After additional review and discussion during subsequent RHC meetings, the RHC adopted regulations on July 24, 2017 for Hearing Officer qualifications, compensation scales, and relevant experience. A budget for expenditures related to Hearing Officers and facilitators was also determined by the RHC.

The Rent Stabilization Program began accepting petitions for individual adjustments of rent in November 2017, and the first petition hearing overseen by a Hearing Officer occurred in January 2018. Petition process and hearing administration-related activities were established as quickly as possible to allow the CSFRA to be fully implemented. As CSFRA Rules and Regulations were adopted and refined, Hearing Officers were routinely provided updates, and especially so when the changes were related to petitions in the hearing process.

Additionally, the RHC was tasked with implementing the Mobile Home Rent Stabilization Ordinance (MHRSO) on behalf of the City Council in October 2021. Rent Stabilization Program staff began administering the MHRSO. Similar to the CSFRA, the MHRSO also allows landlords and tenants to petition the City for adjustments in rent through a petition process. The Rent Stabilization Program is proceeding with implementing this process as outlined in the MHRSO Rules and Regulations.

As part of administering the program, staff provides monthly data reports, which include a graphical overview of petition statuses. This overview shows all petitions received to date as well as a more in-depth review of the current fiscal year and is presented during RHC meetings. To further supplement their knowledge and understanding of the program, the RHC requested annual updates on the petition process. The last petition process update was provided in Fiscal Year 2018-19. Due to significant workload impacts caused by the effects of COVID-19 pandemic-related response programming, staff has been unable to provide the petition process update annually. Therefore, this memorandum provides a five-year look-back of petition-related activity to date and resumes the requested annual update process. Furthermore, the RHC has, from time to time, requested updates on Hearing Officers. Hearing Officer updates have been provided

separately in prior fiscal years; however, this memorandum combines the two at the request of the Chair.

ANALYSIS

The petition and hearing process is crucial to administering and implementing the CSFRA and MHRSO. The CSFRA and MHRSO require the City to provide landlords and tenants of rent-stabilized units with a way to request upward or downward adjustments of rent through a petition process. Landlords and tenants requesting an adjustment in rent do so by filing petitions with the City and entering into a formal process. This process includes the filing of forms and documentation, prehearing meetings, prehearing settlement conferences (if requested), hearings overseen and adjudicated by a Hearing Officer, and the issuing of a formal decision by the same Hearing Officer. The process also allows parties to the petition to file appeals with the RHC should they dispute the outcome of the decision.

Petitions vary greatly in type, complexity, number of affected parties, situations, and circumstances. This variation in content, as well as the impacts of the COVID-19 pandemic on the rental housing market and the adoption of new regulations allowing for new types of petitions (including Specified Capital Improvement Petitions and New and Additional Housing Services Petitions), affect comparative year-over-year analysis and impact potential trends. Types of petitions include:

Landlord-Initiated Petitions:

- Maintenance of Net Operating Income (MNOI Petition)
- Specified Capital Improvement Petition

Tenant-Initiated Petitions:

- Petition A: Unlawful Rent
- Petition B: Failure to Maintain Habitable Premise and/or Reduction in Housing Services
- Petition C: Undue Tenant Hardship
- New or Additional Housing Services Petition

Petitions Summary

From November 2017 through November 2022, the Rent Stabilization Program processed a total of 132 petitions¹ (see Figure 1 below). Eighty-five percent (85%) (112 of 132) of petitions were filed by tenants, while 15% (20 of 132) were filed by landlords. Fifty-two (52) petitions were filed in Fiscal Year 2018-19, representing the greatest number of petitions (39% of all total petitions

¹ One MHRSO petition was formally filed with the City on November 16, 2022 and is not reflected in the contents of this memorandum.

received) for any Fiscal Year. Eighteen (18) petitions filed in Fiscal Year 2018-19 were Undue Tenant Hardship Petitions filed in response to a landlord petition.

Petition filings appear to stabilize after Fiscal Year 2018-19 at an average of 16 petitions filed with the program per year. However, 13 petitions have already been filed for the current fiscal year, which represents only five months of reporting. This level of activity suggests petition filings may be above average for Fiscal Year 2022-23.

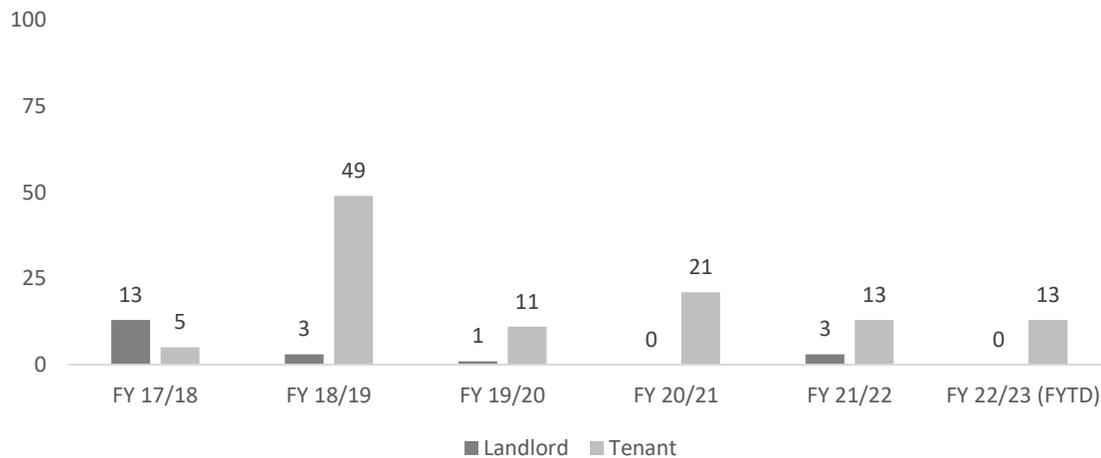


Figure 1: CSFRA Petitions Received by the Rent Stabilization Program to Date

Since November 2017, 114 petitions entered into the formal hearing process, 15 petitions (13%) were withdrawn by the petitioner, and three petitions (3%) were not accepted. Petition nonacceptance is rare. Of the three nonaccepted petitions, one Landlord MNOI Petition was not accepted by Hearing Officer Order due to extensive, active code violations on the property (CSFRA Section 1710(a)1(B)); one Undue Tenant Hardship Petition was not accepted by Hearing Officer Order due to late filing (CSFRA Regulations Chapter 7(C)1(b)); and one Unlawful Rent Petition filed by a mobile home owner in Fiscal Year 2017-18 was not accepted because the RHC deemed mobile homes not covered by the CSFRA on February 26, 2018.

Ten (10) of the 114 petitions are active and currently being reviewed by staff (three petitions), in the hearing process (five petitions), or in the appeal process (two petitions). One hundred four (104) of the 114 petitions have completed the hearing and/or prehearing settlement conference process (see Figure 2 below). Eighty-three percent (83%) (86 of 104 petitions) of the individually filed and finalized petitions received judgments in favor of the petitioner or were settled through a mutually determined agreement via the prehearing settlement conference or conciliation. Twenty-six percent (26%) (27 of 104 petitions) were settled or conciliated. Fifty-nine percent (59%) (61 of 104 petitions) were decided by a Hearing Officer through the formal hearing process. Seventeen percent (17%) (18 of 104) of petitions were appealed to the RHC, with two petitions

currently awaiting final appeal determinations. See Attachment 1, Overview of Petitions Received to Date, for details on petition outcomes and statuses.

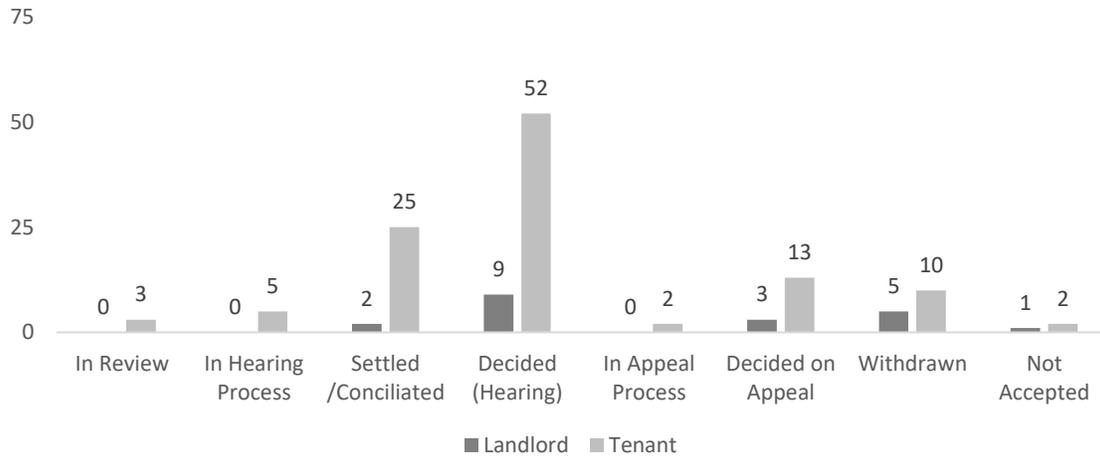


Figure 2: Status of Petitions (Fiscal Year 2017-18 through Fiscal Year 2022-23 Fiscal Year to Date)

Of the 104 petitions with final outcomes, the average time, inclusive of any reason for delay, is 84.6 days from petition acceptance to final outcome. The finalized petition data includes time associated with prehearing settlement conferences, hearings, and/or delays due to requests from affected parties or Hearing Officers. Each step requires due-process considerations and coordination of schedules between parties.

Landlord-Initiated Petitions

CSFRA and MHRSO regulations allow landlords to file petitions with the City requesting an upward adjustment of rent should they be unable to maintain a fair return on their investment as required under Federal law. Landlords may file two types of petitions with the City to request an upward adjustment of rent: Maintenance of Net Operating Income (MNOI) Petition or Specified Capital Improvement Petition. MNOI petitions represent all of the upward adjustment of rent petitions filed with the program. Over the five-year reporting period, 20 Petitions were received by the program, and 14 Petitions entered into the formal hearing process. The program received 13 MNOI petitions in Fiscal Year 2017-18, representing the greatest number of MNOI Petitions filed in a fiscal year. Of the 14 MNOI (landlord) petitions that entered into the formal hearing process, 79% (11) were finalized through the hearing or prehearing settlement process. Twenty-one percent (21%) (three) petitions were appealed to the RHC (see Figure 2 above).

No Specified Capital Improvement Petitions have been filed with the City to date. Specified Capital Improvement Petition forms and workbooks from the City will be available for landlords starting in mid-December 2022; however, landlords have been able to file using their own forms and following the instructions outlined in the regulations since 2021.

Additionally, in Fiscal Year 2021-22, the RHC adopted regulations allowing landlords to file petitions disputing the exemption status of a property. One exemption petition has been filed to date with the petition request being denied by the Hearing Officer.

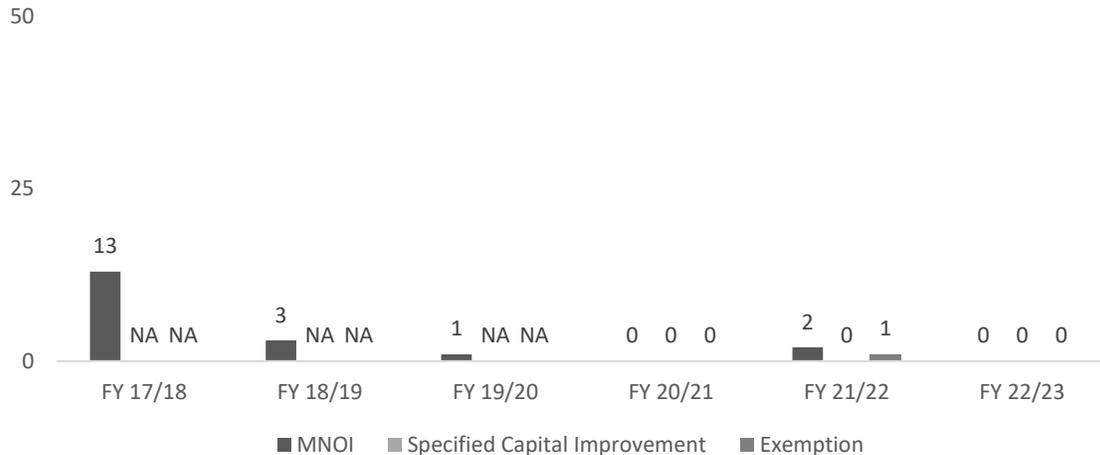


Figure 3: Landlord-Initiated Petitions Received to Date (as of November 22, 2022)

Tenant-Initiated Petitions

CSFRA and MHRSO regulations allow tenants to file petitions with the City requesting a downward adjustment of rent should their landlord be in violation of a section of the CSFRA or MHRSO or if a banked rent increase may pose an undue tenant hardship. Tenants may file three types of petitions with the City to request a downward adjustment of rent: Petition A (Unlawful Rent), Petition B (Failure to Maintain Habitable Premise and/or Reduction in Housing Services), or Petition C (Undue Tenant Hardship). One hundred twelve (112) Downward Adjustment of Rent Petitions were received by the program (see Figure 4 below), and 92 petitions have entered into the formal hearing process (see Figure 2 above). Additionally, as noted in Figure 2 above, of the 92 tenant petitions that entered into the formal hearing process, 84% (77) were finalized through the hearing or settlement process. Sixteen percent (16%) (15) of petitions were appealed to the RHC.

Additionally, in Fiscal Year 2020-21, the RHC adopted regulations for an additional petition process allowing tenants and landlords to file a joint petition for an increase of rent or allow for a one-time payment from tenant to landlord in order to cover, or partially cover, increased costs in defined categories. Tenants must initiate the process. New or Additional Housing Services Petition forms and workbooks from the City will be available for petitioning parties starting in mid-December 2022; however, parties have been able to file using their own forms and following the instructions outlined in the regulations since 2021. No New or Additional Housing Services Petitions have been filed to date.

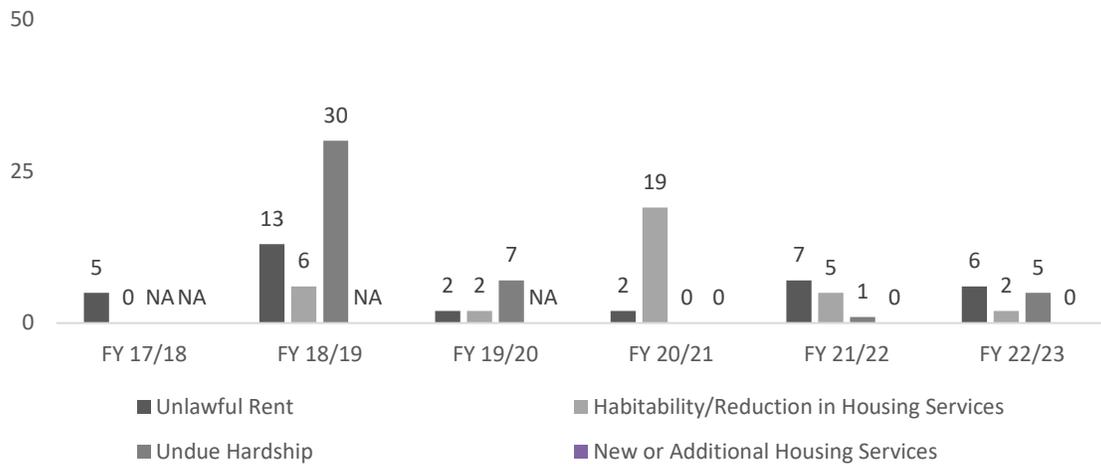


Figure 4: Tenant Initiated Petitions Received to Date by Type (as of November 22, 2022)

Unlawful Rent Petitions

Thirty-five (35) Petition A, Unlawful Rent Petitions, have been filed with the City to date, representing 31% of tenant petitions (see Figure 4). The program received the greatest number of Unlawful Rent Petitions in Fiscal Year 2018-19. Many of these were due to rent rollbacks not being provided as required under the CSFRA. In Fiscal Year 2019-20 and Fiscal Year 2020-21, only two Unlawful Rent Petitions were filed with the City. However, starting in December 2021, staff began receiving inquiries about potentially excessive rent increases, well above the Annual General Adjustment (AGA), related to multi-month concessions primarily given during the height of the COVID-19 pandemic. Tenants began filing Unlawful Rent Petitions to determine their base rent in mid-Fiscal Year 2021-22. In June and July 2022, the RHC adopted regulations clarifying the definition of base rent in relation to concessions.

Failure to Maintain Habitable Premise and/or Reduction in Housing Services Petitions

Thirty-four (34) Petition B, Failure to Maintain Habitable Premise and/or Reduction in Housing Services Petitions, have been filed with the City to date, representing 30% of tenant petitions (see Figure 4). The program received the greatest number of Failure to Maintain Habitable Premise and/or Reduction in Housing Services Petitions in Fiscal Year 2020-21. Many of these were due to alleged reductions in housing services related to the COVID-19 pandemic. In Fiscal Years 2021-22 and 2022-23, staff began receiving additional inquiries about habitability issues from tenants obtaining assistance at the Housing and Eviction Help Center.

Tenant Hardship Petitions

In Fiscal Year 2018-19, Undue Tenant Hardship Petitions became available to tenants. Undue Tenant Hardship Petitions allow tenants to file a petition in response to a banked increase notice or an Upward Adjustment of Rent Petition filed with the City by landlords. Forty-three (43) Petition C, Undue Tenant Hardship Petitions, have been filed with the City since Fiscal Year 2018-19, representing 38% of tenant petitions (see Figure 4), with the greatest number (30 petitions) being filed in that first year. Of the 30 Undue Tenant Hardship Petitions filed by tenants in Fiscal Year 2018-19, 60% (18 of 30) were filed in response to landlord MNOI Petitions.

Staff notes a downward trend in the filing of tenant hardship petitions from March 2020 through June 2022, which partially correlates with a decrease in banked hardship notices being filed with the City in Fiscal Year 2019-20 and Fiscal Year 2020-21. In August 2021, landlords once again began to file banked hardship notices with the program. These notices indicate some property owners withheld applying 2020 and 2021 AGA increases during the height of the COVID-19 pandemic. The increase in banked notices may be due to the rebounding of the rental market. As a result of an increase in banked increase notices being sent to tenants requesting increases beyond the AGA, tenant hardship petitions are once again being filed by tenants.

Hearing Officer Update

As mentioned in the Background section, this update also includes information on Hearing Officers as per the Chair's request. While City staff provide hearing administration-related support for the petition process, Hearing Officers are independent adjudicators who decide the outcome of petitions based on a review of the evidence presented and testimony provided by parties during the petition and hearing process. Hearing Officers review the forms, communications, and documentation provided by parties to a petition, determine the hearing record based on communication and documentation provided by all parties, issue orders, oversee and hold hearings, and write and issue a decision based on the record and testimony provided by the parties at the hearing. Hearing Officers have 30 days to issue a decision after the hearing is formally closed.

The Rent Stabilization Program contracts with Project Sentinel to provide Hearing Officers for the program. Project Sentinel oversees Hearing Officer contracts and recruitment and issues Requests for Qualifications (RFQ) when requested by City staff.

Hearing Officers are highly qualified attorneys with experience in adjudicating challenging and complex issues. The CSFRA and MHRISO regulations require that the petition process be adjudicated by Hearing Officers who meet the following criteria:

1. Hold a Juris Doctor or equivalent degree;

2. Have an active or inactive membership in the California State Bar in good standing or other state bar; and
3. Experience:
 - a. Served as a judge, commissioner, or other judicial officer for more than one year;
 - b. Served as a Hearing Officer or administrative law judge or equivalent position for a public entity for more than three years;
 - c. Served as an arbitrator and heard at least five arbitration proceedings that required hearing witnesses, examining evidence, and issuing a written decision; and
 - d. Served as a Hearing Officer or arbitrator for a binding rental dispute program and held that position for more than two years and issued written decisions in that position.

Hearing Officers perform the following duties for assigned petitions:

- Review the petition(s) and all submitted evidentiary documentation;
- Request clarification and/or additional documentation from affected parties, including the petitioner;
- Order and attend property inspections;
- Conduct prehearing telephonic conferences to prepare parties for their hearing;
- Adjudicate hearings;
- Perform complex mathematical calculations to determine petition outcomes; and
- Write and edit decisions based on the CSFRA and MHRSO, their Regulations, and the hearing record.

From January 2018 through January 2019, Hearing Officers spent an average of 3.8 hours to administer each tenant petition. From July 2019 through the current fiscal year to date, Hearing Officers have averaged 8.8 hours per tenant petition. The change in time spent is due to a change in the complexity of petitions. For example, in one tenant petition for Unlawful Rent, the lawyers for both parties requested multiple hearing dates to discuss the validity of the petition and whether the CSFRA was applicable.

For landlord petitions, the time spent by Hearing Officers in deciding each petition varied depending on a variety of factors, such as the number of units in the building, number of parties involved in the petition, number of affected units, and whether claims of habitability, overdue maintenance, and/or hardship were raised by the affected tenants. For example, a landlord petition affecting 10 units with thorough documentation submitted by the landlords and no issues raised by tenants or discovered by the Hearing Officer took the assigned Hearing Officer 11 hours to process and issue a decision. Likewise, in the three landlord petitions where hardship petitions were submitted and/or habitability issues were raised by the affected tenants, the assigned Hearing Officers each expended between 27 to 30 hours (including the hearing) in deciding the matters of the petitions.

Hearing Officers provide feedback to staff through quarterly meetings. Staff then takes this feedback into account and works to further streamline the petition process. These actions include:

- Changes to, and/or development of, regulations presented to and approved by the RHC;
- Updates to templates and forms;
- Clarification of, and adjustments to, timelines and schedules; and
- Updated trainings and quarterly meetings provided to Hearing Officers.

Staff also developed the following strategies to further assist Hearing Officers:

1. Increased communication with and training for current Hearing Officers to further improve the hearing process: Hold bimonthly Hearing Officer meetings to provide a platform for Hearing Officers to share questions and ideas and two biannual, comprehensive trainings to review changes and updates and address common concerns and challenges.
2. Developed and/or refined supportive materials: Created Excel workbooks for petitions designed to automatically perform relevant calculations for all petition worksheets.
3. Reviewed and refined regulations on an ongoing basis to incorporate best practices.
4. Refined remuneration schedule to reflect changes and/or additions to the petition process, workload, and jurisdictional best practices.

NEXT STEPS

Petition Program

During Fiscal Year 2022-23, staff plans to do the following to further enhance the petition program:

1. Update, finalize, and release multi-language petition forms and workbooks: Update current petition forms and workbooks to meet new regulations, provide all petition forms and workbooks in key languages, and release Specified Capital Improvement and Additional Housing Services Petition Forms.
2. Finalize and release all MHRSO Petition Forms.
3. Implement the Petitions Communications Plan.
4. Release Phase Four of the Online Portal, Landlord Petitions, on mvrent.mountainview.gov.
5. Update regulations with RHC approval as needed for clarification and to improve understanding and implementation of the CSFRA and MHRSO.

Hearing Officers

During Fiscal Year 2022-23, staff plans to do the following to support Hearing Officer recruitment and retention and provide appropriate assistance as needed:

1. Hire and train additional Hearing Officers to reduce workload: Issue an RFQ through Project Sentinel to recruit additional Hearing Officers, facilitate new hire orientation, provide additional guidance, and support for new Hearing Officers.
2. Develop and/or refine supportive materials: Create an Excel overview worksheet for Hearing Officers, refine timelines and schedules as needed, and improve templates and documents based on feedback received.
3. Review and refine regulations with RHC approval on an ongoing basis to incorporate best practices.

4. Periodically review and refine remuneration schedule to reflect changes and/or additions to the petition process, workload, and jurisdictional best practices.

PB-AVD/JS/6/CDD/RHC
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Attachment: 1. Overview of Petitions Received to Date