

DATE: August 22, 2024

TO: Rental Housing Committee

FROM: Patricia Black, Senior Management Analyst
Anky van Deursen, Division Manager

SUBJECT: Update on One-Time Utility Adjustment Petition Process

PURPOSE

To receive an update on the One-Time Utility Adjustment Petition Process.

BACKGROUND

After the Rental Housing Committee (RHC) conducted study sessions on January 31, 2023, August 21, 2023, and October 16, 2023, and stakeholder meetings in February and March of 2023, the RHC on December 18, 2023, adopted regulations to clarify that the definition of Rent under the CSFRA includes utilities and to address utility charges and the use of Ratio Utility Billing Systems (RUBS) or similar systems for shared or master-metered utilities in CSFRA-covered properties, including the following elements:

- Clarification that 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.
- Clarification of the prohibition of using RUBS or similar systems to charge tenants utility charges which are billed directly or indirectly to landlords associated with the use and occupancy of CSFRA-covered units, including a statement that, for new tenancies, landlords cannot impose a separate fee or charge for any utility service which is billed to landlords by the utility provider.

- An administrative petition process to transition noncompliant practices into compliance with the CSFRA, otherwise known as the One-time Utility Adjustment Petition.
- A methodology to calculate each tenant's share of the utilities which consists of landlords 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.
- Clarification 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.

During the December 18, 2023, meeting, the RHC requested staff provide updates to the Committee throughout the One-time Utility Adjustment Petition implementation process. The following overview provides the implementation efforts to date including the implementation of the petition process and performing outreach, education and support.

ANALYSIS

The implementation process has six distinct phases (see Attachment 1):

1. Perform Research and Receive Input – Complete (January 2023 - August 2023)
2. Adopt Regulations – Complete (October 2023 – December 2023)
3. Implement the Petition Process – Underway (December 2023 – current)
4. Perform Outreach and Education – Underway (December 2023 – current)
5. Landlords Submit Petitions to Division – Coming Up (starting September 2024)
6. Staff Processes Petitions – Coming Up (starting September 2024)

Phases 1 and 2: Perform Research and Receive Input; Adopt Regulations (Status: Complete)

Phase 1 involved the initial RHC study sessions, stakeholder meetings and staff analysis to develop recommendations for RHC consideration while Phase 2 focused on the drafting and adoption of regulations. Both Phase 1 and Phase 2 are complete. Because Phases 1 and 2 were completed in conjunction with RHC input, this memo provides updates on Phases 3 through 6 respectively.

Phase 3: Implementation of the Petition Process (Status: In Progress)

In December 2023, staff began developing the internal procedures necessary for the execution of the One-Time Utility Adjustment Petition process. Staff drafted an implementation plan that

includes project milestones and deadlines to best manage this new process. Project milestones for Phase 3 include the hiring of hourly staff, the creation of process workflows and standard operating procedures, and the testing of the landlord submittal, tenant response and staff processes for petitions as described in the regulations. Upon review, areas of the regulations required refinement to ensure the process was administratively feasible. In the May 2024 RHC meeting, staff presented and the RHC adopted, recommendations to amend the regulations in order to address these issues.

Forms, instructions and workbooks have been drafted based on the amended regulations and are being tested by property owners. There are two workbooks for property owners to choose from based on how utilities are charged on the property as outlined in Attachment 2:

1. Full Version: Available for landlords whose utility billing includes RUBS and/or utilities paid directly to the landlord.
2. Condensed Version: Available for landlords whose utility billing is either already incorporated into rent for all units and/or sub metered.

Both versions of the workbook are formatted to auto-calculate and/or auto-populate as much as possible to reduce errors and ease workload for landlords. For those unable to utilize or access the computer-based workbooks, staff will provide one-on-one assistance and support necessary including paper-based forms. The forms and workbooks are currently available upon request for review by property owners and will be available for use at the beginning of September 2024.

Phase 4: Perform Outreach, Education and Support (Status: In Progress)

In an effort to ensure both landlords and tenants understand how utilities can lawfully be charged under the CSFRA and to better improve petition process outcomes, staff developed a specifically tailored communications and outreach plan. The plan includes short-, medium- and long-term goals, objectives and tasks to be performed throughout the One-Time Utility Adjustment Petition process. Staff has, and will continue to, execute this plan and perform extensive outreach, education and support throughout this process.

Outreach and Education efforts performed to date include:

- 6 Workshops held (as of August 9, 2024):
 - 3 Landlord-specific Workshops – 130 participants
 - 3 Tenant-specific Workshops (Bilingual – Spanish/English) – 35 participants
- 7 Mailings sent
 - 1 Insert in Rental Housing Fee invoice
 - 2 Postcards
 - 2 Landlord Packets mailed to property owners and property managers
 - 2 Newsletters (1 Landlord and 1 Tenant)

- Dedicated Webpage routinely updated with materials and information
- Bi-weekly Housing Help Centers for Landlords (virtual and in-person)

Upcoming Outreach, Education and Support efforts include:

- Weekly Housing Help Centers for Landlords (virtual and in-person)
- Monthly Utility Adjustment Petition Specific Workshops for Landlords
- Bi-monthly Tenant Update Workshops
- Landlord Packet to be mailed in September
- Instructional booklet and video
- Hard-copy forms and packets mailed to targeted property owners
- Tenant and Landlord Newsletters to be mailed in September
- Insert in Rental Housing Fee invoice

Phase 5: Landlords Submit Petitions to Division (Status: Coming Up)

Phase 5 will start at the beginning of September and conclude by August 31, 2025, as outlined in CSFRA Regulations – Chapter 13: Utility Charges (See Attachment 3). Landlords will be able to submit One-time Utility Adjustment Petitions to staff as of September 1, 2024. The number of units on the property determines the submittal period as outlined in Table 1 below. Landlords who fail to timely submit a One-time Utility Adjustment Petition, are unable to incorporate utilities into rent and tenants will then have the right to file a Downward Adjustment of Rent Petition based on prior overpayment of rent due to RUBS utility charges.

Table 1: Submittal Periods for One-time Utility Adjustment Petitions

Number of Units	Submittal Periods	Submittal Dates
> 20 Units	Petition must be submitted to the Rent Stabilization Division within six (6) months of Division release date of petition form(s)	Between September 1, 2024 and February 28, 2025
6-20 Units	Petition must be submitted to the Rent Stabilization Division within nine (9) months of Division release date of petition form(s)	Between September 1, 2024 and May 31, 2025
1-5 Units	Petition must be submitted to the Rent Stabilization Division within twelve (12) months of Division release date of petition form(s)	Between September 1, 2024 and August 31, 2025

Landlords will submit their petition packet including the petition form, workbook and documentation to staff and once approved, serve the petition on tenants. After serving the petition on tenants, landlords must file the petition packet and proof of service with staff for administrative determination.

Phase 6: Staff Processes Petitions (Status: Coming Up)

Phase 6 will start after the submittal of the first petition and continue until all petitions are processed. In the final phase of the process, staff will review the petition packet and any responses received from tenants. Then, based on the number units on the property, staff will analyze the calculations in the workbook and make a determination of whether the Utility Adjustment(s) for the Property were properly calculated. If staff confirms that the Utility Adjustment(s) were properly calculated, then a notice will be sent to both the Landlord and the Tenant(s) confirming the amounts in the Utility Adjustment Petition. If staff determines that the Utility Adjustment(s) were improperly calculated, the errors will be corrected, and a notice of the corrected adjustment(s) will be sent to both the Landlord and the Tenant(s).

NEXT STEPS

Staff will continue to implement the petition process and provide updates to the RHC as requested.

PUBLIC NOTICING - Agenda posting, posting on the City's website, and email to distribution list.

- Attachments:
1. One-Time Utility Adjustment Petition Process Implementation Plan
 2. One-Time Utility Adjustment Petition Process Workbook and Filing Determination for Full Covered Properties
 3. CSFRA Regulations Chapter 13 – Utility Charges