



MEMORANDUM

Rent Stabilization Program,
Community Development Department

DATE: October 18, 2021

TO: Rental Housing Committee

FROM: Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Anky van Deursen, Program Manager

SUBJECT: Acceptance of Appeal of Decision Regarding Petition No. 20210022

RECOMMENDATION

Receive information and evidence from the petitioner and respondent about the acceptance of the petitioner's filed appeal of the Hearing Officer's decision received after the 10-day deadline and decide whether to accept or reject the petitioner's late appeal.

BACKGROUND

The petitioner first filed a tenant petition for downward adjustment of rent based on failure to maintain a habitable premises and decrease in housing services or maintenance by mail on April 28, 2021. The original petition was accepted by staff on May 18, 2021, and the respondent filed a response on May 31, 2021. A settlement conference was scheduled for June 16, 2021 but was ultimately canceled because the respondent requested a hearing on the petition. On June 21, 2021, the petitioner filed an amended petition alleging additional violations of the Community Stabilization and Fair Rent Act (CSFRA). Staff accepted the petitioner's amended petition on June 23, 2021.

A prehearing conference call between the parties and the Hearing Officer took place on July 9, 2021, during which the parties agreed to reschedule the July 22, 2021 hearing to July 28, 2021. On that date, the Hearing Officer conducted a hearing on the petition. In addition to the prehearing briefing already submitted, both parties presented oral argument, additional documentary evidence, and witness testimony in support of their positions. The Hearing Officer, upon agreement of both parties, left the record of the hearing open for an additional 14 days to allow for submission of additional evidence identified at the hearing. The Hearing Officer issued a decision on September 7, 2021. A notice of the Hearing Officer's written decision was sent to the parties via electronic mail on September 10, 2021.

On September 28, 2021, the petitioner filed an appeal of the Hearing Officer's decision via hand-delivery at City Hall, and, on September 29, the petitioner also filed the appeal through electronic mail. In his email, the petitioner noted that he had never received a mailed hard copy of the Hearing Officer's decision, which he argued was required. The petitioner also mentioned that he had timely mailed his completed appeal form via USPS, but that the envelope containing the appeal had been returned, marked as undeliverable. After reviewing the petitioner's appeal for completeness, staff, on October 11, 2021, issued a Notice of Acceptance of Appeal and Notice of Hearing of Appeal to the parties via electronic mail and forwarded the appeal to the next phase.

On October 12, 2021, the respondent objected to staff's acceptance of the petitioner's appeal, claiming that only the Rental Housing Committee (RHC), not staff, had the authority to accept late appeals. In response to the respondent's objection, staff rescinded the October 11 Notice of Acceptance of Appeal and instead placed this item on the agenda for consideration and decision by the RHC.

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
April 28, 2021	Petitioner files petition for downward adjustment
May 18, 2021	Petition accepted by program staff
May 31, 2021	Respondent files objection to petition
June 21, 2021	Petitioner files amended petition
June 23, 2021	Amended petition accepted by program staff
July 9, 2021	Prehearing telephone conference held
July 28, 2021	Hearing opened
August 2, 2021	Written order after hearing to leave record open for 14 days for submission of additional evidence
August 11, 2021	Record is closed
September 7, 2021	Hearing officer decision on petition issued
September 10, 2021	Notice of Hearing Officer Decision sent to parties
September 21, 2021	Deadline to file appeal
September 28, 2021	Petitioner files appeal
October 11, 2021	Notice of Acceptance of Appeal and Appeal Hearing sent to the parties by staff
October 12, 2021	Respondent objects to staff's acceptance of petitioner's appeal
October 13, 2021	Notice of Acceptance of Appeal rescinded; item agendized for October 18, 2021 RHC meeting

ANALYSIS

Procedural Due Process

Both the Federal and State Constitutions require the government to afford persons due process before depriving them of “life, liberty or property” (U.S. Const., 14th Amend.; Cal. Const., Art. I, § 7). The most fundamental requirements of due process are adequate notice and an opportunity to be heard before a fair and impartial hearing body (*Horn v. County of Ventura* (1979) 34 Cal.3d 605, 612). The requirements of due process extend to administrative adjudications. *Id.* Administrative adjudications, or quasi-judicial proceedings, involve the application of a rule or standard to the specific facts of an individual case to determine specific rights or take specific actions under existing law (*Arnel Dev. Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 519). Hearings on individual adjustment petitions and subsequent appeals of Hearing Officers’ decisions on those petitions are considered quasi-judicial proceedings that require a guarantee of due process.

Role of the RHC

The CSFRA Regulations provide that any party to a petition may appeal the Hearing Officer’s decision by submitting a request to appeal to the RHC (Chapter 5, Section H.1). If neither party requests an appeal within 10 days after service of the decision, the decision will be considered final. *Id.* However, the RHC has the authority to accept late appeals under certain circumstances (Chapter 5, Section H.1.c). Specifically, prior to accepting a late appeal, the RHC must make a finding that the “untimely appeal request is supported by good cause and postponement serves the interests of justice.” *Id.*

In determining whether there was good cause for the petitioner’s late filing of the appeal and whether the postponement serves the interests of justice, the RHC may consider, but is not limited to considering, the following factors:

- Whether the petitioner received adequate notice of: (1) the Hearing Officer’s decision; and (2) the consequences of the failure to appeal in a timely manner;
- Whether the petitioner took ordinary care and prudence to file the appeal in a timely manner;
- Whether conditions outside of the petitioner’s control prevented the petitioner’s timely filing of the appeal;

- Whether the delay in filing the appeal has unfairly prejudiced or unduly burdened the respondent; and
- Whether granting or denying the late filing would deprive either party of their due process rights.

However, the RHC need not and should not consider the substantive issues raised by or the likelihood of success of the appeal in determining whether to accept the appeal.

FISCAL IMPACT

A decision by the RHC to adopt or reject the petitioner's appeal could potentially lead to litigation, which would have fiscal impacts.

PUBLIC NOTICING – Agenda posting.

KMT-AvD/JS/6/RHC

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