



## CITY OF MOUNTAIN VIEW

### MEMORANDUM

CSFRA, Community Development Department

**DATE:** June 8, 2017

**TO:** Rental Housing Committee (RHC)

**FROM:** Jannie L. Quinn, City Attorney  
Anky van Deursen, Associate Planner

**SUBJECT: Rental Housing Committee Hearing Officer Qualifications and Compensation**

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#### INTRODUCTION AND ANALYSIS

Pursuant to Section 1709(d)(4) of the CSFRA, the Rental Housing Committee (RHC) has the power and the duty to appoint Hearing Officers to conduct hearings on Petitions for Individual Rent Adjustments.

The purpose of this agenda item is to provide the RHC with an overview regarding the use of hearing officers in other jurisdictions with rent stabilization. This overview will inform the RHC about what is involved in the appointment of the Hearing Officers. A comparison of Hearing Officer qualifications and requirements for degree/license, experience, training, and Hearing Officer compensation for other jurisdictions is provided in Attachment 1 to this Memo. Based on this review, staff has identified key items for the RHC to consider in the selection and appointment of Hearing Officers, including qualifications, experience, relationship between the RHC and the Hearing Officers, ease of administration, and the potential costs associated with the appointment of Hearing Officers. Staff's recommendations are also provided for the RHC. Staff seeks direction from the RHC regarding how it would like to structure the appointment of Hearing Officers.

## Potential Hearing Officer Qualifications and Experience

A survey of the required qualifications for hearing officer revealed they are similar in most jurisdictions. Staff has identified the following items for your consideration:

### 1. Juris Doctor or Equivalent Degree

Because the role of the hearing officer is to conduct hearings, listen to evidence, and apply the CSFRA to the evidence provided by the parties, the jurisdictions surveyed all require hearing officers to have a law degree. Although having this degree is no guarantee of the ability to apply the basic skills needed for this position, it does indicate training in legal analysis and writing, which are essential skills for the position.

### 2. Active or Inactive Membership in the California State Bar in Good Standing or Other State Bar

Almost every other jurisdiction requires State bar membership. Adding inactive membership as an alternative ensures that retired attorneys or judges who might be good candidates but chose not to remain active in the California bar, are not eliminated.

### 3. Experience

- Served as a judge, commissioner, or other judicial officer for more than one year;
- Served as a hearing officer or administrative law judge or equivalent position for a public entity for more than three years;
- Served as an arbitrator and heard at least five arbitration proceedings that required hearing witnesses, examining evidence, and issuing a written decision;
- Served as a hearing officer or arbitrator for a binding rental dispute program, and has held that position for more than two years and has issued written decisions in that position.

These experience requirements are applied in most jurisdictions. Each alternative would provide assurance of experience relevant to the tasks performed by the

Hearing Officers. The suggested quantitative amounts of experience are designed to ensure that the relevant experience is more than just a token amount.

4. Complete a CSFRA Training and Orientation Program Presented by the City of Mountain View

This requirement is not specifically required in every jurisdiction, but it assures uniform hearing officer performance, and conformity with the program protocols of the CSFRA, particularly since the program is just starting.

5. Not Currently a Member of a Tenant or Landlord Advocacy Group or Trade Organization

Only the San Jose program has a similar requirement. However, this type of requirement deserves consideration as a method of assuring Hearing Officers will have a neutral orientation toward the two populations subject to the CSFRA. No further review of prior affiliations is recommended (to protect prior freedom of association) as long as there is no current membership in an advocacy group or trade organization.

#### Staff Recommendation

Staff recommends that the RHC require Hearing Officers to have a juris doctor degree or equivalent, have an active or inactive State bar membership, and possess at least one of the categories of experience as a hearing officer enumerated above. In addition, staff recommends all Hearing Officers be provided with CSFRA-specific training and that Hearing Officers not be a current member of either a tenant or landlord advocacy group or trade organization.

#### **Relationship Between Hearing Officers and the RHC**

The RHC has some options to consider regarding legal relationship it establishes with the Hearing Officers. The RHC or effectively the City of Mountain View can hire Hearing Officers as employees. The RHC can also contract with Hearing Officers or a third party to provide hearing officer services. A review of other jurisdictions revealed the Hearing Officer relationship varies:

- Employee Status

The larger jurisdictions rely on full-time staff with employee benefits to perform this function. These jurisdictions have a full caseload, guaranteeing full-time utilization of their hearing officers.

- Independent Contractor Status; Either Directly with the City or by Contracting Through a Third-Party Provider

Smaller jurisdictions trend toward utilizing independent contractors. The independent contractor approach makes more sense in any program where the caseload would not support a full-time employee.

Both contracting approaches have been used by other jurisdictions. A direct independent contractor relationship with the RHC gives the RHC and the City more direct control over the administration of the Hearing Officer's duties, along with the resulting additional administrative burden, as opposed to giving that responsibility, and workload, to a third party.

The relationship can change over time. For example, the RHC may initially wish to consider independent contractor status until such time as the CSFRA is fully implemented and the caseload is more predictable. Once the petition process is up and running, Staff can provide updates to the RHC regarding the number of petitions filed and the number of hearings. The RHC may revisit this issue at any time and consider modifying the relationship.

#### Staff Recommendation

The costs of the Hearing Officers will be a component of the budget established by the RHC and included in the Rental Housing Fee adopted by the RHC. At this stage of the implementation, staff recommends the RHC utilize independent contractors for Hearing Officer services until the caseload is established. Project Sentinel, a nonprofit organization, has experience with securing and deploying hearing officers in several programs, and has the capacity to provide hearing officers on an as-needed basis for petition hearings under the CSFRA. Project Sentinel is familiar with the community as it has been providing landlord tenant services to the community for the past 30 years and has been fielding calls and assisting both landlords and tenants since the passage of the CSFRA. Staff recommends the RHC contract with Project Sentinel to provide the Hearing Officers for a period of one year. Alternatively an RFP process can be initiated, but staff has not been able to locate any other agencies providing similar services. This

will allow the RHC to monitor the number of petitions and retain the flexibility to staff in accordance with the number of petitions being filed.

### **Hearing Officer Costs**

The jurisdictions use either a rate per hearing/case or an hourly rate. These costs can be either directly charged to the petitioner who uses the petition process and/or it can be included in the budget to be adopted by the RHC later this calendar year.

Some jurisdictions use a type of flat rate per hearing, ranging from \$600 to \$800 per case, including the City's current Rental Housing Dispute Resolution Program (RHDRP) and the City of Hayward. In both situations, the applicable ordinance is less complex than the CSFRA, particularly in the case of landlord petitions. Other jurisdictions use an hourly rate, but with some type of cap on the number of hours. The hourly rates in effect range between \$150 and \$220. East Palo Alto, whose ordinance is more similar to the CSFRA than the RHDRP, caps the hourly rate at 10 hours, absent an express authorization from staff for additional compensated hours due to the complexity of a particular case. San Jose sets a rate per hearing, but varies that rate depending on the number of units at issue and pays separately for related activities such as holding a pretrial hearing.

### **Staff Recommendation**

Based on the comparison rates of other Jurisdictions, staff recommends the RHC utilize a per-hearing rate and that the rate be based on the type of petition and number of units concerned. The rates should reflect reasonable market-rate compensation in other jurisdictions.

Recommended rate schedule based on the above factors:

<b>TENANT PETITIONS</b>	<b>PER HEARING</b>
<ul style="list-style-type: none"> <li>Covering 1 to 4 units</li> <li>Covering 5 to 9 units</li> <li>Covering 10 + units</li> </ul>	<p>\$600</p> <p>\$750</p> <p>\$900</p>
<ul style="list-style-type: none"> <li>Petition includes issues of habitability and/or services reduction</li> </ul>	Additional \$250
<ul style="list-style-type: none"> <li>Hearing Officer holds a pretrial meeting</li> </ul>	Additional \$250
<ul style="list-style-type: none"> <li>Complex cases requiring more than one day of hearing, requiring advance approval of staff</li> </ul>	Additional \$75 per hour
<b>LANDLORD PETITIONS</b>	<b>PER HEARING</b>
<ul style="list-style-type: none"> <li>Covering 1 to 4 units</li> <li>Covering 5 to 9 units</li> <li>Covering 10 + units</li> </ul>	<p>\$ 750</p> <p>\$ 1000</p> <p>\$ 1250</p>
<ul style="list-style-type: none"> <li>Petition includes one or more tenants raise issues of habitability and/or services reduction</li> </ul>	Additional \$250
<ul style="list-style-type: none"> <li>Hearing Officer holds a pretrial meeting</li> </ul>	Additional \$250
<ul style="list-style-type: none"> <li>Complex cases requiring more than one day of hearing, requiring advance approval of staff</li> </ul>	Additional \$75 per hour

**STAFF DIRECTION REQUESTED**

Q1: Does the RHC want to adopt the Hearing Officer Qualifications as recommended above or include other qualifications?

Q2: Does the RHC want to utilize independent contractors for Hearing Officer services or hire full time employee(s)?

Q3: Does the RHC want to contract with Project Sentinel or another third party to provide Hearing Officers?

Q4: Does the RHC want to adopt the fee schedule above or set different fees?

### **FISCAL IMPACT**

The cost of the Hearing Officers will be a component of the RHC budget. The cost recovery for the Hearing Officers can either be a separate fee charged directly to petitioners, be a component of the general fee assessed to all landlords or a combination of both. Staff will return to the RHC with proposals for the RHC budget and fee(s) to be adopted for the implementation and administration of the CSFRA.

### **NEXT STEPS**

Staff will implement the direction of the RHC to retain and train Hearing Officers so they will be available to hear Individual Rent Adjustment Petitions when the necessary regulations have been promulgated.

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