

Mountain View Rental Housing Committee
Interim Hearing Procedure Regulations

Discussion Draft

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HEARING PROCEDURE

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A. Hearing Purpose; Applicability

1. Hearing Purpose.

A Hearing Officer will conduct an administrative Hearing to resolve the issues raised by a Petition. In accordance with the procedures established by this Chapter, a Hearing shall involve the parties to the Petition at issue presenting evidence to the Hearing Officer and testimony from the parties to the Petition at issue and witnesses identified in accordance with Chapter 4, Sections (D)(2)-(3). Following a Hearing, the Hearing Officer shall issue a written Decision on the issues raised in the Petition.

2. Applicability.

A Hearing on all Petitions accepted as complete by the Rental Housing Committee or its designee will be scheduled in accordance with the procedures of this Chapter unless:

- a. The Petitioner withdraws the Petition by submitting written notice to the Rental Housing Committee.
- b. Each issue underlying the Petition has been settled by and among each party to the Petition prior to the Hearing, as confirmed in writing by each party to the Petition, including, but not limited to, any private, written settlement agreement reached during a Prehearing Settlement Conference in accordance with Chapter 4, Section (N).

B. Hearing Officers

1. Designation of Hearing Officers. The Rental Housing Committee shall appoint individuals who meet the criteria established in Chapter 5, Section (B)(2) to serve as Hearing Officers. A Hearing Officer may be an employee of the Rental Housing Committee or an independent contractor who has executed a contract with the Rental Housing Committee to serve as a Hearing Officer.

2. Selection Criteria. Hearing Officers must meet the following criteria:

- a. Juris Doctor or Equivalent Degree
- b. Active or Inactive Membership in the California State Bar in Good Standing or Other State Bar

- c. 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; or
 - 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.
 - d. Completed a Community Stabilization and Fair Rent Act (CSFRA) Training and Orientation Program Presented by the City of Mountain View
 - e. Not Currently a Member of a Tenant or Landlord Advocacy Group or Trade Organization
3. Disqualification from Cases. A Hearing Officer shall disqualify himself or herself from Hearing a case, or can be disqualified by the Rental Housing Committee following the written request of one of the parties if:
- a. The Hearing Officer knows or has reason to know he or she has a financial interest affected by the determination or award;
 - b. The Hearing Officer is related to one of the parties or their representatives to the third degree;
 - c. The Hearing Officer has been retained or employed by one of the parties within the past two (2) years, or has given advice to one of the parties relative to the issues involved in the Hearing;
 - d. It appears probable that the Hearing Officer, by reason of bias or prejudice, cannot provide a fair and impartial Hearing; or
 - e. The Hearing Officer is a party to the Hearing.

A Hearing Officer is not disqualified from Hearing a case where one or more of the parties have appeared before the Hearing Officer in an earlier Hearing. The parties may waive their right to the disqualification of a Hearing Officer by a written statement accepting the Hearing Officer's services.

4. Hearing Officer Authority. A Hearing Officer shall have the authority to:
 - a. Administer oaths and affirmations;
 - b. Cause the Rental Housing Committee to issue subpoenas for the attendance of persons to testify and to produce books, records, papers, and other material related to the issues raised in a Petition;
 - c. Cause inspections to be made of the property that is the subject of a Petition, in accordance with the procedures of Chapter 5, Section (C)(5);
 - d. Rule on offers of proof and receive relevant evidence;
 - e. Control the course of the Hearing;
 - f. Rule on procedural requests;
 - g. Render Decisions on Petitions; and
 - h. Take other action authorized by the rules and regulations adopted by the Rental Housing Committee.
5. Review of Hearing Officers' Performance. The Rental Housing Committee will periodically review the performance of Hearing Officers, will schedule Hearing Officer training, and will have authority in its sole discretion to execute or terminate Hearing Officers' contracts.

C. Notice and Prehearing Procedures

1. Hearings. A Hearing Officer shall be assigned to preside over each Hearing. The Hearing Officer shall have access to the Petition and supporting documentation and any opposing response and supporting documentation prior to the Hearing. The Hearing Officer shall accept argument from all Parties on the claims raised on appeal and review relevant supporting documentation.
2. Timing of Hearing. To the extent practicable, the Hearing shall be scheduled no more than thirty (30) days after the later to occur of: (a) the determination

that a Petition is complete; or (b) the completion of a prehearing settlement conference, if applicable.

3. Hearing Notice. As soon as practicable after scheduling the date, time, and location of a Hearing, but in no event less than fourteen (14) calendar days prior to the Hearing date, the Rental Housing Committee shall provide written notice to all parties to a Petition that a Hearing has been scheduled. The Hearing notice will include the date, time, and place of the Hearing, as well as a brief description of the Hearing process, including the burden of proof, and the ability to be represented by an attorney, legal worker, Recognized Tenant Organization representative, or other third party at the Hearing.
4. Requests for Information or Documents from Hearing Officer. Along with or after written notice of the Hearing is provided to each party to the Petition, the Hearing Officer may request additional information or documentation from any party to the Petition. The Hearing Officer may request any information or documentation be submitted to the Hearing Officer prior to or at the Hearing.
5. Inspection. Hearing Officers may, at their sole discretion, inspect or request an inspection of a property that is the subject of a Petition and Hearing. Each party to the Hearing must receive written notice and be afforded an opportunity to be present at the property during any inspection performed by a Hearing Officer. Any party to the Hearing may waive their right to be present during the inspection. If a proposed inspection date or time cannot be accommodated by one or more parties to the Hearing that have not waived their right to be present, then the Hearing Officer may offer alternative dates or times or forego personal inspection by the Hearing Officer.
6. Additional Submissions. The Hearing Officer shall accept additional submissions of arguments and documentation regarding the Petition's claims up to ten (10) calendar days prior to the Hearing, so long as two (2) complete copies of the submission are provided to the Hearing Officer and a complete copy of the submission is provided by the submitting party to all other parties to the Petition.

D. Postponement Requests

1. Postponement Authorized. Requests for rescheduling of the Hearing will be considered if they are for good cause and are received by the Hearing Officer at least seven (7) calendar days before the Hearing date. A Hearing Officer

may grant a written request for postponement of a Hearing received from a party to a Hearing if the request for postponement is supported by good cause and postponement serves the interest of justice.

2. Good Cause for Postponement. A Hearing Officer must consider the following to be good cause for one postponement and may reasonably decide whether further postponements are warranted. A Hearing Officer may request documentation to verify any of the following:
 - a. Illness of a party, party's representative, or material witness to a party's case;
 - b. Travel beyond the San Francisco Bay Area;
 - c. Any other reason that would make it impractical to appear on the scheduled date, including, but not limited to, unforeseen circumstances or verified prearranged plans which cannot be changed. Mere inconvenience or difficulty in appearing cannot constitute "good cause."

Additionally, requests for rescheduling based on a Party's medical emergency or similar significant conflicts may be allowed by the Hearing Officer within seven (7) calendar days of the Hearing date if the event was unforeseen and the requester provides immediate notification of the unforeseen event to the Hearing Officer that is supported by reasonable documentation

3. Hearing Rescheduling. If the Hearing Officer approves a rescheduling request, the Hearing will be rescheduled with the originally assigned Hearing Officer, unless that Hearing Officer is unavailable.
4. Effect of Failure to Appear.
 - a. Failure to appear at the Hearing by a Petitioner or that party's authorized representative designated in writing to act for the Petitioner shall result in a determination by the Hearing Officer that the Petition has been withdrawn.
 - b. Failure to appear by a responding party without good cause shall result in a determination that the party has waived his or her right to a Hearing, and the Hearing Officer shall rule on the Petition based on the evidence available in the record.

E. Conduct of Hearing

1. Hearing Officer. The Hearing Officer shall control the conduct of the Hearing and rule on procedural requests. The Hearing shall be conducted in the manner deemed by the Hearing Officer to be most suitable to secure the information and documentation necessary to render an informed Decision, and to result in a fair Decision without unnecessary delay.
2. Hearing Attendance and Participation.
 - a. Hearings shall be open to the public; however, no individual other than a party to the Petition, a party's designated proxy, representative, translator, or a nonparty witnesses may participate in the Hearing.
 - b. During a Hearing, the Hearing Officer may adopt rules to encourage a timely and business-like Hearing, such as requiring the parties, rather than their counsel or other advisors, to be the primary speakers at Hearings, with adequate time given to consult with their counsel or advisor, or with a large group encouraging representatives, if any, to be the primary spokespersons.
 - c. Hearings are not meetings subject to the Brown Act or any City of Mountain View implementing ordinances.
3. Ex Parte Communications. There shall be no oral communication outside the Hearing between the Hearing Officer and any party or witness, except at a prehearing conference, if any, to clarify and resolve issues. All discussion during the Hearing shall be recorded. All written communication from the Hearing Officer to a party after the Hearing has commenced shall be provided to all parties, or if the party has a proxy, to the proxy.
4. Records of Hearings. Audio recordings (or video recordings, if ordered by the Hearing Officer) of Hearings will be produced and maintained. This audio or video record will be available for review to all parties, and any party may receive a copy of such recording upon payment not to exceed the reasonable cost of producing such copy. The Hearing Officer has the discretion to allow or disallow the making of other records or transcripts.
5. Length of Hearing.
 - a. A Hearing schedule shall be established providing for not more than seven (7) hours of Hearing with half of the time for the appealing party and the other half for the responding party or parties. The ceiling on the

time for each party shall include the time used by the party for cross-examination of witnesses.

- b. An extension of this time period may be granted by the Hearing Officer for good cause as determined by the Hearing Officer. In no case may the Hearing last more than ten (10) hours unless the need for translation results in the need for a longer Hearing.
6. Right of Assistance. All parties to a Hearing shall have the right to seek assistance in developing their positions, preparing their statements, and presenting evidence from an attorney, tenant organization representative, landlord association representative, translator, or any other person designated by said parties to a Hearing.
7. Participation of the Hearing Officer. The Hearing Officer shall at all times in the conduct of the Hearings and in otherwise performing the duties of the Hearing Officer act neutrally and impartially as between the landlord and the tenants.
8. Hearing Record. The Hearing Officer shall maintain an official Hearing record, which shall constitute the exclusive record for Decision. The Hearing record and Decision shall include:
 - a. A copy of the Petition and documents submitted to support the Petition;
 - b. Any written submissions by the parties;
 - c. All exhibits, papers, and documents offered either before or during the Hearing;
 - d. A list of participants present at the Hearing;
 - e. A summary of all testimony upon which the Decision is based;
 - f. A statement of all materials officially noticed;
 - g. The Hearing Officer's Decision;
 - h. All findings of fact and conclusions of law;

- i. All recommended or final Decisions, orders, or rulings; and
 - j. A recording of the Hearing in a format determined by the Rental Housing Committee.
9. Reopening of Hearing Record. The Hearing Officer may reopen the Hearing record when she or he believes that further evidence should be considered to resolve a material issue, where the Hearing record has been closed and where a final Decision has not yet been issued by the Hearing Officer. In those circumstances, the parties may waive further Hearing by agreeing in writing to allow additional exhibits into evidence.

F. Decision

1. Time for Issuance.
- a. The Hearing Officer shall issue, and have mailed, a written Decision to all parties within thirty (30) calendar days after the Hearing based on the Hearing record, in accordance with Chapter 5, Section (E)(8).
 - b. The Decision of the Hearing Officer shall be final unless a Party files a timely appeal to the Rental Housing Committee in accordance with Chapter 5, Section (H).
2. Decision Contents. The Decision shall include findings of fact and conclusions of law which support the Decision, in addition to the information specified below.
- a. For Rent Decrease Petitions:
 - i. The amount of the rent adjustment attributable to each failure to maintain habitable premises, decrease in housing services or maintenance, or demand for or retention of unlawful rent claimed in the Petition;
 - ii. The basis for each rent adjustment ordered;
 - iii. The duration of the downward adjustment; and
 - iv. The amount of any rent allowed to be restored upon the correction of each condition that provided a basis for the adjustment.

- b. For Rent Increase Petitions:
 - i. The amount of the rent increase, if any, for each unit;
 - ii. The basis for the rent adjustment calculation;
 - iii. A list of any unresolved City Code violation complaints, if any; and
 - iv. An explanation of any adjustments to the income and expense amounts claimed in the Petition that are made for the purpose of the fair return calculation, if applicable [If a fixed rate of return fair return standard is selected, this subsection should read: "An explanation of any adjustments to the valuation of the investment claimed in the Petition that are made for the purpose of the fair return calculation, if applicable"].
- c. For All Petitions:
 - i. A summary of the issues raised by the Petition and evidence submitted;
 - ii. Any conditions which are placed on the award, including conditions and limitations imposed for violation of the CSFRA or other City ordinances;
 - iii. The date on which any adjustment to the rent is effective for each unit;
 - iv. An explanation of the basis for the Decision with citations to the CSFRA, as applicable; and
 - v. The cover page of the Decision will provide that the date the Decision is issued is the date of mailing.
- 3. Applicability of Decision. The Decision of a Hearing Officer shall not apply to a tenant who has not filed a Petition or has not been included as a party to a landlord's Petition.
- 4. Effective Date of Rent Adjustments. Unless otherwise set by the Hearing Officer, any rent increases allowed in a Decision shall not be effective until all of the following are completed: (a) the landlord provides notice to the tenant of such increase pursuant to Civil Code Section 827; and (b) twelve (12) months have passed since the last increase in the tenant's rent. In the event

of a rent decrease, the Decision shall specify the effective date of the rent decrease.

G. Burden of Proof

1. The burden of proof for any claims included in a Rent Increase Petition is on the landlord.
2. Tenants have the burden of proving the existence of housing service reductions, Code violations, violations of the CSFRA (including the demand for or retention of unlawful rents), or any claims raised in a Rent Decrease Petition.
3. No individual claims shall be approved by a Hearing Officer unless supported by the preponderance of the evidence in the Hearing record.

H. Appeals to Rental Housing Committee

1. Timely Appeals.
 - a. Any Party to a Petition may appeal the Decision by requesting an Appeal on a form provided by the Rental Housing Committee. The appealing party must state each claim that he or she is appealing, and the legal basis for such claim, on the Appeal request form.
 - b. If no party requests an Appeal within ten (10) calendar days after the mailing date of the Decision, the Decision will be considered a final Decision.
 - c. Any Hearing Officer Decision that is appealed before a Decision is final shall be subject to an Appeal Hearing before the Rental Housing Committee. The Rental Housing Committee may accept late appeals in its sole discretion, but only upon finding that the untimely appeal request is supported by good cause and postponement serves the interest of justice.
2. Appeal Hearing Scheduling and Notice.
 - a. Upon receipt of a complete Appeal form that states one or more claims, an Appeal Hearing shall be scheduled. To the extent practicable, the Appeal Hearing shall be scheduled no more than thirty (30) days after the determination that an Appeal form is complete. Appeal Hearings

shall be scheduled at regularly occurring meetings of the Rental Housing Committee.

- b. As soon as practicable after scheduling the Appeal Hearing, but in no event less than fourteen (14) calendar days prior to the Appeal Hearing date, written notice shall be provided to all parties to an Appeal that an Appeal Hearing has been scheduled.
- c. An Appeal Hearing can only be held with a quorum of the Rental Housing Committee present, and scheduled Appeal Hearings shall be rescheduled as necessary to obtain a quorum.

3. Legal Advice for Rental Housing Committee; Tentative Decisions.

- a. At any point prior to an Appeal Hearing or issuing a decision, the Rental Housing Committee may, in its sole discretion, request and receive oral and/or written legal advice regarding an Appeal, which advice shall be considered confidential between legal counsel and the Rental Housing Committee.
- b. Regardless of any legal advice received and at its sole discretion, the Rental Housing Committee may issue a tentative decision no less than ten (10) calendar days prior to the date set for an Appeal Hearing. If issued, the tentative decision must include all elements of a final decision as defined in Section F(2), as applicable, and state whether the Decision of the Hearing Officer, or any aspect of the Decision, is tentatively affirmed, reversed, modified, or remanded in accordance with Section H(5). Any tentative decision shall be provided to each party to the Appeal Hearing..
- c. The parties may file supplemental written material to respond to the tentative decision at least five (5) calendar days prior to the Appeal Hearing date. The parties shall also simultaneously serve the supplemental materials on the other parties in the case by e-mail (if available) and the address of record in the Petition.

4. Standard of Review.

- a. The Rental Housing Committee shall only review the claims raised in the appeal of the Decision.
- b. The appeal shall be based on the Hearing Record, and the Rental Housing Committee shall neither hear nor find facts beyond those

presented to the Hearing Officer, unless a majority of the Rental Housing Committee determines a De Novo Hearing shall be conducted. The scope of any de novo review may be limited to issues specified by a majority of the Rental Housing Committee.

- c. The Rental Housing Committee shall consider the Hearing Officer's Decision final with respect to matters not raised in the appeal.
5. Rental Housing Committee Ruling on Appeal.
- a. The Rental Housing Committee shall affirm, reverse, or modify the Decision of the Hearing Officer, or remand the matters raised in the Appeal to a Hearing Officer for further findings of fact and a revised Decision, if applicable:
 - i. Unless the Rental Housing Committee determines that it should hold a De Novo Hearing, the Rental Housing Committee's Decision shall be based upon the Hearing Record, any information submitted in connection with appeal, and any testimony heard by the Rental Housing Committee.
 - ii. If the Rental Housing Committee determines to hold a De Novo Hearing, the Hearing shall be conducted in the manner set forth in Chapter 5, Section E.
 - b. The Rental Housing Committee's Decision to affirm, reverse, or modify the Decision of the Hearing Officer shall be supported by written findings of fact and conclusions of law. When the Rental Housing Committee affirms the Decision of the Hearing Officer, it adopts the findings of fact and conclusions of law in the Hearing Officer's Decision, unless the motion to affirm states otherwise.
 - c. The Decision of Rental Housing Committee shall be final unless a party files a timely judicial action to challenge the ruling.