



CITY OF MOUNTAIN VIEW

MEMORANDUM

CSFRA, Community Development Department

DATE: May 21, 2018

TO: Members of the Rental Housing Committee

FROM: Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Justin D. Bigelow, Special Counsel to the Rental Housing Committee
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SUBJECT: Expedited Petition to Address Inflationary Effects Prior to September 1, 2016 and Adoption of Tenant Hardship Regulations (Chapter 8)

RECOMMENDATION

Consider the potential options to address inflationary effects incurred prior to September 1, 2016.

BACKGROUND

At its April 23, 2018 meeting the Rental Housing Committee (RHC) adopted a motion instructing staff to prepare an expedited petition process to address the impacts of inflation experienced by certain landlords of long-term tenants. The RHC requested deliberation of the expedited petition process and the resolution regarding a banked Annual General Adjustment for 2016 as proposed at the April 23, 2018 meeting. Likewise, the RHC requested that staff provide for a tenant hardship procedure.

In accordance with this direction, staff has drafted two new Chapters of regulations (6.5 and 8) and attached the previously distributed draft 2016 annual general adjustment (AGA) resolution and April 23, 2018 staff report for review. The majority of this staff report discusses draft Chapter 6.5 Fair Return – Inflation Effects Prior to September 1, 2016. Revisions and further details for draft Chapter 8 Tenant Protections will be discussed at a future meeting.

ANALYSIS

As currently drafted, Chapter 6.5 would allow certain Landlords to seek a two and sixth-tenths percent (2.6%) increase in rent for specified Covered Rental Units. A Landlord who owned a property prior to October 19, 2015 and continues to own the Covered Rental Unit could petition for the 2.6% increase for tenancies in units subject to two qualifications: (1) the units must have been continuously occupied by the same tenant household since October 19, 2015, and (2) the Tenants in the unit must not have been subject to a Rent increase between October 19, 2015 and December 23, 2016.

Regulations cannot alter the requirements of the CSFRA. The draft expedited petition process is subject to three notable provisions of the CSFRA, among other constraints. First, a Landlord must demonstrate that any adjustment is "necessary to provide the Landlord with a fair rate of return" (CSFRA § 1709(a)). Second, each petitioner has the burden of proof, and no petition can be granted "unless supported by the preponderance of the evidence" (CSFRA § 1711(h)). Finally, each petition must be addressed through a Hearing that is open to the public and conducted by a Hearing Officer (CSFRA §§ 1711(a) and (e)).

To address these constraints and provide for an expeditious process, draft Chapter 6.5 creates a five-step process: (1) the Petition, (2) Acceptance by the City, (3) Potential Tenant Response, (4) Hearing Procedure, and (5) Decision and Right to Appeal. Each step is briefly described below.

1. The Petition

Draft Chapter 6.5 requires a Landlord to submit a petition affirming that the Landlord, and the units for which the increase is sought, are each eligible as described above. The draft regulations presume that two documents could demonstrate eligibility: (a) a copy of document demonstrating ownership as of October 19, 2015 (i.e. a deed to the property), and (b) a rent roll identifying the units for which the increase is sought, the Tenant household(s) that have resided in the unit since October 19, 2015, and any rent increases imposed since October 19, 2015.

2. City Acceptance

Landlords would submit the Petition and supporting documents to staff. Staff would have no authority to assess the adequacy of the Petition or supporting documentation, but would refuse acceptance of the Petition if information were omitted, or if the Petition failed to provide the required supporting documents to affirm the eligibility criteria. If the Petition is complete and includes documents that could support a determination of eligibility, then staff would send out notices of acceptance to the

Landlord and affected Tenant households. The notice to Tenants would inform them of their rights, as described in step 3, below. The notice would provide a tentative Hearing date, as described in step 4, below.

3. Potential Tenant Response

Each potentially affected Tenant household would receive a copy of the Petition and information about the Chapter 6.5 petition process, including their rights to review the supporting documentation, to challenge the petition, and/or to request a Tenant Hardship.

4. Hearing

If the affected Tenant household does not challenge the Petition or request a hardship, a Hearing Officer would hold an "Uncontested Hearing." No one would need to appear at the Hearing, and the Hearing Officer would provide a written Decision to the parties based on the submitted documents within fourteen calendar days.

If the affected Tenant household either challenged the Petition or requested a Tenant Hardship, then a new date for the Hearing would be scheduled, which date would be within 30 calendar days of receipt of the Tenant household's response. The "Contested Hearing" would follow the standard Hearing procedures in Regulations Chapter 5.

5. Appeal

After a Contested or Uncontested Hearing, any party to the Petition could appeal the Decision in accordance with Regulations Chapter 5, Section H.

A summary table identifying the timeframe for each step is copied below and included in Section E of draft Chapter 6.5.

Timeline to Process a Fair Return Petition Addressing Inflation Effects Prior to September 1, 2016	
Review of Submission to Determine if Petition is Complete	Within 14 Calendar Days of Submission to the City
Notice of Acceptance Sent to Landlord and Tenant(s). (Identifies Scheduled Date of Hearing if Uncontested.)	
Deadline for Tenant Response to Petition	Within 30 Calendar Days of Notice of Acceptance from City
Date of Uncontested Hearing.	Within 45 Calendar Days of Notice of Acceptance
Date of Contested Hearing	Within 30 Days of Submission of Tenant Response to City

Notice of Decision Sent

Within 14 Calendar Days of
Uncontested Hearing**FISCAL IMPACT**

Adoption of draft Chapters 6.5 and 8 Regulations providing for an expedited petition process and tenant hardship procedure are likely to significantly increase the number of petitions filed. The new, expedited nature of the proposed process will require significant time for staff to create and administer the program, as well as additional hearing officers to conduct hearings and draft decisions. Creation, implementation, administration, and third-party (Hearing Officer) costs may have a significant fiscal impact on the RHC. Likewise, adoption of draft Chapter 6.5 could lead to litigation, which would have separate, additional fiscal impacts.

Adoption of the draft 2016 AGA resolution could lead to litigation and/or cause additional petitions to be filed.

PUBLIC NOTICING – Agenda posting**ATTACHMENTS**

1. Draft Chapter 6.5 Regulations: Fair Return – Inflation Effects Prior to September 1, 2016
2. Draft Chapter 8 Regulations: Tenant Hardship
3. Resolution adopting Draft Chapters 6.5 and 8
4. Draft 2016 AGA Resolution
5. April 23, 2018 Staff Report discussing the Draft 2016 AGA Resolution