



MEMORANDUM

CSFRA, Community Development Department

DATE: January 28, 2019

TO: Rental Housing Committee

FROM: Patricia Black, Administrative Analyst
Anky van Deursen, CSFRA Program Manager

SUBJECT: **Annual Update on Hearing Officer Recruitment, Training and Procedures**

RECOMMENDATION

To receive an annual update regarding the recruitment, training and procedures for hearing officers and facilitators for the CSFRA Program.

BACKGROUND

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. City staff performed extensive policy research of, and held discussions with, rent stabilization jurisdictions throughout the state to analyze and determine best practices related to the hearing administration process, including the hiring and oversight of hearing officers. Staff presented this information, along with regulations for the Hearing Process (CSFRA Chapter 5) and provided recommendations for the RHC's consideration during the June 8, 2017 RHC meeting. At this meeting the RHC then provided direction to staff for the recruitment of hearing officers. After additional review and discussion during subsequent RHC meetings, the RHC adopted regulations on July 24, 2017 for hearing officer qualifications, compensation scales, and relevant experience. A budget for expenditures related to hearing officers and facilitators was also determined by the RHC.

Furthermore, and as stated in Chapter 5 of the regulations, the RHC decided to contract with an independent contractor or a third party service provider for Hearing Officers. The RHC has therefore chosen to contract with Project Sentinel for hearing administration related services, including the hiring and training of hearing officers. It is Project Sentinel who then contracts with qualified hearing officers via the Request for Qualifications (RFQ) and interview process.

Project Sentinel issued a Request for Qualifications (RFQ) for hearing officers based on the direction provided by the RHC. The recruitment closed on September 14, 2017. Ten qualified hearing officers responded to the RFQ, who were interviewed, and ultimately retained by Project Sentinel, Inc. to serve as hearing officers for the CSFRA.

Project Sentinel, in conjunction with CSFRA staff and legal counsel, developed a comprehensive training session in an effort to adequately prepare hearing officers for potential petition hearings. The training was held on October 4, 2017 and facilitated by legal counsel, Project Sentinel and CSFRA staff. During the training, the following topics were covered:

- Community Stabilization and Fair Rent Act
- Overview of Petition Forms and the Hearing Process
- Best Practices, Checklists and Templates
- Conflict of Interest and Ethics Issues
- Fair Rate of Return Methodology and the Vega Standard

ANALYSIS

The CSFRA Program began accepting petitions for individual adjustments of rent in November 2017 and the first Petition Hearing overseen by a hearing officer occurred in January of 2018. Initially it was estimated that up to 300 petitions could be filed with the RHC during FY 2017-18 and therefore hearing officer and prehearing settlement conference facilitator related expenditures were budgeted at \$340,000 for the fiscal year with \$300,000 budgeted for hearing officers and \$40,000 budgeted for prehearing settlement conference facilitators (facilitators).

From November 2017 through January 2019, the CSFRA Program processed a total of 58 petitions with 52 of those petitions entering into the formal hearing process. Two petitions were not accepted by the CSFRA Program and four petitions were withdrawn by the petitioner. In total, hearing officers spent approximately 353 hours on hearing administration and prehearing settlement conference related matters.

Table 1 Petitions Received by the CSFRA Program to Date

Acceptance Status	Landlord Petitions	Tenant Petitions	Total
Accepted	11	41	52
Not Accepted	1	1	2
Withdrawn	2	2 ¹	4
Total	14	44	58

¹ Petitions were conciliated between tenant and landlord as a result of the petition being served

For tenant petitions, hearing officers spent an average of 3.8 hours to administer each petition. For landlord petitions, the time spent by hearing officers in administering each petition varied depending on a variety of factors like number of units in the building, number of affected units and whether claims of habitability, overdue maintenance and/or hardship were raised by the affected tenants. For example, a landlord petition affecting 10 units with thorough documentation submitted by the landlords and no issues raised by tenants or discovered by the hearing officer, took the assigned hearing officer 11 hours to administer. Likewise, in the three landlord petitions where hardship petitions were submitted and/or habitability issues were raised by the affected tenants, the assigned hearing officers each expended between 27 to 30 hours (including the hearing) in administering the matters.

Of the 52 accepted petitions, 20 were tenant hardship petitions filed in response to landlord petitions; therefore, data related to these petitions has been consolidated into their related landlord petition. Of the remaining 32 individually filed petitions, 21 have completed the hearing and/or pre-hearing settlement conference process. Ninety-five percent (20 of 21 petitions) of the individually filed and finalized petitions received judgements in favor of the petitioner or were settled through a mutually determined agreement. Of the 21 petitions with final outcomes, the average time, inclusive of any reason for delay, is 90 days from petition acceptance to final outcome. The finalized petition data includes time associated with prehearing settlement conferences, hearings, the appeal process, and/or delays due to requests from affected parties or hearing officers. This data includes outliers, and is only reflective of finalized petitions.

Table 2 Status of Petitions Accepted by the CSFRA Program

Petition Status	Landlord Petitions	Tenant Petitions	Total
Consolidated ²	0	20	20
Awaiting Hearing	0	1	1
Awaiting Hearing Decision	1	6	7
Awaiting Appeal Decision	2	1	3
Finalized	8	13	21
Total	11	41	52

² Twenty tenant hardship petitions were filed in response to landlord petitions and are consolidated into the landlord data shown in Table 2 re. Finalized and in Table 3

Table 3 Method of Hearing Administration for Finalized Petitions

Method of Hearing Administration	Landlord Petitions	Tenant Petitions	Total
Finalized via Hearing	7	8	15
Finalized via Pre-hearing Settlement Conference	1	5	6
Total	8	13	21

During FY 2017-18 a total of 18 petitions were filed and therefore, three percent (\$11,093.75) of the total budget was expended. Taking into account the petition related workload from FY 2017-18 as well as the new Tenant Hardship Petition process, the hearing officer and facilitator budget for FY 2018-19 was adjusted downward to \$270,000 with \$250,000 budgeted for hearing officers and \$20,000 budgeted for facilitators. The mid-year budget review and new contract for Project Sentinel provided an additional opportunity to refine the budget, with the FY 2018-19 hearing officer and facilitator budget being further reduced to \$252,000 (\$232,500 for hearing officers and \$20,000 for facilitators). As of the end of the second quarter of FY 2018-19, a total of \$34,505 has been billed and four percent (\$9,427.50) of the total budget for FY 2018-19 has thus far been paid.

Of the ten hearing officers retained by Project Sentinel in 2017, 6 have formally overseen petition hearings and 4 have acted as facilitators/mediators for pre-hearing settlement conferences. Hearing officers performed the following duties for assigned petitions:

- Reviewed the petition(s) and all submitted evidentiary documentation
- Requested clarification and/or additional documentation from affected parties including the petitioner
- Ordered and attended property inspections
- Conducted prehearing telephonic conferences to prepare parties for their hearing
- Adjudicated hearings
- Performed complex mathematical calculations to determine petition outcomes
- Wrote and edited decisions based on the CSFRA, its Regulations and the hearing record

Petition process and hearing administration related activities were established as quickly as possible to allow the CSFRA to be fully implemented. CSFRA Rules and Regulations were adopted and refined throughout the year. Hearing Officers were routinely provided updates throughout the year, and especially so when the changes were related to petitions in the hearing process. From November 2017 through December 2018, Project Sentinel provided an average of 96 hours per month of support related to hearing administration activities. The hours Project Sentinel staff perform



related to hearing administration are not reflected in the hearing officer and facilitator budget as they are covered by their own budget allocation. This includes providing hearing officers with one-on-one support to answer questions and address concerns. Legal counsel was also consulted as needed. Major topic areas regularly requiring clarification included:

- Regulations Changes and Updates
- Tenant Hardship Petitions
- Schedules, Timelines and Expectations
- Allowed Petition Expenditures and Calculations
- Fair Rate of Return and Vega Standards
- Templates and Supportive Materials
- Decisions and Outcomes
- Appeal Process

Actions were taken to address issues, as they arose, faced by hearing officers and improve the outcomes for all involved throughout the inaugural year of the petition process. Actions taken include:

- Changes to, and or development of, regulations presented to and approved by the RHC
- Updates to templates and forms
- Clarification of, and adjustments to, timelines and schedules
- Updated training provided to hearing officers on December 6, 2018

NEXT STEPS

Staff has developed strategies to further assist hearing officers. These strategies include a wide range of activities:

1. **Hire and train additional hearing officers to reduce workload:** require contractor, such as Project Sentinel, to issue an annual RFQ for hearing officers, facilitate new hire orientation, provide additional guidance and support for new hearing officers
2. **Increase communication with and training for current hearing officers to further improve the hearing process:** hold bi-monthly hearing officer meetings to provide a platform for hearing officers to share questions and ideas, and two bi-annual comprehensive trainings to review changes and updates and address common concerns and challenges.
3. **Develop and/or refine supportive materials:** create excel workbook for petitions designed to automatically perform relevant calculations for all petition worksheets including an overview worksheet for hearing officers, refine

timelines and schedules as needed, improve templates and documents based on feedback received.

4. **Review and refine regulations on an ongoing basis to incorporate best practices.**
5. **Periodically review and refine remuneration schedule to reflect changes and/or additions to the petition process, workload, and jurisdictional best practices.**

PUBLIC NOTICING – Agenda posting.

ATTACHMENTS

1. CSFRA Regulations: Chapter 5, Hearing Procedure