

DATE: October 16, 2023

TO: Rental Housing Committee

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SUBJECT: **Study Session: Rent and the Treatment of Utilities in the CSFRA and Ratio Utility Billing Systems**

PURPOSE

That the Rental Housing Committee provide input on and parameters for regulations, including:

- Clarification that all rental charges, including charges for shared or master-metered utilities, including, but not limited to water, sewer or trash, are part of the definition of rent as stipulated in the Community Stabilization and Fair Rent Act (CSFRA), and the cost of such services must be established as part of the initial rental rate and specified in the rental agreement at the commencement of the tenancy.
- A transitional One-Time Utility Adjustment Petition process:
 - Allowing housing providers, currently using Ratio Utility Billing Systems (RUBS) or similarly calculated and billed utility charges, a transition from separately charged utilities to including utility costs in the rental amount with a One-Time Utility Adjustment Petition, to bring noncompliant rental properties into compliance with the CSFRA.
 - Explaining the administration of submitting and processing of One-Time Utility Adjustment Petitions.

BACKGROUND

On January 31, 2023 and August 21, 2023, the Rental Housing Committee (RHC) conducted Study Sessions (see Attachments 1 and 2) on the treatment of utilities in the CSFRA and the impacts of using RUBS. In the first Study Session, the RHC requested staff to organize stakeholder meetings to better understand the issues in the community. In February and March 2023, stakeholder meetings were conducted with landlords, tenants, and interested parties. The second Study Session was held to frame the issue for the newly appointed RHC members of the issues related

to rent, utilities, and the use of RUBS under the CSFRA, and request RHC's initial input on and parameters for developing regulations to address the use of RUBS for shared or master-metered utilities in CSFRA-covered properties in order to increase compliance with lawfully imposed rents and allowed rent increases under the CSFRA.

Summary of the Issue

- The purpose of the CSFRA is to promote neighborhood and community stability, healthy housing, and affordability for renters in the City of Mountain View by controlling excessive rent increases and arbitrary evictions to the greatest extent allowable under California law, while ensuring landlords a fair and reasonable return on their investment and guaranteeing fair protections for renters, homeowners, and businesses.
- To protect tenants from excessive and unreasonable rent increases, the CSFRA limits annual rent increases and is intended to regulate rent as a single stabilized charge for all housing services associated with the use or occupancy of a rental unit as defined in the CSFRA.
- Some landlords have been “unbundling” the cost of various housing services from rent, including imposing utility charges that can fluctuate on a monthly basis, despite the limits in the CSFRA.
- The CSFRA includes utilities in the definition of rent. The CSFRA: (1) only allows one rent increase in any 12-month period; (2) limits rent increases to the increase in the CPI (2023 AGA = 5%); and (3) requires that any rent increases be preceded by at least 30-days' written notice. RUBS charges tend to fluctuate monthly. These monthly fluctuating utility charges constitute a monthly change of rent. Therefore, the use of RUBS is inconsistent with the CSFRA.
- Almost all CSFRA-covered rental units in Mountain View are master-metered for water and/or other utilities. Many, if not most, landlords bill tenants a varying monthly charge separate from rent to cover the cost of these shared or master-metered utilities.
- The result has been confusion for both landlords (about the how to comply with the CSFRA) and tenants (about the legality of the monthly fluctuations in the cost of utility charges resulting from the use of RUBS, as well as misunderstandings about the calculation of Base Rent and imposition of the Annual General Adjustments).
- The CSFRA differs from some other rent-stabilized jurisdictions in that the CSFRA expressly includes utility charges in the definition of Rent, thereby regulating increases in utility charges. Some other rent-stabilized jurisdictions allow the continued use of RUBS either because there are specific exemptions in their ordinances or because the definitions of Rent and Housing Services in their ordinances do not include utility charges.

This memo summarizes the input received from the RHC at its August 21, 2023 meeting and provides options to include in draft regulations based on that feedback.

Input Received from RHC

The RHC provided feedback to staff to develop options for regulations to clarify that utilities are part of Rent, as follows:

- The RHC unanimously provided direction that regulations should be developed, clarifying that utility charges, whether paid directly or indirectly to the landlord, are part of the CSFRA's definition of rent. This means that if the landlord charges utility costs to the tenant, whether separately billed through a third-party service provider (Ratio Utility Billing Systems, such as Conservice or Multi-Family Utility Company, which process the propertywide invoice and allocate and bill the property utility charges among the tenants), or through a billing process implemented by the landlord themselves, the utility charge is considered part of rent and subject to the limitations for rent increases in the CSFRA.
- In addition to the above clarifications that utilities are part of the definition of rent, and are subject to the CSFRA rent increase limitations, the RHC also directed staff to develop options to facilitate phasing out of noncompliant practices in existing tenancies. This would result in a process to allow rental properties using noncompliant methodologies, such as RUBS, to partially offset previous separately charged fluctuating utilities through a One-Time Utility Adjustment Petition. Staff was directed to provide options for a formula to be used to calculate the one time rent adjustment, including specific parameters related to the exclusion of charges for common areas.

Finally, the RHC directed staff to consider other necessary clarifications related to the transition of noncompliant properties, including:

- A statement that for new tenancies a landlord cannot impose a separate fee or charge for any utility service which is billed to the landlord by the utility provider. This includes, but is not limited to, the use of RUBS or similar system that is not based on a tenant's actual usage.
- A clear statement that landlords may elect to install submeters and may recover the cost of this installation through the existing capital improvement petition process.
- An outline for administratively processing One-Time Utility Adjustment Petitions that the RHC may consider.

These regulations would result in:

- Predictable monthly costs for tenant (to provide housing stability); and
- A one-time process for landlords to recuperate reasonable costs for utilities to be included in rent (to provide a fair and reasonable return on their investment).

The following analysis outlines options for the RHC to consider related to the following outstanding issues:

- The clarification that utilities paid directly or indirectly to the landlord are part of rent under the CSFRA.
- A methodology for landlords to bring noncompliant practices into compliance, including a one-time rent adjustment for previously separately charged utilities.
- An expedited process to administer such one-time rent adjustments.

The RHC's feedback on these issues will direct staff's development of regulations.

ANALYSIS

1. Clarification in Regulations that Utilities Are Part of Rent

The development of regulations to clarify that utilities charged by landlords are part of the definition of rent and subject to the rent limitations in the CSFRA should include the following provisions:

- All utility charges, including any charges for gas, electricity, water, garbage, sewer, telephone, cable, internet, or other service relating to the use and occupancy of a Rental Unit, that are paid directly or indirectly (through a third-party billing service such as Conservice, Multi-Family Utility Company, or the other similar service) to the landlord, are considered Rent for the purposes of the CSFRA.
- Upon adoption, these regulations become effective immediately for new tenancies. At the commencement of the tenancy, the landlord shall, in the Rental Agreement for the Covered Unit, specify which utilities charges are included in the initial rental rate, and specify a dollar amount in the initial rental rate that is associated with the cost of these charges. Thereafter, these utility charges shall be considered in the calculation of the Base Rent and for the purpose of calculating any subsequent rent increase pursuant to the AGA. No landlord may impose a separate fee or charge for any utility service that is billed to the landlord by the utility provider. This includes, but is not

limited to, the use of RUBS or any other methodology that is not based on a tenant's actual usage.

- If a landlord elects to install submeters in the future such that their tenants are charged directly by the utility provider, then they would have to provide tenants with a corresponding reduction in rent for reduction in housing services related to that specific utility. However, the costs of the actual installation of the submeters could potentially be recovered by a temporary rent increase through a capital improvement petition.

2. Transitional Process to Bring Noncompliant Properties into Compliance

In addition to the above regulations clarifying that utilities are part of the definition of Rent, the RHC also expressed interest in creating a process to facilitate the transition of noncompliant practices into compliance. The outcome of such a process would be a one-time rent adjustment to account for previously separately charged fluctuating utilities.

The following three options could be considered for such transition:

The lesser of the sum of all applicable Santa Clara County Housing Authority Utility Allowances (see Attachment 3); or:

- Option A: A calculation of average past 12 months charged utility costs per unit.
- Option B: A calculation of average utility costs per room.
- Option C: A calculation of average utility costs per square footage.

The next section provides more details on each of the options:

Option A: An average of past 12 months charged utility cost per unit.

Determine the lesser of:

- a. The average of all actual utility charges paid to the landlord or on behalf of the landlord per unit over the past 12 months; or
- b. The sum of all applicable Santa Clara County Housing Authority Utility Allowances.

Calculation:

The unit's proportionate share of the total utility charges for the property would be calculated in the following manner:

1. Calculate the total utility charges paid to the landlord or on behalf of the landlord for each unit over a period of 12 months.
2. Depending on whether common areas were already subtracted before the unit utility charges were calculated, show the percentage used for common area utility costs, or alternatively subtract a percentage (between 10% and 20%, depending on the common-use facilities provided) from this total for common-area utility costs.
3. Divide by 12 to get the average monthly utility costs for the unit.
4. Determine the applicable Santa Clara County Housing Authority Utility Allowances (see Attachment 3).
5. Determine the lesser of the two calculations as the allowable rent adjustment.

Documentation:

The landlord must document the following:

- Twelve (12) months of utility bills or invoices from the utility provider for the property.
- Provide information on the percentage subtracted for common-area utility costs.
- Twelve (12) months of utility invoices for each unit.
- The calculation of the Santa Clara County Housing Authority Utility Allowance for each unit.
- An overview sheet with the calculations of each unit's allowed adjustment and current and new rent.

Benefit: This methodology most closely represents current RUBS practices in that it reflects what the landlord actually charged each tenant in the previous 12 months.

Challenge: This methodology results in a detailed process whereby the landlord needs to gather the previous 12-month utility charge documents and then calculate average usage for each tenant, separately. The process of review for staff may also be more challenging

as they will have to review more documentation per unit (regardless of whether the calculation for all units or a sample of the units are to be reviewed).

Option B: A calculation of average utility costs per room.

Determine the lesser of:

- a. The unit's share of the total utility charges for the property paid to the landlord or on behalf of the landlord calculated based on the total number of rooms in the unit as a proportion of all rooms in the apartment building; or
- b. The sum of all applicable Santa Clara County Housing Authority Utility Allowances.

Calculation:

The unit's proportionate share of the total utility charges for the property are calculated in the following manner:

1. Calculate the total utility charges paid to the landlord or on behalf of the landlord for the property over a period of 12 months.
2. Subtract a percentage (between 10% and 20%, depending on the common-use facilities provided) from this total for common-area utility costs.
3. Divide by 12 to get the average monthly utility costs for the entire property to be charged to the units.
4. Divide the average monthly utility charges for the entire property by the total number of rooms on the property.
5. Multiply the per-room utility cost by the number of rooms in each specific unit for which the monthly utility charges are being calculated.
6. Determine the applicable Santa Clara County Housing Authority Utility Allowances.
7. Determine the lesser of the two calculations as the allowable rent adjustment.

Regulations include how to calculate the number of rooms, such as single rooms without kitchens are one-room units; studios with kitchens are two-room units; one-bedroom units, including a living room, a bedroom, and a kitchen, are three-room units; and so on. Kitchens are counted as one room, but bathrooms are not.

Documentation:

The landlord must document the following:

- Twelve (12) months of utility bills or invoices from the utility provider for the property.
- Provide information on the percentage subtracted for common area utility costs.
- The calculation showing how the amount of utility charges per room is determined.
- The calculation of the Santa Clara County Housing Authority Utility Allowance for each unit.
- An overview sheet with the calculations of each unit's allowed adjustment and current and new rent, including the number of rooms of each unit, taking into account the guidelines for calculating the number of rooms in each unit.

Benefit: This methodology is more administratively streamlined than Option A, and it does not involve the documentation of each unit's utility charges for the prior 12-months. It reflects input from the RHC that this method is more equitable as opposed to continue to use previous RUBS formulas that include number of household members, and is easy to measure.

Challenge: This methodology might not as closely reflect the utility charges each unit was charged until the transition.

Option C: A calculation of utility charges per square footage.

Determine the lesser of:

- a. The unit's share of the total utility charges paid to the landlord or on behalf of the landlord for the property calculated according to the unit's percentage of the total square footage of the property; or
- b. The sum of all applicable Santa Clara County Housing Authority Utility Allowances.

Calculation:

The unit's proportionate share of the total utility charges for the property would be calculated in the following manner:

1. Calculate the total utility charges for the property paid to the landlord or on behalf of the landlord over a period of 12 months.

2. Calculate the total square footage of the property, including any vacant units and all common areas and facilities.
3. Divide the 12-month total utility charges for the property by the total square footage of the property to get a “per square foot” utility charge amount per year.
4. Divide the yearly per square foot amount by 12 to determine the monthly per square foot utility charge.
5. Multiply the per square footage amount by the number of square feet of each unit for which the monthly utility charges are being calculated.
6. Determine the applicable Santa Clara County Housing Authority Utility Allowances for each unit.
7. Determine the lesser of the two calculations as the allowable rent adjustment.

Documentation:

The landlord must document the following:

- Twelve (12) months of utility bills or invoices from the utility provider for the property.
- The total square footage of the property, the calculation of the square footage of common areas, and the calculation of the square footage for each unit.
- A calculation showing how the amount of utility charges per square footage of each unit.
- The calculation of the Santa Clara County Housing Authority Utility Allowance for each unit.
- An overview sheet with the calculations of each tenant’s allowed adjustment and current and new rent, including the square footage of each unit.

Benefit: This methodology is more administratively streamlined than Option A, and it does not involve the documentation of each unit’s utility charges for the prior 12-months. This methodology would allocate actual, rather than arbitrary, common-area costs to the landlord. It reflects input from the RHC that this method is more equitable as opposed to continue to use previous RUBS formulas that include number of household members.

Challenge: This process may not as closely reflect the utility charges each tenant has paid up until the transition. There are multiple methodologies to calculate interior square footage, and not all landlords have accurate square footage measurements for rental units. Also, not all tenants know or are able to determine the square footage of their unit to verify that their portion of the utilities charges is being calculated properly.

Any of these options would bring landlords into compliance with the CSFRA and incorporate utility charges into rent. Any of the methods would also provide landlords with a methodology to adjust the rent to cover costs of utilities. Once the initial adjustment is made, landlords would have the option to file a maintenance of net operating income (MNOI) petition for upward adjustment of rent if the landlord's utility' costs increase at a rate greater than the AGA if the landlord is not receiving a fair rate of return.

3. Administrative Process for the One-Time Utility Adjustment Petition

The administrative process for a One-Time Utility Adjustment Petition could include the following:

1. The landlord completes a One-Time Utility Adjustment Petition on a form provided by staff and accompanied by all required documentation, serves a copy of the petition on tenants, and files the petition with the RHC.
2. Staff determines "completeness" of the One-Time Utility Adjustment Petition. Staff marks the petition as "incomplete" if any required fields are omitted or improperly marked or if the supporting documentation is incomplete.
3. (If applicable) If a One-Time Utility Adjustment Petition is marked as "incomplete," staff informs the landlord of this determination and provides the landlord with a list of the issues that need to be addressed to complete the application. This will include the date the landlord is required to cure any issues.
4. Once a One-Time Utility Adjustment Petition is determined to be complete and the response period by tenants has expired, then one of the following options would be included in the Regulations:
 - a. Staff would examine each adjustment to ensure that the rent adjustment was properly calculated and send landlord and all affected tenant(s) a confirmation letter.
 - b. Staff would examine a sample of the rent adjustments for each property to ensure that the rent adjustments are properly calculated and send landlord and all affected tenant(s) a confirmation letter.

5. If the One-Time Utility Adjustment Petition is challenged by the tenant(s) filing a Response within the period for submission of a Response, the One-Time Utility Adjustment Petition and Responses will be reviewed by either: (a) Program staff; (b) a Hearing Officer; or (c) other; to determine whether the rent adjustment has been calculated correctly.
6. If no Response is received within the period of submission, and the One-Time Utility Adjustment Petition is confirmed by staff, the tenant has no further options to challenge the adjustment.
7. If the One-Time Utility Adjustment Petition process results in a one-time rent increase, such adjustment shall not be effective until: (i) 12 months have elapsed from the most recent rent increase for the unit; and (ii) the landlord provides a rent increase notice to tenants as required by state law, along with a copy of the Administrative Decision/Staff confirmation letter and the end of notice period under State law and/or the tenant's lease.

Timeline for the Administrative Process:

Staff recommends that the regulations go into effect immediately upon adoption to provide guidance on how to treat new tenancies. Once regulations have been adopted, staff will also begin preparing for implementation of the administrative petition process. This includes developing administrative practices and processes to execute the One-Time Utility Adjustment Petition process, creating forms and notices, and designing and implementing an outreach plan. It is estimated that staff will need at least six months after the adoption of regulations to prepare for roll-out and accepting petitions.

Deadlines for Filing One-Time Utility Adjustment Petitions

Staff recommends Regulations include staggered deadlines for landlords to file One-Time Utility Adjustment Petitions based on number of units on the property. Staggering the filing deadlines

will assist staff in being able to administer the process more effectively. The following deadlines are proposed in Table 1 below:

Table 1: Proposed Filing Deadlines for One-Time Utility Adjustment Petitions

Number of Units on Property	Filing Deadline
>20 units	Petition served on tenants and filed with City within 6 months of City roll-out date
6-20 units	Petition served on tenants and filed with City within 9 months of City roll-out date
1-5 units	Petition served on tenants and filed with City within 12 months of City roll-out date

Should landlords fail to file One-Time Utility Adjustment Petitions with the City by the required deadline, tenants will be able to file RUBS-related unlawful rent petitions with the City if the property continues to charge utilities using RUBS or a similar system.

Tenant Petitions

During the implementation of these processes, staff recommends that a pause be placed on the acceptance and processing of any tenant petitions that seek a downward adjustment of rent due to unlawful rent based solely on RUBS or similar system utility charges. This pause would begin once the regulations are adopted and would conclude once the filing deadline for the subject property has passed. After expiration of the filing deadline, tenants would be permitted to file the RUBS utility petitions only if their landlord failed to file a One-Time Utility Adjustment Petition within the required timeline and continued to charge the tenants utility charges using a RUBS system. Tenants can continue to file petitions for downward adjustment of rent related to other issues, such as failure to roll back rent, decrease in housing services, etc.

As a related matter, it is possible that some One-Time Utility Adjustment Petitions will result in a downward adjustment of rent (i.e., because the tenant has been overpaying). Therefore, the RHC should determine whether it will require to landlords to refund any tenants that the One-Time Utility Adjustment Petition process determines have been overpaying, and if the RHC will require such refund, for how many years of overpayment the tenant will be permitted to recover. (NOTE: The California statute of limitations for contract claims is four (4) years.)

RECOMMENDATIONS

Does the RHC approve of the following recommendations, based on the above analysis?

1. Staff recommends drafting regulations clarifying the prohibition of using RUBS or similar systems to bill utility charges associated with the use and occupancy of CSFRA-covered units.
2. Staff recommends a transitional process to bring noncompliant practices into compliance with the CSFRA, using Option B: the lesser of: (a) a calculation of average utility costs per room; and (b) the sum of all applicable Santa Clara County Housing Authority Utility Allowances. This seems to be the most equitable option, is fairly commonly used, and is easy to calculate, reducing chances of disputes.
3. Staff recommends adopting an administrative process as outlined above.
4. Staff recommends having staff examine a sample of the rent adjustment petitions for each property to ensure that the rent adjustments are properly calculated and send the landlord and all affected tenant(s) a confirmation letter. This option reduces the administrative burden and would allow staff to timely and efficiently process the petition applications.
5. Staff recommends review of submitted One-Time Utility Adjustment Petitions be performed by program staff, due to limited availability of Hearing Officers and an increase in filed petitions in general.
6. Staff recommends adopting the proposed deadlines for submission of One-Time Utility Adjustment Petitions:
 - a. >20 units: Within 6 months of launch of Offset Petition process.
 - b. 6-20 units: Within 9 months of launch of Offset Petition process.
 - c. 1-5 units: Within 12 months of launch of Offset Petition process.
7. Staff recommends including a provision in the draft regulations pausing the filing and processing of any tenant petitions based solely on RUBS until after the deadline for submission of the One-Time Utility Adjustment Petition has expired.
8. Staff recommends including a provision in the draft regulations to require landlords to refund excess rent to any tenants who have overpaid due to the use of RUBS for a period of four (4) years.

NEXT STEPS

Staff provides the following recommendations for the RHC to consider as next steps:

1. In today's meeting, the RHC potentially directs staff to draft regulations, including the input and recommendations regarding preferred options as laid out above.
2. If so directed, staff will provide draft regulations in a subsequent meeting.
3. After adoption of regulations, staff will start the implementation of the One-Time Utility Adjustment Petition process.

FISCAL IMPLICATIONS

The implementation and administration of a One-Time Utility Adjustment Petition process will require more staff hours and most likely result in the hiring of temporary and/or permanent staff. Staff will report back to the RHC in a subsequent meeting and include this in the budget discussions for Fiscal Year 2024-25.

PUBLIC NOTICING—Agenda posting.

AvD-KMT-NS/KG/8/HSN/RHC
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- Attachments:
1. Rental Housing Committee Memo, January 31, 2023
 2. Rental Housing Committee Memo, August 21, 2023
 3. 2022 Santa Clara County Housing Authority Utility Allowances
 4. Examples Calculations for Options under One-Time Utility Adjustment Petitions