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memorandum

To

Mountain View Rental Housing Committee

From

Karen M. Tiedemann, Special Counsel to the Rental Housing Committee

Nazanin Salehi, Special Counsel to the Rental Housing Committee

RE

Proposed Amendments to Chapter 13: Utility Charges of the Community Stabilization and Fair Rent Act Regulations

RECOMMENDATION

Review and adopt amendments to Community Stabilization and Fair Rent Act (CSFRA) Regulations Chapter 13: Utility Charges clarifying certain aspects of the One-Time Utility Adjustment Petition process and amending Table 2 with regard to the timeframes for compliance.

BACKGROUND

On January 31, 2023, August 21, 2023, and October 16, 2023, the Rental Housing Committee (RHC) conducted study sessions on the treatment of Utility Charges in the CSFRA and the impacts of using Ratio Utility Billing Systems (RUBS).

On December 18, 2023, the RHC adopted Chapter 13 of the CSFRA Regulations, which generally:

- Clarifies that all rental charges, directly or indirectly charged by landlords, 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, 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; and
- Provides a one-time Utility Adjustment Petition process that:
 - Allows landlords currently using a Ratio Utility Billing System or similarly calculated and billed utility charges to transition from separately

charged utilities to including utility costs in the rental amount, thereby bringing rental properties into compliance with the CSFRA; and

- Establishes the process for submissions and review of Utility Adjustment Petitions.

In the time since the adoption of Chapter 13, staff has (1) gained a better sense of the implementation timeline and (2) learned about additional topics that staff recommend addressing in the regulations. For these reasons, staff recommends changes to CSFRA Regulations Chapter 13 – Utility Charges, as outlined in the Discussion section below.

DISCUSSION

There are three proposed changes to the regulations; two are administrative changes that require no action from the RHC, and one is a recommended change that requires RHC consideration.

1. Administrative Clarification to Section A.1.c.

Staff received inquiries from landlords and tenants regarding situations where landlords mid-way during a tenancy removed utility charges that had previously been included in rent, and, without a corresponding rent decrease, began charging tenants for those utilities through RUBS or other means. This is considered a reduction in housing services resulting in an unlawful rent increase for which tenants are eligible to file petitions. Additionally, in such instances the One-Time Utility Adjustment Petition process can not be used to incorporate utilities into rent.

c. Ineligibility. The One-Time Utility Adjustment Petition process does not apply to tenancies where all of the following conditions are met:

- i. The initial rental rate for the Covered Rental Unit was inclusive of Utility Charges that were paid by the Landlord;
- ii. On or after December 23, 2016, the Landlord ceased paying for one or more of these Utility Charges without a corresponding decrease in the Tenant's Rent;
- iii. At the same time or subsequently thereafter, the Landlord began using a Ratio Utility Billing System (RUBS) (or any similar system or methodology that is not based on a Tenant's actual usage) to allocate the Utility Charges to the Tenant; and

- iv. The Landlord demanded and the Tenant actually paid the Utility Charges allocated to the Tenant based on RUBS (or any similar system or methodology that is not based on a Tenant's actual Utility usage).

The foregoing scenario constitutes a reduction in housing services and therefore, an unlawful rent increase pursuant to CSFRA Section 1706(a) and Chapter 2 of CSFRA Regulations Sections (h) and (p). In such cases, the Landlord is required to (1) roll back the Tenant's Rent for the Covered Rental Unit to the Rent that was in effect immediately prior to the implementation of RUBS (or any similar system or methodology that is not based on a Tenant's actual Utility usage) and (2) refund the Tenant all overpayments in Rent. As authorized by subparagraph (18) of paragraph (d) of this Section B and CSFRA Section 1710(d), a Tenant whose tenancy satisfies all of the criteria in (i) through (iv) above may file a Petition for Downward Adjustment based on Unlawful Rent with the Division at any time.

EXAMPLE 1: Tenant A's tenancy commenced on March 1, 2014. The Tenant's initial rental rate was \$1,500 per month and Tenant's lease specifically provided that the Landlord was responsible for paying water, sewer, and trash. At the time that the CSFRA went into effect on December 23, 2016, Tenant's monthly Rent was still \$1,500. On February 1, 2017, the Landlord notified Tenant A that the Landlord intended to pass along the cost of water, sewer and trash to the Tenants in the building using RUBS. On April 1, 2017, the Tenant A paid \$1,500 in Rent and \$125.00 for water, sewer and trash allocated via RUBS and billed by Conservice. To date, Tenant A receives a separate bill from Conservice each month for water, sewer, and trash. Tenant A's tenancy **IS NOT** eligible for a One-Time Utility Adjustment Petition and the landlord must rollback the rent and refund the overcharges.

EXAMPLE 2: Tenant B's tenancy also commenced on March 1, 2014. Tenant B's initial rental rate was \$1,650 per month and Tenant B's lease specifically provided that the Landlord was responsible for paying water, sewer, and trash. On January 1, 2015, the Landlord notified Tenant B that the Landlord intended to pass along the cost of water, sewer and trash to the Tenants in the building using RUBS. On March 1, 2015, Tenant B received a bill from Conservice in the amount of \$150.00 for water, sewer and trash. On March 5, 2015, Tenant B paid \$1,650 in Rent and \$150.00 for water, sewer and trash allocated via RUBS and billed by Multifamily Utility Company. At the time that the CSFRA went into effect on December 23, 2016, Tenant B's monthly rent was still \$1,650, and she continued to be charged separately by Multifamily Utility Company each month for water, sewer and trash. Tenant B's tenancy **IS** eligible for a One-Time Utility Adjustment Petition.

EXAMPLE 3: Tenant C's tenancy commenced on February 1, 2017. Tenant C's initial rental rate was \$1,700 per month, and Tenant C's lease specifically provided that the Landlord was responsible for paying water, sewer, and trash.

On January 1, 2019, the Landlord notified Tenant C that the Landlord intended to pass along the cost of water, sewer and trash to the Tenants in the building via RUBS. On March 1, 2019, the Tenant C paid \$1,700 in Rent and \$100.00 for water, sewer, and trash allocated via RUBS and billed by Conservice. To date, Tenant A receives a separate bill from Conservice each month for water, sewer, and trash. Tenant A’s tenancy **IS NOT** eligible for a One-Time Utility Adjustment Petition and the landlord must rollback the rent and refund the overcharges.

Reason for Recommendation: The purpose of the additional language is to clarify (1) that landlords cannot apply the One-Time Utility Adjustment to tenancies where utilities were included in the initial rental rate and were (after the effective date of the CSFRA) separated out from rent without a commensurate rent decrease to be allocated and charged via RUBS (or other similar system); (2) that such actions amount to unlawful rent increases under the CSFRA and landlords must address such issues to comply with the CSFRA; and (3) tenants may file Petitions for Downward Adjustment to address the issue at anytime.

2. Recommended Change to Section Table 2.

Staff began receiving and processing petitions in late 2024 and has developed a greater understanding of the timeframes associated with submitting petitions, including but not limited to, the amount of time required to gather supporting documentation and the amount of support required for landlords to complete the petition submission process. Therefore it is recommended to extend the submission timeline by two months. In the meantime staff will perform additional outreach to ensure deadlines are not missed.

| Number of Units on Property | Submittal Periods |
|-----------------------------|---|
| >20 units | Petition must be submitted to the Rent Stabilization Division within six (6) months of Division release date of petition form(s) (between September 1, 2024 and February 28 April 30, 2025). |
| 6-20 units | Petition must be submitted to the Rent Stabilization Division within nine (9) months of Division release date of petition form(s) (between September 1, 2024 and May 31 July 31, 2025). |
| 1-5 units | |

| | |
|--|---|
| | Petition must be submitted to the Rent Stabilization Division within twelve (12) months of Division release date of petition form(s) (between September 1, 2024 and August 31 October 31, 2025). |
|--|---|

Reason for Recommendation: Due to the penalties associated with missing the submittal deadlines, and the length of time required to submit a petition, staff recommends the above revised dates for the submission of petitions by Landlords.

3. Administrative Clarifications to Section B.18.d. and Table 3.

Landlords, tenants and hearing officers requested clarification about whether unlawful rent petitions related to utilities under certain circumstances can still be filed during the One-Time Utility Adjustment Petition process. This confusion highlights the need for further clarification as explained in the following section:

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|--|
| <p><u>Petitions regarding unlawful rent charges for utilities.</u> Notwithstanding the foregoing, paragraph (b) does not apply to either of the following:</p> <ul style="list-style-type: none"> i. Any Petition for Downward Adjustment based on overpayment of Utility Charges where the tenancy meets all of the criteria in subparagraphs (i) through (iv) of paragraph (c) of subsection (1) of Section B of this Chapter; or ii. Any Petition for Downward Adjustment based on overpayment of Utility Charges where the tenancy commenced on or after March 1, 2024 and the Landlord has unlawfully demanded or retained payment of Utility Charges that were allocated to the Tenant using a Ratio Utility Billing System (RUBS) (or any similar system or methodology that is not based on a Tenant’s actual Utility usage). <p>Petitions based on either of the foregoing bases may be filed with the Division at any time and will be heard and decided in accordance with the relevant timelines set forth in Chapter 5.</p> |
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Table 3

| Types of Tenant Petitions | Filing and Acceptance |
|---|--|
| Downward Adjustment of Rent Petition where the tenancy satisfies all of the criteria in Section B.1.c.i-iv. of this Chapter 13. | May be filed by Tenants and accepted by staff at any time. |

Reason for Recommendation: The addition of the language in Section B.18.d. would clarify that tenants who have been unlawfully charged rent under the specified conditions (as outlined in the addition of Section A.1.c.) are still eligible to file unlawful rent petitions at any time. This addition informs tenants, landlords and hearing officers of how to handle such situations during the One-Time Utility Adjustment Petition process.

FISCAL IMPACT

The recommended changes to the One-Time Utility Adjustment Petition process are, in part, intended to streamline the One-Time Utility Adjustment Petition process, which may have a minor positive impact on the Rental Housing Committee budget by increasing efficiency and reducing administrative costs.

PUBLIC NOTICING – Agenda posting, posting on the City’s website, and email to distribution list.

ATTACHMENTS

- Attachment 1: Resolution to Adopt Amendments to CSFRA Regulation Chapter 13 – Utility Charges
- Exhibit A: Amendments to Chapter 13 – Utility Charges