

M David Kroot

Lynn Hutchins

Karen M. Tiedemann

Thomas H. Webber

Dianne Jackson McLean

Isabel L. Brown

James T. Diamond, Jr.

Margaret F. Jung

Heather J. Gould

William F. DiCamillo

Amy DeVaudreuil

Barbara E. Kautz

Rafael Yaquián

Celia W. Lee

Dolores Bastian Dalton

Joshua J. Mason

Jeffrey A. Streiffer

Elizabeth R. Klueck

Jhaila R. Brown

Gabrielle B. Janssens

Benjamin Funk

Rye P. Murphy

Aileen T. Nguyen

Katie Dahlinghaus

Matthew S. Heaton

Brandon V. Stracener

Nazanin Salehi

Erin C. Lapeyrolerie

Minda Bautista Hickey

Jocelyn A. Portales

Colleen A. Wisel

Thomas J. Levendosky

Estrella M. Lucero

Los Angeles

213 627-6336

San Diego

619 239-6336

Goldfarb & Lipman LLP

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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 7: Procedures for Annual General Adjustments of the Community Stabilization and Fair Rent Act Regulations and Chapter 8: Procedures for Annual General Adjustments for Mobile Home Rent Stabilization Ordinance Regulations

RECOMMENDATION

To review and provide feedback to staff on proposed amendments to Community Stabilization and Fair Rent Act (CSFRA) Regulations Chapter 7: Procedures for Annual General Adjustments and Mobile Home Rent Stabilization Ordinance (MHRSO) Regulations Chapter 8: Procedures for Annual General Adjustments, clarifying certain aspects of the process for tenant hardship petitions filed to seek relief from banked Annual General Adjustment increases.

BACKGROUND

CSFRA Section 1707(d) authorizes a Landlord who has refrained from imposing a Rent increase (or portion thereof) pursuant to an Annual General Adjustment (AGA) to accumulate and impose the unimplemented amount in subsequent years, subject to the 10 percent limitation in Section 1707(e). In addition, Section 1707(d) provides that the Rental Housing Committee (“Committee”) “may issue rules and regulations that modify, restrict, or prohibit the ability of Landlords to impose accumulated increases upon a finding that the banking of Annual General Adjustments causes undue hardship on Tenants, provided that Landlords retain their right to a fair return.”

Similarly, MHRSO Section 46.6 authorizes a Park Owner or Mobile Home Landlord who has refrained from imposing a Rent increase (or portion thereof) pursuant to an Annual General Adjustment (AGA) to accumulate and impose the unimplemented amount in subsequent years, subject to a maximum annual increase limit of 10 percent. The MHRSO also allows the Committee to “issue rules and regulations that modify, restrict or prohibit the ability of park owners or mobile home landlords to impose accumulated increases upon

a finding that the banking of annual general adjustments causes undue hardship, provided that park owners and mobile home landlords retain the ability to earn a fair return.”

On April 23, 2018, the Committee adopted CSFRA Regulations Chapter 7: Procedures for Annual General Adjustments to address implementation of banked AGA increases, including the criteria and process for tenant hardship petitions. After the adoption of the MHRSO, the Committee, on January 24, 2022, adopted MHRSO Regulations Chapter 8: Procedures for Annual General Adjustments, mirroring the CSFRA Regulations regarding implementation of banked AGA increases.

As with several other policies and procedures adopted by the Committee in the early days of implementing and administering the CSFRA and MHRSO, and in an ongoing effort to improve process efficacy, staff has identified certain areas in the process and procedures for Tenant Hardship Petitions that require refinement. Moreover, several Hearing Officers have, while administering these banked increase Tenant Hardship Petitions, identified aspects of the process and regulations that could benefit from clarification and simplification.,.

Staff’s analysis has determined that the following changes would maximize administrative efficiency, accuracy, and clarity in the banked increase Tenant Hardship Petition process:

1. Revision of the information to be provided by Tenants filing a Tenant Hardship Petition to better balance Tenant and Landlord needs;
2. Extension of the timeframes for processing Tenant Hardship Petitions;
3. Clarification of the outcome of a Tenant Hardship Petition upon withdrawal by the Landlord of a banked increase;
4. Bifurcation of the processes for uncontested and contested petitions to provide that an uncontested petition will be decided administratively (i.e., based on documentation and without a hearing); and
5. Clarification that only a Tenant, and not a Landlord, may appeal the Hearing Officer’s decision in an uncontested petition.

Staff’s recommendations intend to clarify and simplify the process of a banked increase tenant hardship petitions, and to provide more balanced guidelines for Hearing Officers. For these reasons, staff is recommending that the Committee review and provide feedback on several proposed amendments to the tenant hardship petition process for banked rent increases, as outlined below and in Attachments 1 and 2 to this staff report.

DISCUSSION

The references in this Discussion are to sections of the CSFRA Regulations. However, the same changes are being proposed to the MHRSO Regulations, as shown in Attachment 2

to this staff report. The text shown in the boxes below reflect the existing language in CSFRA Regulations Chapter 7, Section C; recommended edits to the language are shown as either underlined or strikethrough text.

A. Recommended Changes to Section C.1.a. and C.1.b.

1. Petition Required. ...

- a. Contents of Petition. The hardship Petition must: (i) be submitted on a form provided by the Rental Housing Committee; (ii) clearly identify the hardship claimed under Subsection (C)(2) of this Chapter 7; ~~and~~ (iii) indicate whether the Tenant can pay any portion of the banked AGA increase, inclusive of the AGA increase for the current year, and if yes, the amount of the banked AGA increase the Tenant can pay.; and (iv) provide adequate supporting documentation of the hardship as described in Subsection (C)(2) of this Chapter 7.
- b. Petition Due Date. Hardship Petitions should be submitted as early as possible after receipt by the Tenant of a notice of rent increase to allow for potential relief. Hardship Petitions must be received within ten (10) calendar days of the effective date of a rent increase. Hardship Petitions received after the effective date of a rent increase cannot alter the first month of the requested rent increase. Hardship Petitions received more than ten (10) calendar days after the effective date of the requested rent increase will be rejected, unless the Tenant demonstrates that there was good cause for the delay in filing the Hardship Petition and the length of the delay was reasonable given the cause.

Reason for Recommendation: To achieve a better balance between tenant and landlord needs in the Tenant Hardship Petition process, staff is recommending that Tenants provide information about whether they are able to pay any portion of the banked AGA increase that was accumulated and is being imposed by the Landlord. This will ensure that Landlords receive a fair rate of return, as required by both the CSFRA and MHRSO, while preserving the administrative nature of the Tenant Hardship Petition process and the privacy of Tenants Any portion of the banked AGA increase that the Tenant is unable to pay and from which a Hearing Officer grants relief may be imposed in subsequent years.

Staff is also recommending the addition of language in Section C.1.b. to allow for acceptance of an untimely tenant hardship petition where the tenant demonstrates good cause. There have been instances where a Tenant had good cause (e.g., medical emergency, extended time away from home) for filing a hardship petition after the 10-day deadline. The added language will allow Hearing Officers to consider such causes for the delay and accept the late filing where they determine it is appropriate to do so.

B. Recommended Change to Section C.3. and C.3.c.

3. Petition Process. Within ~~fourteen~~ thirty (1430) days of submission to the Rental Housing Committee of a Petition and documentation supporting eligibility, as described in Section C of this Chapter 7, the Rental Housing Committee shall notify the Tenant-Petitioner of acceptance of the Petition or inform the Tenant-Petitioner why the Petition has not been accepted. Staff shall not assess the adequacy of any documentation supporting eligibility but shall refuse acceptance of a Petition submitted without a document that purportedly supports a finding of Tenant hardship. One (1) document may be submitted to support more than one (1) eligibility criterion identified in Subsection (C)(2). Each notice of acceptance must identify the date of the scheduled Uncontested Hearing, as described in Section (C)(5) of this Chapter 7 and provide a brief explanation of the procedures for the Hearing and the potential outcome of the Hardship Petition.

...

c. Prehearing Settlement Conferences—Encouraged. Upon ~~acceptance, the Rental Housing Committee shall encourage~~ filing of the Hardship Petition, the Tenant-Petitioner ~~and each Landlord potentially affected by the Petition to voluntarily participate in~~ can request a voluntary Prehearing Settlement Conference with the Landlord, as described in Section N of Chapter 3.

Reason for Recommendation: The Division has experienced an increase in the volume of filings for all types of petitions, accompanied by petitions with greater complexity and more issues. For these reasons, the time for processing petitions has increased and it is become increasingly infeasible for staff to meet the processing deadlines for all petitions, including tenant hardship petitions. On several occasions, staff has had to issue notices to parties informing them of the need for additional time to process petitions. Increasing the timeframe for staff's review and notification from 14 to 30 days is necessary to ensure that staff can continue to do a thorough job without running afoul of deadlines.

C. Recommended Change to Section C.4.c.

4. Landlord Response. Each Landlord potentially affected by a Petition submitted in accordance with this Chapter 7 may take any combination of the following actions within thirty (30) calendar days of acceptance of a Petition by the Rental Housing Committee. An action described in Subsections (C)(5)(a) and (C)(5)(b) shall be considered a “Landlord Response” for purposes of Subsection (C)(6) of this Chapter 7.

...

c. Withdraw the proposed rent increase (in which case, the hardship Petition shall be deemed withdrawn and a notice of withdrawal shall be delivered to the Tenant-Petitioner and Landlord); and/or

Reason for Recommendation: The language in the existing C.6 has been moved up into Section C.4.c. to clarify the outcome of a withdrawal of the proposed banked rent increase by the Landlord in response to a Tenant Hardship Petition. Staff is recommending this change to make it easier for individuals, including staff and Hearing Officers, reviewing the regulations to determine the effect of a Landlord’s withdrawal of a banked rent increase.

D. Recommended Changes to Section C.5. through C.6.

5. ~~Hearing.~~ Upon acceptance by the Rental Housing Committee, each Petition submitted under this Chapter 7 shall be scheduled for Hearing by a Hearing Officer to be held between thirty (30) and sixty (60) calendar days from the date the Notice of Acceptance is sent.
- a. ~~Uncontested Hearing Petition.~~ If no Landlord Response is received and the noticed rent increase is not withdrawn within thirty (30) calendar days of the notice of acceptance by the Rental Housing Committee, then a Hearing on the Petition will be held by a Hearing Officer on the date identified in the notice of acceptance of the Petition. ~~Hearing.~~ During the Hearing, the Hearing Officer must shall administratively review the adequacy of the Tenant Hardship Petition and any supporting documentation in light of the burden of proof identified in CSFRA Section 1711(h) and in accordance with CSFRA Section 1711(e) and this Chapter 7.
- a. ii. ~~Decision.~~ Within ~~fourteen~~ sixty (1460) calendar days from the date of the Hearing notice of acceptance by the Rental Housing Committee, the Hearing Officer ~~must~~ shall issue a written Decision either confirming the hardship petition by granting one (1) or more forms of relief identified in Subsection (C)(36) or rejecting the hardship Petition, which Decision shall include: findings of fact and conclusions of law that support the Decision. If the Decision rejects the hardship Petition, then the Decision must provide for the payment to the Landlord of any rent held by the Tenant during the pendency of the hardship Petition. The Hearing Officer must issue the Decision outlining the allowed increase (if any) based solely on the Tenant Hardship petition and the documentation submitted by the Tenant.
- b. iii. ~~Appeal.~~ The Decision of the Hearing Officer shall be final unless the Tenant-Petitioner ~~or an affected Landlord~~ files a timely appeal to the Rental Housing Committee in accordance with Regulations, Chapter 5, Section (H). An affected Landlord who fails to timely file a Landlord Response is prohibited from appealing the Decision of the Hearing Officer in an uncontested Hardship Petition.
6. ~~Contested Hearing Petition.~~ If a Landlord Response is received within thirty (30) calendar days of the notice of acceptance by the Rental Housing Committee, then a ~~new~~ a Hearing shall be scheduled for a date no later than thirty (30) calendar days ~~of~~ after receipt by the Rental Housing Committee of the Landlord Response.
- a. Hearing. A Hearing for a Petition under this Chapter 7 for which a ~~Tenant-Landlord~~ Response has been received shall be held in accordance with Regulation Chapter 5, Subsection C(3) through Regulation Chapter 5, Section H, and Chapter 5 shall govern the Hearing, Decision, and Appeal procedures. During the Hearing, the Hearing Officer must review the adequacy of the Tenant Hardship Petition and any supporting documentation

in light of the burden of proof identified in CSFRA Section 1711(h) and in accordance with CSFRA Section 1711(e) and this Chapter 7.

- b. ~~c.~~ ~~Withdrawal Decision.~~ Within thirty (30) days from the date the Hearing, the Hearing Officer shall issue a written Decision either confirming the hardship condition petition as by granting one (1) or more forms of relief identified in Subsection (C)(6) or rejecting the hardship Petition, which Decision shall include: findings of fact and conclusions of law that support the Decision. If a Landlord withdraws the noticed rent increase, If the Decision rejects the hardship Petition, then the Decision must provide for the payment to the Landlord of any rent held by the Tenant during the pendency of the hardship Petition. shall be deemed

Reason for Recommendation: Currently, the Regulations require a Hearing before a Hearing Officer regardless of whether a Landlord contests a Tenant Hardship Petition or not. However, since the start of the program, the Division has received thirty-one (31) banked increase Tenant Hardship Petitions and only five (5) of those were contested by the Landlord. In those cases where the Landlord did not contest the Tenant Hardship Petition, the Landlord accepted and implemented the Hearing Officer's decision. To increase efficiency and maximize the Division's existing resources, Staff recommends amending the regulations to provide for two slightly different processes depending on whether the Tenant Hardship Petition is or is not contested by the Landlord.

Where the Landlord does not contest the Tenant Hardship Petition, the Hearing Officer shall administratively (i.e., without a hearing) review and decide the Tenant Hardship Petition based solely on the petition forms and supporting documents submitted by the Tenant. In the case of an uncontested petition, the Hearing Officer is required to review and issue a decision on the petition within 60 days of the date of acceptance of the petition by the Committee (i.e., within 30 days after the Landlord's time to object has expired).

To bring the Tenant Hardship Petition process into alignment with best practices for other types of petitions in case a Tenant Hardship Petition is not contested by the Landlord, only the affected Tenant shall be permitted to appeal the Hearing Officer's decision. This recommendation is appropriate because Landlords are notified of the filing of a banked increase Tenant Hardship Petition, including receiving a copy of the actual petition and any supporting documentation, immediately upon acceptance and are afforded ample opportunity to object to the petition. Furthermore, allowing Landlords who have failed to contest a Tenant Hardship Petition to appeal the Hearing Officer's decision would require reopening of the record to allow for admittance of additional evidence, a process which is not only complicated and costly but also unfair to the Tenant.

Where the Landlord timely contests the Tenant Hardship Petition, the process shall remain the same as currently provided by the regulations. A Hearing will be scheduled within 30 days of receipt of the Landlord's Response, the Hearing Officer shall issue a decision (based on information and documentation submitted by both parties) within 30 days after the close of the Hearing, and either or both parties may appeal the Hearing Officer's Decision on the Tenant Hardship Petition. The bifurcation of these processes should decrease the amount of time that staff spend on scheduling Hearings, and the amount of time that Hearing Officer's must dedicate to uncontested Tenant Hardship Petitions.

Ultimately, Staff estimates that the shift to an administrative review (i.e., no hearing) of uncontested Tenant Hardship Petitions will save up to eight (8) hours of staff and Hearing Officer time per case.

E. Recommended Change to Section C.7.

7. Relief from Hardship. ~~Upon demonstrating~~ If the Tenant demonstrates the existence of one (1) or more hardship conditions identified in Subsection (C)(2), ~~a—the~~ Hearing Officer shall ~~consider~~ grant the Tenant household's hardship condition as one (1) factor when determining whether and to what extent any of the potential relief identified by this Subsection (C)(6) is appropriate relief from of the banked AGA increase(s). Any relief granted under this Subsection (C)(6) must be documented by the Decision of a Hearing Officer granting an adequately supported Tenant hardship Petition. No relief granted under this Subsection (C)(6) shall be applied so as to deprive a Landlord from the ability to earn a fair return.
- a. ~~a.—Prohibit Implementation of Requested Rent Increase.~~ In accordance with CSFRA Section 1707(d), a HEARING Officer may restrict or prohibit the ability of a Landlord to impose one (1) or more accumulated or banked AGAs. Unless the Tenant has indicated in the Hardship Petition that they are able to pay some portion of the banked AGA increase(s), the Hearing Officer shall grant relief from the entire amount of the banked AGA increase(s). In no case, however, shall the relief granted under this Section (C)(6) prevent a Landlord from imposing the effective AGA increase for the year in which the Hardship Petition is filed.
- i. If the Hearing Officer's Decision restricts or prohibits the ability of a Landlord to impose one (1) or more accumulated or banked AGAs, the Decision shall clearly indicate that the Decision does not preclude the Landlord from applying or imposing the same banked or accumulated AGAs in a subsequent year.

Reason for Recommendation: When the Committee originally adopted the regulations, the Committee expressed its intention that a Tenant be granted relief from a banked AGA increase so long as the Tenant demonstrated that they met one of the expressed hardship conditions. The Hearing Officers were meant to consider the Landlord's arguments in

determining how the relief would be implemented (for instance, by phasing in an increase). However, as currently written, the regulations appear to provide Hearing Officers with discretion to deny relief even where the Tenant has demonstrated the applicability of a hardship condition.

Staff recommends the proposed amendments to Section C.7 to clarify that relief is to be granted to the Tenant so long as they meet their burden of proving the applicability of a hardship condition. The relief granted by the Hearing Officer shall be relief from the entire banked AGA increase, unless the Tenant has expressed in the petition that they are able to pay some portion, but not all, of the banked increase. Any portion of a banked AGA increase that is denied by the Hearing Officer may be imposed in subsequent years and the Tenant must file new banked increase Tenant Hardship Petition to receive relief from each banked increased that a Landlord seeks to impose.

FISCAL IMPACT

The recommended changes to the Tenant Hardship Petition process are, in part, intended to streamline the process, which may have a 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:

1. Draft Amendments to CSFRA Regulations Chapter 7: Procedures for Annual General Adjustments
2. Draft Amendments to MHRSO Regulations Chapter 8: Procedures for Annual General Adjustments