

DATE: June 12, 2023

TO: Rental Housing Committee

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SUBJECT: Amendments to Community Stabilization and Fair Rent Act Regulations Chapter 5, Hearing Procedure, and Mobile Home Rent Stabilization Ordinance Regulations Chapter 6, Hearing Procedure—Subpoenas

RECOMMENDATIONS

Amend Community Stabilization and Fair Rent Act Regulations Chapter 5, Hearing Procedure, and Mobile Home Rent Stabilization Ordinance Regulations Chapter 6, Hearing Procedure, to clarify that a Hearing Officer may issue a subpoena to compel relevant evidence or witness testimony in a Petition Hearing.

BACKGROUND AND DISCUSSION

The Community Stabilization and Fair Rent Act (CSFRA) empowers the Rental Housing Committee (“RHC” or “Committee”) to:

1. “Establish rules and regulations for administration and enforcement of this Article.” (CSFRA Section 1708(d)(2).)
2. “Appoint Hearing Officers to conduct hearings on Petitions for Individual Rent Adjustment pursuant to” the CSFRA (CSFRA Section 1708(d)(4).)
3. “Administer oaths and affirmations and subpoena witnesses and relevant documents.” (CSFRA Section 1708(d)(6).)

Similarly, the Mobile Home Rent Stabilization Ordinance (MHRSO) authorizes the RHC to:

1. “Establish rules and regulations for administration and enforcement of” the ordinance. (MHRSO Section 46.9(a)(3).)
2. “Appoint hearing officers to conduct hearings on petitions for individual rent adjustment.” (MHRSO Section 46.9(a)(5).)

3. “Administer oaths and affirmations and subpoena witnesses and relevant documents.”
(MHRSO Section 46.9(a)(7).)

The RHC adopted regulations to provide rules and regulations for the Petition process and Hearing procedure (See, generally, CSFRA Regulations Chapters 4 to 5; MHRSO Regulations Chapters 5 to 6). The RHC also authorized Project Sentinel to recruit Hearing Officers for the CSFRA and MHRSO Petitions, in accordance with the guidelines as set forth in Section B of Chapter 5 of the CSFRA Regulations and Section B of Chapter 6 of the MHRSO Regulations.

During the Petition process, in a couple of cases, requests were made by one of the parties to the Hearing Officer to subpoena relevant documents for the case. In assessing the party’s request, the Hearing Officer reached out to Program staff to express that neither the CSFRA and MHRSO (as cited above) nor their implementing regulations expressly provide for a delegation of the RHC’s authority to subpoena witnesses and relevant documents to Hearing Officers. As outlined above, the CSFRA and MHRSO both empower the RHC to subpoena relevant documents and witnesses. However, the CSFRA and MHRSO are silent about whether Hearing Officers are extended this same authority by extension of their appointment to adjudicate Petitions on behalf of the Committee, and if they are, how they should go about exercising said authority. As a result, it was unclear to the Hearing Officer how they would need to proceed if they were to grant the party’s request. In the relevant cases, the Hearing Officer was able to receive voluntary cooperation in providing the relevant evidence, but for clarity staff would like to propose to amend CSFRA Chapter 5 and MHRSO Chapter 6 to include express written authority to Hearing Officers to be able to subpoena relevant evidence.

The amendments to Chapter 5 of the CSFRA Regulations and Chapter 6 of the MHRSO Regulations are being proposed in accordance with staff’s longstanding practice of recommending changes to the Committee to address issues that have been raised to staff in its day-to-day operations. The proposed amendments would do the following:

1. Authorize Hearing Officers to issue subpoenas directly in the name of the RHC without any further approval from the Committee or Program staff;
2. Clarify that a Hearing Officer may subpoena relevant documents and witnesses either *sua sponte* (i.e., on his or her own accord) or upon request of one or more parties to the Petition; and
3. Require that any party to a Petition requesting the subpoena must do so on a form approved by the RHC, or its designee, and will be responsible for service of the subpoena on the appropriate party after it has issued.

Since both the CSFRA and MHRSO provide the same authority to the RHC related to the issue of subpoenas and since both programs utilize the same panel of Hearing Officers, the language of the proposed amendments to Chapter 5 of the CSFRA Regulations and Chapter 6 of the MHRSO Regulations are identical. The synchronicity is intended to create uniformity across the programs and provide a clear and uniform process for Hearing Officers.

Staff's recommendation to delegate authority to Hearing Officers to allow them to directly issue subpoenas, rather than through a different process, is twofold. First, the delegation will allow for more efficient processing of subpoena requests. Without delegation, each request for a subpoena (whether from a Hearing Officer or from a party to a Petition) would need to be brought before the entire RHC for consideration and may either require additional special meetings of the RHC or result in delays in the Petition process. Secondly, Hearing Officers tend to have greater knowledge of both the factual and legal issues in the Petitions they are reviewing and are, therefore, better positioned to determine the relevancy of the documents or witnesses demanded by a subpoena. The amendments to the regulations as proposed align with the approach taken by other rent-controlled jurisdictions, such as East Palo Alto, Richmond, and Berkeley, regarding Hearing Officer authority to issue subpoenas. These jurisdictions have similar structures to Mountain View for the adjudication of Petitions, i.e., a rental board or committee with appointed Hearing Officers or hearing examiners.

FISCAL IMPACT

The adoption of the proposed amendments to Chapter 5 of the CSFRA Regulations is not anticipated to impact the CSFRA budget of the RHC. The adoption of the proposed amendments to Chapter 6 of the MHRSO Regulations is not anticipated to impact the MHRSO budget of the RHC.

PUBLIC NOTICING—Agenda posting.

AvD-KMT-NS/AK/1/CDD/RHC
895-06-12-23M

- Attachments:
1. Draft Resolution to Adopt Amendment to Chapter 5 of the CSFRA Regulations
 2. Draft Resolution to Adopt Amendment to Chapter 6 of the MHRSO Regulations