

M David Kroot May 23, 2024

memorandum

Lynn Hutchins
Karen M. Tiedemann
Thomas H. Webber

To
Mountain View Rental Housing Committee

Dianne Jackson McLean
Isabel L. Brown
James T. Diamond, Jr.

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

Margaret F. Jung
Heather J. Gould
William F. DiCamillo

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

Amy DeVaudreuil
Barbara E. Kautz
Rafael Yaquián
Celia W. Lee

Dolores Bastian Dalton
Joshua J. Mason

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.

Jeffrey A. Streiffer
Elizabeth R. Klueck
Jhaila R. Brown

BACKGROUND

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

Gabrielle B. Janssens
Benjamin Funk
Rye P. Murphy

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

Aileen T. Nguyen
Katie Dahlinghaus
Matthew S. Heaton

Brandon V. Stracener
Nazanin Salehi
Erin C. Lapeyrolerie

- 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

Minda Bautista Hickey
Jocelyn A. Portales
Colleen A. Wisel

Thomas J. Levendosky
Estrella M. Lucero

- 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

Los Angeles

213 627-6336

San Diego

619 239-6336

Goldfarb & Lipman LLP

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.

Rent Stabilization Division staff has started preparing for the One-Time Utility Adjustment Petition process, including hosting informational workshops with stakeholders, developing user-friendly petition forms, and more. 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

1. Recommended Change to Section A.1.b.

Applicability. This Section A.1 does not apply to any individually submetered Utilities or Utilities for which the Tenant of a Covered Rental Unit is billed directly by the utility service provider (such as Pacific Gas & Electric). Submetered water shall be subject to the requirements of Civil Code Sections 1954.204, *et seq.* Notwithstanding the foregoing, a Landlord who is exempt from this Section A.1 shall file a One-Time Utility Adjustment Petition as required in Section B of this Chapter 13 explaining the basis of their exemption (e.g., that the Covered Rental Unit is separately metered, that they already include Utilities Charges in the Rent for the Covered Rental Unit).

Reason for Recommendation: The purpose of the additional language is to clarify and put Landlords on notice that even if they (1) already include Utilities Charges in the Rent for the Covered Rental Unit or (2) utilize submetered or individually metered utilities for which the Tenant is billed directly, they will still need to file a One-Time Utility Adjustment Petition to claim an “exemption” from this petition process. Requiring Landlords to claim their exemption from the petition process will also provide any of their affected Tenants with an opportunity to object to the exemption claim.

2. Recommended Change to Section B.1.

1. Purpose and Applicability.

- a. Purpose. The purpose of the One-Time Utility Adjustment Petition process is to bring all CSFRA-covered rental properties that are currently using RUBS (or any similar system or method that is not based on a Tenant's actual Utility usage) to allocate Utility Charges to Tenants into compliance with the CSFRA.
- b. Applicability. The One-Time Utility Adjustment Petition process applies only to Utility Charges, not to any other discernable fees associated with other Housing Services that are included in the Rent for a Covered Rental Unit.

Reason for Recommendation: Based on the prior language, there was a lack of clarity about whether the One-Time Utility Adjustment Petition would apply to other Housing Services with a specified fee associated with them (e.g., parking, pets, etc.) as stated in the Rental Agreement. The addition of the Applicability language is intended to clarify that the One-Time Utility Adjustment Petition process will only apply to Utility Charges, and not any other Housing Services, as that term is defined in the CSFRA and the Regulations.

3. Recommended Changes to Table 1

| | |
|----------------|---|
| STEP 1: | Determine the amount of Utility Charges for the entire rental property for the 12 month period preceding the submitting of a Utility Adjustment Petition <u>between July 1, 2023 and June 30, 2024</u> |
|----------------|---|

| | |
|----------------|---|
| STEP 7: | Compare the amount in Step 5 (monthly utility charges per rental unit) with the sum of Step 6 (the sum of applicable Utility Allowance per rental unit) and determine the lesser amount for the <u>unadjusted</u> One Time Utility Adjustment. |
| STEP 8: | <u>Multiply the amount for the One Time Utility Adjustment determined in Step 7 by the percentage change in the Consumer Price Index (CPI-All Items San Francisco Bay Area) from June 2023 to June 2024 as published in July 2024. Then add that to the One Time Utility Adjustment amount determined in Step 7. This amount is the maximum allowed amount for the One Time Utility Adjustment.</u> |

Reason for Recommendation – Step 1: Staff recommends requiring the all Landlords to use the Utility Charges for the 12-month period from July 1, 2023, through June 20, 2024, as the basis for calculating the One-Time Utility Adjustment amount. This provides a specific time-period for calculations instead of a rolling time-period that is not feasible for implementation.

Reason for Recommendation – Steps 7 and 8: After adoption of Chapter 13, staff learned that the City of Mountain View rate changes for utility services (water, sewer and trash) would become effective during the first quarter of Fiscal Year 2024-25. As previously structured, the One-Time Utility Adjustment would reflect the increased costs differently depending on when a Landlord submitted their One-Time Utility Adjustment Petition. Additionally, to account for the anticipated rate increases, staff recommends that the Committee authorize a one-time inflationary increase to the One-Time Utility Adjustment.

4. Recommended Addition of Section B.2.e.

e. A Landlord may choose to impose less than the maximum allowed amount for the One-Time Utility Adjustment (as determined by Step 8 in Table 1 above). However, a Landlord who imposes less than the maximum allowed amount for the One-Time Utility Adjustment cannot apply the remainder of the One-Time Utility Adjustment amount at a later time.

Reason for Recommendation: The addition of the language in Section B.2.e. would be to inform and authorize Landlords to impose less than the maximum amount of the One-Time Utility Adjustment. This provides flexibility for Landlords who do not wish to impose the full Adjustment on tenants. In accordance, the One-Time Utility Adjustment Petition forms will include a field for Landlords to indicate whether they will impose the maximum or less than the maximum authorized adjustment.

5. Recommended Changes to Table 2 and Section B.4.b.

| Number of Units on Property | Filing Deadline-Submittal Period |
|------------------------------------|--|
| >20 units | Petition served on tenants and filed with must be <u>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, 2025).</u> Date TBD. |

| | |
|-------------------|---|
| 6-20 units | Petition served on tenants and filed with must be <u>submitted to the</u> Rent Stabilization Division within nine (9) months of Division release date of petition form(s) <u>(between September 1 2024, and May 31, 2025)</u> . Date TBD. |
| 1-5 units | Petition served on tenants and filed with must be <u>submitted to the</u> Rent Stabilization Division within twelve (12) months of Division release date of petition form(s) <u>(between September 1, 2024 and August 31, 2025)</u> . Date TBD. |

Reason for Recommendation: At the time that the Chapter 13 regulations were adopted, staff informed the Committee that they would return with recommended changes to the filing timelines for the One-time Utility Adjustment petitions. Staff now has a better sense of the date on which they will be able to launch the One-Time Utility Adjustment petition process and forms, and therefore recommends the above indicated dates for the submission of petitions by Landlords.

6. Recommended Changes to Sections B.6. through B.8.

6. Incomplete Utility Adjustment Petition. If Staff determines that the Utility Adjustment Petition Packet is incomplete, notice by mail and/or electronic mail (if provided) shall be provided to the Landlord that the Utility Adjustment Petition is incomplete together with a list of the deficiencies in the Utility Adjustment Petition and/or the supporting documentation. The Landlord may add to, amend, or revise and resubmit the Utility Adjustment Petition ~~at any time prior to the applicable filing deadline~~ within 15 calendar days after the mailing date of staff notice of incomplete Utility Adjustment Petition.
7. Notice of Acceptance Service of Utility Adjustment Petition Packet on Tenant. If Once it has been determined that the Utility Adjustment Petition Packet is complete, Staff will notify the landlord that the petition is ready to be served on the tenant(s). The Landlord must provide a copy of the Petition (without supporting documentation) described in Section B.4 and an informational notice form produced by the Rental Stabilization Division to each unit to which the Petition applies at the address of each affected Unit (electronic service is allowed). After the petition is served on the tenant(s), the Landlord needs to file a copy of the petition packet, including the proof of service, with the Rent Stabilization Division.
8. Notice of Formal Filing of Utility Adjustment Petition Packet. ~~The Rental Housing Committee or designee~~ Rent Stabilization Division will notify the petitioner and all affected tenants a Utility Adjustment Petition was accepted by filed with Staff. The notice that a Utility Adjustment Petition Packet was ~~accepted~~ filed with Staff shall identify the due date for the submission of a Tenant Response to the Petition.

Reason for Recommendation: Staff recommends these changes to the One-Time Utility Adjustment petition process to clarify staff's role in the notification process and maximize the efficiency of the petition process.

7. Recommended Addition of Section B.13.a.i.

- i. Regardless of when imposed, the Landlord shall not apply to the One-Time Utility Adjustment portion of rent any AGA increases banked prior to the approval of the One-Time Utility Adjustment. For example, if the Rent associated with the physical space is \$2,000 and the One-Time Utility Adjustment amount is \$100, a Landlord may only impose any applicable prior banked AGA increase to the \$2,000, not the total Rent of \$2,100. Future banked rent increases may be applied to the sum of the physical space rent and utilities after the initial imposition of the One-Time Utility Adjustment.

Reasons for Recommendation: The recommended language would prohibit a Landlord from imposing any previously banked Annual General Adjustment (AGA) increases to the One-Time Utility Adjustment amount. Since the One-Time Utility Adjustment amount will be based on the prior year's actual Utility Charges for the property and staff is recommending an inflationary adjustment to account for upcoming increases, allowing the imposition of prior banked AGA increases would amount to an additional, unlawful rent increase under the CSFRA. Landlords can, of course, impose the previously banked AGA increases to the remainder of the physical Rent for any Covered Rental Unit.

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

ATTACHMENTS

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