

DATE: September 25, 2023

TO: Rental Housing Committee

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SUBJECT: Amendments to Chapters 12 of the Community Stabilization and Fair Rent Act Regulations and Mobile Home Rent Stabilization Ordinance Regulations

RECOMMENDATION

1. Amend Community Stabilization and Fair Rent Act Regulations Chapter 12, Compliance and General Remedies, to place a 10-month cap on the assessment of late charges for failure to timely pay annual rental housing fees and on the assessment of late fees for failure to timely register covered units.
2. Amend Mobile Home Rent Stabilization Ordinance Regulations Chapter 12, Compliance and General Remedies, to place a 10-month cap on the assessment of late charges for failure to timely pay annual space rental fees and on the assessment of late fees for failure to timely register covered mobile home spaces and mobile homes.

BACKGROUND

Of relevance here, the Community Stabilization and Fair Rent Act (CSFRA) empowers the Rental Housing Committee (RHC or Committee) to:

- “Establish rules and regulations for administration and enforcement of the” CSFRA. (Section 1709(d)(2).)
- “Establish a schedule of penalties that may be imposed for noncompliance with [the CSFRA] or with the rules and regulations promulgated under [the CSFRA].” (Section 1709(d)(13).)

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

- “Establish rules and regulations for administration and enforcement of” the MHRSO. (Section 46.9(a)(3).)
- “Establish a schedule of penalties imposed for noncompliance.” (Section 46.9(a)(13).)

In September 2022, the Committee considered and adopted regulations establishing a schedule of late fees to be imposed when a landlord fails to timely pay their annual rental housing/space fees or fails to timely complete their annual registration. Specifically, Section E of Chapter 12, of both the CSFRA and Mobile Home Rent Stabilization Ordinance (MHRSO) regulations, provides:

1. If a landlord fails to pay their annual rental housing/space fees within 30 days of the due date, a late fee in the amount of 4% will be assessed on the unpaid balance for each property for which the landlord is noncompliant; and the 4% will continue to be charged for each month that the landlord fails to pay their annual rental housing/space fees after the due date until the landlord pays their entire unpaid balance.

2. If the landlord fails to complete their annual registration by February 1 of each year, they will be assessed a \$25 per unit/space/mobile home late fee on February 2. Every 30 days that the landlord remains out of compliance with the registration requirement, they will be assessed an additional \$25 per unit/space/mobile home late fee until they register.

In both instances, as currently written, the associated fines continue to accrue month over month and do not cap at the end of each associated year. Instead, they continue to accrue, and in the case of the Rental Housing and Space Fee, compound from month to month until the compliance issue is addressed, either by payment or by registration, respectively.

While compliance with Rental Housing Fee payments has historically been high, compliance with mandatory registration of units has not. The registration and fee cycle for 2023 provided the initial opportunity to test the efficacy of the compliance measure regulations. There is an associated correlation in landlord compliance with mandatory registration and the implementation of the new compliance measures. Registration compliance has increased significantly as demonstrated in Table 1 below. Fee compliance remains, on average, equal to prior years.

Table 1: Registration and Fee Compliance (Calendar Year 2022 and 2023—Year-to-Date)

	Registration Compliance	Fee Compliance
January 2022—December 2022	42% (287/690)	93% (640/690)
January 2023—Year-to-Date	84% (578/690)	94% (646/690)
Percent Increase	101% increase	1% increase

ANALYSIS

Since the adoption of these regulations, Housing staff has worked with both the Mountain View Finance and Administrative Services Department and the Committee’s registration database vendor, 3Di, to identify the best way to implement fees and fine structure as outlined in

Chapter 12. Based on these discussions, staff recommends using 3Di for implementation. However, this will still require modification to the current fine structure.

In order to more effectively administer the fines portion of the compliance measures, staff began discussions with 3Di to process invoices and payments through their system. This transition will greatly reduce manual processes and the likelihood of associated errors. While working with 3Di to develop this work flow, Housing staff has learned that it is very challenging, if not impossible, for the system to process these fines if they continue to accrue continuously. The system cannot continue to accumulate fines on a prior year's lack of compliance. As an example, if a landlord has failed to pay their annual fees for 2023 and/or has failed to register their property in 2023, 3Di's system cannot accommodate the continued assessment of late fees for these failures once the new fee and registration cycle begins on January 1, 2024.

Staff recommends capping the accrual of associated fines at the end of a 10-month period for each year. For any associated late fines from a previous year, the full amount of the new balance includes any prior year's balance, line-itemized by year. 3Di suggests, and staff agrees, that a November 1 end date for the accrual of late charges and fees best comports with the technical limitations of the system.

Additionally, once the system transitions to a new registration cycle, property owners are unable to register their properties for years previously unregistered in the system.

For these reasons, staff recommends the Committee adopt an amendment to the compliance and enforcement regulations that caps the accrual of associated fines on an annual basis. Should there be a significant decrease in compliance after the implementation of these suggested amendments, the RHC may review and revise the regulations as needed. Should the RHC want to continue the current fine structure without caps, a solution is not currently available at this time and would require extensive research and may result in a recommendation to find alternate vendors outside of the current portal system. It is unknown if alternate vendors exist at this time. Additionally, shifting away from the current portal would impact the Division's budget and require additional funding.

Staff also recommends the Committee adjust the annual Rental Housing Fee and property registration due dates for Section E of Chapter 12 of both the CSFRA and MHRSO Regulations to be due on January 31 of each year. With the ability of the 3Di system to process the rental housing fees, it will be beneficial to bring both the rental housing fees and the registration due dates into alignment. This will ensure consistency with the application of the regulations and late fees.

PROPOSED AMENDMENTS

The proposed amendments to the compliance and enforcement regulations would provide as follows:

- Late fees for Failure to Pay Annual Rental Housing/Space fees. If a landlord fails to pay their annual Rental Housing/Space fees by January 31 of each year, the 4% late charge will be assessed only on the yearly unpaid balance rather than the total unpaid balance (i.e., including Annual Rental Housing/Space fees and penalties from prior years) for the property. Additionally, no more than nine months of late charges will accrue on any yearly unpaid balance, and no late charges for the current cycle shall be assessed after November 1 of each year. Any prior unpaid fines will roll over to the new total balance associated with the property at the start of the new cycle.
- Late fees for Failure to Register Covered Units/Mobile Home Spaces/Mobile Homes. If a landlord fails to register their covered units/spaces by January 31 of each year, no late fee for failure to complete annual registration will be assessed after November 1 of each year. Any prior unpaid fines will roll over to the new total balance associated with the property at the start of the new cycle.

The amendments to Chapter 12 of the MHRSO Regulations also include minor clean-up revisions; these changes are nonsubstantive.

FISCAL IMPACT

The adoption of the proposed amendments to CSFRA Regulations Chapter 12 is not anticipated to impact the CSFRA budget of the RHC. The adoption of the proposed amendments to MHRSO Regulations Chapter 12 is not anticipated to impact the MHRSO budget of the RHC.

On the other hand, the Committee's decision not to adopt the proposed amendment may have an impact on the RHC's budget for both the CSFRA and the MHRSO by delaying implementation of the regulations (and, therefore, delaying collection of late fees and charges) and by requiring that staff seek out proposals from additional vendors who might be able to accommodate the Committee's policies as they are currently drafted.

PUBLIC NOTICING—Agenda posting.

PB-AvD-KMT-NS/1/HSN/RHC/897-09-25-23M

- Attachments:
1. Draft Resolution to Adopt Amendment to Chapter 12 of the CSFRA Regulations—Exhibit A, Amendment to Chapter 12
 2. Draft Resolution to Adopt Amendment to Chapter 12 of the MHRSO Regulations—Exhibit A, Amendment to Chapter 12