

DATE: April 25, 2024

TO: Rental Housing Committee

FROM: Patricia Black, Senior Management Analyst
Wayne Chen, Housing Director

SUBJECT: **Options for Determining the Value of Rent Reductions Related to Habitability, Maintenance, and Housing Services Petitions**

RECOMMENDATION

Provide input on potential policy options for the valuation of habitability, maintenance and housing services petition decision rent reductions.

BACKGROUND

The Community Stabilization and Fair Rent Act (CSFRA) and the Mobile Home Rent Stabilization Ordinance (MHRSO) require the City establish a petition process for tenants and landlords. Tenants of rent stabilized units, mobile homes, and mobile home spaces may file petitions for downward adjustment of rent for three reasons:

- Unlawful Rent
- Failure to Maintain Habitable Premise and/or Reduction in Housing Services
- Undue Tenant Hardship

Downward rent adjustment petitions based on tenant claims that a landlord has failed to maintain a livable, healthy and safe premises and/or that there has been a reduction in housing services include information/documentation regarding:

- Living conditions in question.
- Evidence that the tenant has first attempted to notify the landlord of the condition.
- Landlord has been given the opportunity to correct conditions but did not do so.

- Tenant's own estimate of the monetary impact that the condition has had on the ability of the tenant to fully enjoy the rental unit.

Hearing Process

Once filed, the tenant petition is assigned to a hearing officer and the hearing process begins. The petition is also shared with the landlord. The landlord and tenants participate in pre-hearing meetings, settlement conferences (if requested), and hearings conducted by the hearing officer.

The hearing officer evaluates the evidence provided in the petition and information received during the hearing process, applies the applicable provisions of the CSFRA/MHRSO, and makes a finding regarding any reduction in rent and a refund (if any) due to the tenant. The hearing officer issues a formal, legally binding decision with a determination regarding if a downward rent adjustment is required and, if so, the amount of the rent reduction.

Either the landlord or tenant can file an appeal with the RHC should either party dispute the outcome of the decision.

Petitions and Appeals

From November 2017 through February 2024:

- 216 petitions in total have been filed with the Rent Stabilization Division by landlords and tenants.
- 66 petitions (31% of all petitions) were filed by tenants for claims regarding habitability and/or housing services reductions.
 - 44 have final decisions.
 - 25 of the final decisions were in favor of the petitioner (ie, tenant).
 - 15 of the 44 decisions were appealed to the RHC by landlords and tenants.

In FY 2022-23 and FY 2023-24, the Division experienced a significant increase in downward rent adjustment petitions filed as well as a subsequent increase in appeals filed with the RHC regarding final decisions related to the downward rent adjustment petitions.

During the appeal hearings, the RHC expressed interest in further discussing how to determine the value of downward rent adjustments. Staff have also received feedback from tenants completing the valuation portion of the petition form indicating that they are uncertain how best to apply a dollar amount to each issue. Both tenants and landlords have expressed interest in better understanding of how reductions in rent are determined.

The RHC requested staff prepare a study session in Spring of 2024 to further explore the topic, including:

- Different methodologies for determining rent decreases for habitability and/or housing services petitions.
- Option to include valuation guidelines that provide a list of specific violations with accompanying monetary ranges.

Authority

The CSFRA empowers the Rental Housing Committee (“RHC” or “Committee”) to:

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

Similarly, the MHRSO authorizes the RHC to:

1. “Establish rules and regulations for administration and enforcement of” the Ordinance. (MHRSO § 46.9(a)(3).)
2. “Appoint hearing officers to conduct hearings on petitions for individual rent adjustment.” (MHRSO § 46.9(a)(5).)
3. “Administer oaths and affirmations and subpoena witnesses and relevant documents.” (MHRSO § 46.9(a)(7).)

ANALYSIS

At the direction of the RHC, staff analyzed the following areas to evaluate potential policy options:

- Existing methodology used to determine the value of rent reductions in the City.
- Case study of methodologies, policies, and regulations of select, comparable rent stabilization jurisdictions in California with habitability and maintenance petitions.
- Input from CSFRA/MHRSO Hearing Officers.

Existing Rent Reduction Methodology in the City

Hearing officers have authority and discretion in determining the amount of the rent reduction in the decision (CSFRA Section 1711(a) and MHRSO Section; CSFRA Regulations Ch. 5 and MHRSO Regulations Ch. 6).

The CSFRA and the MHRSO regulations do include a framework for rent decreases that currently states:

“the decision shall include findings of fact and conclusions of law which support the decision in addition to the information specified below.

a. For Rent Decrease Petitions:

- *The amount of the rent adjustment attributable to each failure to maintain habitable premises, decrease in housing services or maintenance, or demand for or retention of unlawful rent claimed in the Petition;*
- *The basis for each rent adjustment ordered;*
- *The duration of the downward adjustment;*
- *The amount of any rent allowed to be restored upon the correction of each condition that provided a basis for the adjustment; and*
- *A requirement that the Landlord provide at least thirty (30) days’ notice to any affected Tenants prior to the restoration of rent.*

The regulations also state that hearing officers shall include the following in decisions for both upward and downward adjustment of rent petitions including:

c. For All Petitions:

- *A summary of the issues raised by the Petition and evidence submitted;*
- *Any conditions which are placed on the award, including conditions and limitations imposed for violation of the CSFRA or other City ordinances;*
- *The date on which any adjustment to the rent is effective for each unit;*
- *An explanation of the basis for the decision with citations to the CSFRA, as applicable;*
- *The cover page of the decision will provide that the date the decision is issued is the date of the mailing. For the purposes of this Chapter, "mailing" includes both physical transmission of correspondence via the United States Postal Service, or other courier service, and electronic transmission of correspondence to a recipient's provided email address; and*
- *Information regarding the availability of the compliance hearing process as set forth in Section J of this Chapter 5 (MHR SO, Ch. 6) of the Regulations.*

(CSFRA Ch. 5 and MHR SO Ch. 6 Regulations Sect. F 2 (a; c))..."

CSFRA and MHR SO regulations do not further specify methodologies for determining rent decreases for habitability and/or housing services petitions or provide valuation guidelines. The Hearing Officers apply their knowledge of applicable housing laws and experience adjudicating petitions in Mountain View and in other rent stabilization jurisdictions to the City's petition process.

Methodologies, Policies, and Regulations of Select, Comparable Rent Stabilization Jurisdictions in California with Habitability and Maintenance Petitions

Staff evaluated 14 comparable rent stabilization jurisdictions with existing methodologies, policies, and regulations related to habitability and maintenance petitions.

Of the fourteen rent stabilized jurisdictions, six of the jurisdictions do not have detailed rent decrease methodologies in regulations or valuation guidelines like Mountain View. Eight provide detailed rent decrease methodologies in regulations and three of those eight also provide valuation guidelines in addition to rent decrease methodologies (see Table 1 below and Attachment 1). Neither option in any of the studied jurisdictions are required to be used by hearing

officers in making their decision, leaving hearing officers discretion on whether to apply the calculation methodologies or valuation guidelines.

Table 1: Calculation Methodologies for Rent Decrease Petitions Related to Habitability and/or a Decrease in Housing Services of Rent Stabilized Jurisdictions in California

Jurisdiction	Detailed Rent Decrease Methodology in Regulations	Valuation Guidelines
Mountain View	-	-
Alameda	X	-
Berkeley	X	-
Beverly Hills	-	-
East Palo Alto	-	-
Hayward	-	-
Los Angeles (City)	X	X
Los Angeles (County)	-	-
Los Gatos	X	-
Oakland	-	-
Richmond	X	-
San Francisco	-	-
San Jose	X	-
Santa Monica	X	X
West Hollywood	X	X

Detailed Rent Decrease Methodology in Regulations

The majority of jurisdictions studied (8 of 14) provide more detailed regulations for hearing officers to consider when deciding petitions related to habitability and/or a reduction in housing services. However, staff did not identify industry standards that are commonly used across the jurisdictions; therefore, the regulations vary widely in content, detail, and calculating methodology across the jurisdictions. In each of these eight jurisdictions, the regulations state

that the detailed methodologies are an optional, supplemental tool that hearing officers can but are not required to use in making decisions.

In general, the regulations have two categories: 1) considerations and 2) calculation methodologies.

Considerations include but are not limited to:

- Impact of violation or issue on tenant’s health and wellbeing
- Impact of violation or issue on tenant’s use and benefit from the unit
- Size or impact of a decrease in space or services
- Seriousness of violation
- Lack of responsiveness to correcting issue or violation
- Compliance with California Civil Codes

Calculation methodologies include:

- Percent of impairment of the tenant’s use of and benefit from the unit
- Percent loss of square footage affected by violation
- Reasonable monthly replacement cost for item or service
- Minimum percentage of award

Valuation Guidelines

As stated above, the majority of jurisdictions do not include valuation guidelines in their regulations. Three jurisdictions have valuation guidelines in addition to detailed methodologies. No jurisdiction has only valuation guidelines. The regulations also state that the guidelines are provided to help hearing officers arrive at a “reasonable valuation” of the presented issues and can value reductions outside of the guidelines if there is evidence in the record to support their conclusion of a different amount.

There does not appear to be an industry standard to guide the development of valuation guidelines. Each city with valuation guidelines (Los Angeles, Santa Monica, and West Hollywood) has its own list of violations that include a monetary range for potential award under a certain violation area. For example, the City of Los Angeles includes item more related to losses in housing services, like the loss of use of a pool or coin operated laundry facility, while Santa Monica and West Hollywood have detailed lists for reductions related to maintenance issues, like

faulty electrical wiring and plumbing as well as losses in housing services. The number of items included in the valuation guidelines varies by jurisdiction.

- City of Los Angeles – 20 specified violations
- Santa Monica – 37 specified violations for general habitability/reduction in housing services petitions; 15 additional specified violations for construction impact related habitability/reduction in housing services petitions
- West Hollywood – 77 specified violations

Ranges of award often varies greatly. For example, the City of Santa Monica’s valuation guidelines list a valuation for plumbing between \$18 and \$455 per month while West Hollywood’s guidelines list a valuation between \$5 and \$277 per month.

For all three jurisdictions, the valuation guidelines became effective in the 1980s. This could suggest that this is a practice that is not commonly adopted by jurisdictions, particularly in jurisdictions with newer rent stabilization laws.

Input from Hearing Officers

The Rent Stabilization Division holds quarterly meetings with hearing officers. In prior meetings and during the quarterly meeting held in December 2023, hearing officers provided input regarding considerations for potential regulations related to this issue. They also discussed the tradeoffs between adding more details to the existing CSFRA/MHRSO methodology versus developing valuation guidelines based on their experience adjudicating petitions in Mountain View as well as their experience serving as hearing officers in other rent stabilization jurisdictions.

During the meetings, hearing officers:

- Expressed that they prefer access to prior decisions to better understand how other hearing officers have determined awards in petitions with similar circumstances. In response to this request, staff developed an online, searchable repository of prior decisions in 2023 for hearing officers to easily access this content.
- Requested that staff perform an analysis of prior decisions highlighting trends in awards and methodologies and that this would be more beneficial than additional regulations. Staff began a trend analysis in early 2024.
- Stated that additional methodological regulations may be helpful because the regulations could provide best practices, such as ways to determine the percentage of rent or the

percentage of usable space affected by violation. They expressed that it may be helpful to have examples of potential calculation methodologies as well as more detailed areas of consideration and shared that these types of regulations may improve the public's understanding of not only how awards are determined, but also how to more effectively complete the valuation portion of the petition form.

- Provided insight into hearing officer authority and discretion in the CSFRA, MHRSO and accompanying regulations and whether more detailed regulations violate the law. In general, they agreed that as long as the regulations state that they are intended to provide additional resources and assistance to hearing officers in determining the award, then clarifying regulations would not interfere with the hearing officers' authority in determining reductions in rent as required by the CSFRA and MHRSO.
- Shared their experience in adjudicating hearings and writing decisions in jurisdictions with valuation guidelines. Those with experience using these guidelines stated that the range of the reduction can vary widely, which may diminish the usefulness of the guidelines in helping to determine the appropriate reduction.
- Expressed concern that valuation guidelines may expose decisions to additional legal risk because it is difficult to include every potential violation or issue in the guidelines and therefore may open decisions to further litigation.
- Expressed concern that, even with expository language stating the list is not inclusive of all potential issues, property owners may be able to use this as a defense against not addressing potential habitability issues which may lead to an increased risk of litigation related to decisions.

INITIAL POLICY CONSIDERATIONS AND POTENTIAL APPROACHES

Based on staff's analysis and Hearing Officer input as discussed above, the following are policy options for RHC consideration. Staff seeks RHC input on a preferred option or other considerations to incorporate.

Option 1: Maintain current practices.

The RHC could consider maintaining current practices with no changes to regulations. In this option, the current regulations remain and hearing officers continue to adjudicate petitions utilizing the same practices and as specified in the CSFRA/MHRSO. Hearing officers will continue to provide analysis, detailed in decisions and accompanying award schedules, describing the methodology and reasoning behind the award based on a variety of factors including the percentage of the space affected by the violation, the evidence provided by the parties,

knowledge of housing laws, and prior experience adjudicating petitions. Under this option, staff will continue to analyze past decisions as requested by hearing officers.

Benefit: Hearing officer decisions provide detailed information on the considerations and methodologies used to assess and determine associated monetary awards. No legal challenges have been raised for decisions utilizing current practices since the Division began accepting petitions.

Challenge: This option does not provide additional tools for hearing officers on what to consider when determining reductions in rent for this type of petition. Additionally, maintaining the status quo does not improve the public's understanding of how reductions in rent are determined, or how to more effectively complete the valuation portion of the petition form.

Option 2: Perform additional research into and provide draft regulations for RHC consideration that further specify methodologies and areas of consideration for determining rent decreases for habitability and/or housing services petitions.

The RHC could consider adopting regulations that offer more detailed methodologies for hearing officers to consider when determining habitability and housing services rent reduction awards. Regulations could include information on areas of consideration when determining awards and examples for calculations similar to those found in other jurisdictions. In order to maintain hearing officer authority as required by the CSFRA, MHRSO and accompanying regulations, these regulations would need to specify that they are provided to help hearing officers arrive at a

“reasonable valuation” of the presented issues and that hearing officers can award outside of the guidelines if there is evidence to support their conclusion of a different award.

Areas of consideration could include but are not limited to:

- Impact of violation or issue on tenant’s health and wellbeing
- Impact of violation or issue on tenant’s use and benefit from the unit
- Size or impact of a decrease in space or services
- Seriousness of violation
- Lack of responsiveness to correcting issue or violation
- Compliance with California Civil Codes

Calculation methodologies could include but are not limited to:

- Percent of impairment of the tenant’s use of and benefit from the unit
- Percent loss of square footage affected by violation
- Reasonable monthly replacement cost for item or service
- Minimum percentage of award

Under this option, staff will continue to analyze past decisions as requested by hearing officers.

Benefit: Drafting regulations with more specific methodologies and areas of consideration would provide additional insights and clarification for hearing officers on what to consider when determining awards for this type of petition. Additionally, it would improve the public’s understanding of how reductions in rent may be determined, and may also assist petitioners in more effectively completing the valuation portion of the petition form.

Challenge: Because no industry standard appears to exist for this type of regulation, determining what methodologies and areas of consideration should be included in regulations may be time consuming and may be a challenge due to staff capacity. Due to the challenges associated with drafting regulations for this option and staff workload, additional research and draft regulations would not be brought back to the RHC until early to mid-2025 (Q3 or Q4 of FY 2024-25).

Option 3: In addition to Option 2, staff performs additional research into and provide draft regulations for RHC consideration for valuation guidelines for habitability and/or housing services petitions.

The RHC could consider adopting regulations that include valuation guidelines listing violations and potential ranges of monetary awards in addition to also adopting regulations that further specify methodologies and areas of consideration for determining rent decreases (Option 2) for habitability petitions. As with Option 2, in order to maintain hearing officer authority as required

by the CSFRA, MHRSO and accompanying regulations, these regulations would need to specify that they are provided to help hearing officers arrive at a “reasonable valuation” of the presented issues and that hearing officers retain discretion to issue awards that differ from the guidelines if there is evidence to support their conclusion of a different award.

Benefit: Valuation guidelines may help the public more easily understand potential petition outcomes.

Challenge: The lack of standardization for valuation guidelines means that determining what violations should be included in the guidelines as well as the valuation ranges themselves will be time consuming and challenging for staff. Due to the challenges associated with drafting regulations for this option and staff workload, additional research and draft regulations would not be brought back to the RHC until early to mid-2025 (Q3 or Q4 of FY 2024-25).

Additionally, while appearing to clarify awards, the wide variations and necessary ranges of the awards may limit the efficacy of valuation guidelines. Valuations guidelines could also lead parties to the petition to have unreasonable expectations related to the outcome and may increase appeals if the hearing officer makes an award that does not adhere to the guidelines. Monetary valuations also have differing impacts depending upon the rent and unit size so may not accurately reflect the situation at issue in the petition. Finally, as stated above, this methodology could increase legal risk and potentially result in increased litigation.

Option 4: Provide other direction.

NEXT STEPS

Staff provides the following recommendations for the RHC to consider as next steps:

1. The RHC provides input and recommendations regarding preferred potential options in today’s meeting.
2. Staff returns to the RHC in a future meeting, detailing RHC input and recommendations.
3. If requested by the RHC, staff will then provide draft regulations and return to the RHC in a subsequent meeting.

FISCAL IMPACT

This study session has no fiscal impact. Options 2 and 3 present a significant impact on staff and legal counsel which would increase legal costs.

PUBLIC NOTICING

Agenda posting, posting on the City's website, and email to distribution list.

ATTACHMENTS

1. Valuation Regulations of Peer Jurisdictions