

RENTAL HOUSING COMMITTEE
RESOLUTION NO. RHC-114
SERIES 2023

A RESOLUTION OF THE RENTAL HOUSING COMMITTEE OF
MOUNTAIN VIEW TO ADOPT REGULATIONS CHAPTER 13, TITLE: UTILITY CHARGES IN THE
COMMUNITY STABILIZATION AND FAIR RENT ACT

WHEREAS, Section 1709 of the Community Stabilization and Fair Rent Act (CSFRA) authorizes the Rental Housing Committee to establish rules and regulations for administration and enforcement of the CSFRA, including rules and regulations for compliance and general remedies; and

WHEREAS the Rental Housing Committee held a publicly noticed meeting on December 18, 2023, and discussed and considered adoption of CSFRA regulations Chapter 13 Utility Charges to clarify Rent and the Treatment of Utilities and Ratio Utility Billing Systems in the CSFRA; now, therefore, be it

RESOLVED: that the Rental Housing Committee hereby adopts CSFRA Regulations Chapter 13, Utility Charges, as set forth in Exhibit A of this Resolution.

The foregoing Resolution was regularly introduced and adopted at a Regular Meeting of the Rental Housing Committee of the City of Mountain View, duly held on the 18th day of December 2023, by the following vote:

AYES: Committee Members Brow, Ma Cox, Vice Chair Rosas, and Chair Keating

NOES: None

ABSENT: None

ATTEST:

APPROVED:

DocuSigned by:
Anky van Deursen
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ANKY VAN DEURSEN
Manager Rent Stabilization Division

DocuSigned by:
Edie Keating
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EDIE KEATING
CHAIR

I do hereby certify that the foregoing resolution was passed and adopted by the Rental Housing Committee of the City of Mountain View at a Regular Meeting held on the 18th day of December 2023, by the foregoing vote.

DocuSigned by:
Anky van Deursen
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Manager Rent Stabilization Division
City of Mountain View

~~KG/4/HSD/847-12-18-23r~~

Exhibit: A. CSFRA Regulations Chapter 13, Utility Charges

Community Stabilization and Fair Rent Act

CHAPTER 13

UTILITY CHARGES

A. Utility Charges Paid Directly or Indirectly to Landlord Considered Rent

1. Utility Charges Paid Directly or Indirectly to Landlord. All Utility Charges, including any charges for gas, electricity, water, garbage, sewer, telephone, cable, internet, or other service relating to the use and occupancy of a Covered Rental Unit, which are paid directly or indirectly (such as through a third-party billing service) to the Landlord are considered Rent for the purposes of the Community Stabilization and Fair Rent Act (CSFRA).
 - a. Limitations on Increases to Utility Charges. As with all other forms of Rent, a Landlord shall not increase the Utility Charges for a Covered Rental Unit by more than the Annual General Adjustment (pursuant to Section 1707 of the CSFRA) or by more than an amount authorized by a Hearing Officer pursuant to a Petition for Upward Adjustment of Rent – Fair Rate of Return (pursuant to Section 1710(a) of the CSFRA). In addition, a Landlord shall not increase Rent, including the Utility Charges for a Covered Rental Unit more than once in any twelve-month period (pursuant to Section 1707(b) of the CSFRA).
 - b. Applicability. This Section 1 does not apply to any individually sub-metered 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). Sub-metered water shall be subject to the requirements of Civil Code Sections 1954.204, et seq.
2. Ratio Utility Billing System (RUBS) Prohibited. Upon adoption of these Regulations by the Committee, and in accordance with the schedule below, Landlords of Covered Rental Units are prohibited from using a Ratio Utility Billing System (RUBS) (or any similar system or methodology that is not based on a Tenant’s actual usage) to allocate Utility Charges to their Tenants. No Landlord shall impose a separate fee or charge for any Utility service that is billed to the Landlord by the Utility provider unless such Utility service is sub-metered such that the Tenant’s actual usage of such Utility is measured.
 - a. Tenancies Commencing Prior to March 1, 2024. For any Tenancy commencing prior to March 1, 2024, where the Landlord uses RUBS (or any similar system or methodology that is not based on a Tenant’s actual usage) to allocate Utility Charges to Tenants, a Landlord may continue to use RUBS or similar system to allocate Utility Charges to their Tenants until such date that a Utility Adjustment is implemented in accordance with the requirements and timelines set forth in subsection 3 below and approved by Rent Stabilization Division staff (“Staff”). Proportionate shares of utility charges for vacant or newly rented units may not be allocated to existing units through RUBS or any similar system.
 - b. Tenancies Commencing On or After March 1, 2024. For any Tenancy of a Covered Rental Unit commencing on or after March 1, 2024, the Landlord shall include the cost of

Utilities, other than those Utilities charged directly to the Tenant by the Utility service provider or those Utilities that are sub-metered, in the total Rent for the Covered Rental Unit. At the commencement of such Tenancy, the Landlord, in the Rental Housing Agreement, shall indicate the fixed dollar amount of the initial Rent and specify which Utility Charges and any Housing Services that have a discernible fee associated with them, are included in the initial Rent (such as water, garbage, sewer, parking or pet rent).

B. One-Time Utility Adjustment Petition Process.

1. 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.
2. One-Time Utility Adjustment Amount. The One-Time Utility Adjustment amount for each Rental Unit shall be the lesser of (i) the Covered Rental Unit's share of the total Utility Charges for the Property paid to the Landlord or on behalf of the Landlord calculated based on the total number of rooms in the Covered Rental Unit as a proportion of all of the rooms in the building or on the Property or (ii) the sum of all applicable Santa Clara County Housing Authority Utility Allowances in effect at the time that the Utility Adjustment Petition is filed.
 - i. Determining Proportionate Share. Each Rental Unit's proportionate share of the total Utility Charges for the Property shall be calculated in accordance with steps 1 through 7 in **Table 1 below**.

Table 1: Steps for Determining One-Time Utility Adjustment Amount

STEP 1:	Determine the amount of utility charges for the entire rental property for the 12-month period preceding submittal of a Utility Adjustment Petition.
STEP 2:	Determine the Common Area Deduction (CAD) percentage (as determined by subparagraph (ii) below) and deduct that amount from the total 12-month property utility charges determined in Step 1.
STEP 3:	Determine the average <i>monthly</i> utility charges excluding CAD for the property, by dividing the total 12-month utility bill, minus the CAD (as done in Step 2), by 12 months.

STEP 4:	<p>Determine the total number of rooms in the entire property, (in accordance with subparagraph (iii) below) .</p> <p>Divide the average monthly utility charges as calculated in Step 3 by the total amount of rooms on the property to get the monthly utility charge per room.</p>
STEP 5:	<p>Calculate the allowable monthly utility charge per rental unit, by determining the number of rooms in each rental unit (in accordance with subparagraph (iii) below) and multiply that by the Monthly Utility Charge per Room as calculated in Step 4.</p>
STEP 6:	<p>Determine the sum of applicable utility allowances per rental unit as published annually by the Santa Clara County Housing Authority.</p>
STEP 7:	<p>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 One Time Utility Adjustment.</p>

- ii. Common Area Utility Charge Deductions The common area deduction for all properties shall be presumed to be twenty percent (20%). However, a Landlord may rebut the presumption of a twenty percent (20%) common area deduction by demonstrating that the common area deduction should be reduced for good cause (e.g., there is no pool or laundry facilities on the property) or special circumstances.
- iii. The Landlord shall claim any reduction to the common area deduction on their Utility Adjustment Petition form and provide documentation to support the reduction with their Petition packet. Staff shall determine whether the Landlord is entitled to a reduction of the common area deduction.. However, in no case may Staff approve a total reduction greater than fifteen percent (15%) and in no case may Staff award a reduction greater in any category that exceeds the following percentages:
 - Pool facilities: 5%
 - Landscaping: 5%
 - Laundry facilities: 5%
- iv. Calculation of Rooms. The number of rooms on the Property and in each Covered Rental Unit shall be calculated as follows:
 - Single rooms (SRO without kitchens) are one-room units.
 - Studios (with kitchen and living/bedroom) are two-room units.
 - One-bedroom units (with kitchen, living room and 1 bedroom) are three-room units.
 - Two-bedroom units (with kitchen, living room and 2 bedrooms) are four-room units.

- Three-bedroom units (with kitchen, living room and 3 bedrooms) are five-room units; and so on.

Bathrooms and separate dining areas are not counted as rooms for the purposes of the room count.

3. Deadlines for Filing Utility Adjustment Petition. A Landlord may only file a Utility Adjustment Petition within the time provided in Table 2 below. If a Landlord fails to or chooses not to file a Utility Adjustment Petition by the deadline provided in Table 2 below, any affected Tenant of the Landlord may file a Petition for Downward Adjustment of Rent related to Utility Charges after the applicable deadline has expired.

Table 2: Filing Deadlines for One-time Utility Adjustment Petitions

Number of Units on Property	Filing Deadline
>20 units	Petition served on tenants and filed with Rent Stabilization Division within six (6) months of Division release date of petition form(s). Date TBD.
6-20 units	Petition served on tenants and filed with Rent Stabilization Division within nine (9) months of Division release date of petition form(s). Date TBD.
1-5 units	Petition served on tenants and filed with Rent Stabilization Division within twelve (12) months of Division release date of petition form(s). Date TBD.

4. Requirements for Utility Adjustment Petition. A Landlord shall file the Utility Adjustment Petition on a form provided by Staff and shall provide all supporting documentation required by the Utility Adjustment Petition form or these Regulations. At minimum, the Landlord shall include the following supporting documentation with the Utility Adjustment Petition:
 - i. A list of all Rental Units on the property with the following information about each Covered Rental Unit:
 - Whether the Covered Rental Unit is occupied or vacant at the time of the filing of the Petition.
 - If occupied, the date on which the tenancy of the Covered Rental Unit commenced, the length of the initial term of the tenancy, and the initial Rent.
 - The date and amount of the most recent increase and the current Rent for the Covered Rental Unit; and

- The number of rooms, as calculated pursuant to 2.iii. above, in the Covered Rental Unit.
- ii. Copies of all master billing statements for all Utility Charges paid by the Landlord for the entire Property for the 12-month period preceding the filing of the Utility Adjustment Petition , (i.e., the billing statements sent to Conservice or Multifamily Utility Company for allocation to Tenants);
 - iii. Documentary or other type evidence (such as pictures of amenities or floor plans) supporting the common area Utility Charge deduction; and
 - ii. Documentary or other type evidence (such as photos of each unit or floor plans) supporting the total room count for the Property and for each Covered Rental Unit.
5. Determination of Completeness of Petition Packet. Staff shall make a determination regarding the completeness of the Utility Adjustment Petition Packet, which includes all relevant petition forms and supporting documentation. The Utility Adjustment Petition Packet is incomplete if any required fields on the form are omitted, or if the supporting documentation is incomplete, missing, or improperly marked.
 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.
 7. Notice of Acceptance Utility Adjustment Petition Packet. If it has been determined that the Utility Adjustment Petition Packet is complete, a notice will be mailed to the Landlord and all affected Tenants that a Utility Adjustment Petition was accepted by staff. The notice that a complete Utility Adjustment Petition Packet was accepted shall identify the due date for the submission of a Tenant Response to the Petition.
 8. Tenant Response to Utility Adjustment Petition. The Tenant shall have thirty (30) calendar days from the date of the mailing of Staff's notice to file a Tenant Response on a form provided by Staff. If a Tenant Response to the Utility Adjustment Petition is filed, Staff shall mail a notice to the Landlord that a Tenant Response was received with a copy of the Tenant Response. The Tenant Response shall state the grounds on which the Tenant is challenging the amount of the Utility Adjustment in the Petition and shall include all documentary evidence that the Tenant wishes to provide to support their challenge of the adjustment. Any Tenant who fails to timely challenge the Utility Adjustment via Tenant Response is foreclosed from challenging the Utility Adjustment via a Downward Adjustment of Rent Petition (as authorized in Section 1710 of the CSFRA).

9. Review of Petition and Responses, Additional Documents. After the Utility Adjustment Petition has been determined to be complete and the period for a Tenant Response has expired, Staff shall do the following:
 - i. For properties of five (5) or fewer units, examine the Utility Adjustment calculations for all Covered Rental Units to ensure the adjustments were properly calculated.
 - ii. For properties of six (6) or more units for which no Tenant Responses are received, examine at least a twenty percent (20%) randomized sample of the Utility Adjustment calculations for Covered Rental Units in each Property to ensure that the Utility Adjustment was properly calculated.
 - iii. For properties of six (6) or more units for which one (1) or more Tenant Responses are received, examine a fifteen percent (15%) randomized sample of the Utility Adjustment calculations for Covered Rental Units in each Property plus the Utility Adjustment calculations applicable to each Tenant who filed a timely Tenant Response to the Utility Adjustment Petition and all documentation provided by the Tenant in support of their Tenant Response to ensure that the adjustments were properly calculated.
 - iv. Staff may, in its sole discretion, request additional documentation from either or both the Landlord and Tenant as required to make a determination about whether the Utility Adjustment was properly calculated.
10. Administrative Determination by Staff. After review of the Utility Adjustment Petition and any Tenant Response(s), Staff shall make a determination of whether the Utility Adjustment(s) for the Property were properly calculated. If Staff confirms that the Utility Adjustment(s) were properly calculated, then a notice shall be sent to both the Landlord and the Tenant(s) confirming the amounts in the Utility Adjustment Petition. If Staff determines that the Utility Adjustment(s) were improperly calculated, any erroneous calculations shall be corrected, and a notice of the corrected adjustment(s) shall be sent to both the Landlord and the Tenant(s).
11. No Appeal to Rental Housing Committee. Staff's determination on a Utility Adjustment Petition is final and not appealable to the Committee.
12. Imposition of Utility Adjustment.
 - i. Upward Adjustment. If the Utility Adjustment Petition results in a one-time Rent increase, the Landlord may impose the adjustment either (i) on a date no earlier than twelve (12) months after the most recent Rent increase for the Covered Rental Unit, (ii) on a date no earlier than twelve (12) months after the commencement of the tenancy, or (iii) upon the expiration of a longer than 12 month term of the Tenant's current Rental Housing Agreement, whichever is latest. The Landlord shall provide a written notice of rent increase pursuant to California Civil Code Section 827. At all times before the Utility Adjustment goes into effect, the Landlord may continue to use RUBS or any similar system or methodology that is not based on a

Tenant’s actual usage in accordance with these Regulations to allocate Utility Charges to Tenants.

- ii. Downward Adjustment. If the Utility Adjustment Petition results in a one-time downward adjustment of Rent, the Landlord shall impose the adjustment within thirty (30) days of the mailing of Staff’s determination on the Utility Adjustment Petition.
13. No Tenant Hardship Petitions. A Tenant of a Covered Rental Unit that is the subject of a Utility Adjustment Petition shall not be permitted to file a Tenant Hardship Petition, as provided for in Chapter 6, Section H of these Regulations, in response to the Utility Adjustment Petition.
14. Landlord Liability. So long as a Landlord files a Utility Adjustment Petition by the applicable deadline in Table 2 above, the Landlord shall not, under these regulations, be held liable for any prior overpayment by a Tenant of Rent related to Utility Charges billed through RUBS in accordance with these Regulations (or any similar system or methodology that is not based on a Tenant’s actual usage).
- i. Nothing in this subsection is intended to preclude a Tenant from filing a civil action to recover prior overpayment by the Tenant of Rent related to Utility Charges billed through RUBS (or any similar system or methodology that is not based on a Tenant’s actual usage).

15. Tenant Petitions.

- i. Prior Decisions on Petitions Including Utility Charges. Nothing in this Chapter is intended to nullify, void, or overturn a final decision, issued by a Hearing Officer or the Committee prior to December 18, 2023, on a Downward Adjustment of Rent Petition wherein the Base Rent was adjusted to include Utility Charges.
- ii. Future Petitions. Unless the Landlord fails to file a Utility Adjustment Petition by the applicable deadline in Table 2 above, no Tenant shall file a Downward Adjustment of Rent Petition (pursuant to Section 1710 of the CSFRA) based on prior overpayment by the Tenant of Rent related to Utility Charges billed through RUBS. Beginning with adoption of these Regulations (December 18, 2023) by the Committee through the applicable deadline for filing a Utility Adjustment Petition, Staff will limit acceptance of any Tenant petitions related to Utility Charges filed under Section 1710 of the CSFRA in accordance with Table 3 below.
- iii. Petitions in Progress. Notwithstanding the foregoing, paragraph (ii) does not apply to any Downward Adjustment of Rent Petition based on prior overpayment by the Tenant of Rent related to Utility Charges billed through RUBS that was filed on or before December 18, 2023 and heard before March 1, 2024.

Table 3: Acceptance of Tenant Petitions

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Types of Tenant Petitions	Filing and Acceptance
Downward Adjustment of Rent Petition based on one or more issues including compliance with Section A.2.b of this Chapter 13 (Tenancies commencing on or after March 1, 2024).	Maybe filed by Tenants and accepted by staff at anytime.
Downward Adjustment of Rent Petition based on multiple issues including overpayment by the Tenant of Rent related to Utility Charges	<p>Filed on or before December 18, 2023: Will be heard before March 1, 2024.</p> <p>Filed after December 18, 2023: Will be bifurcated. All issues not related to Utility Charges will be heard and decided within the regular timeframes outlined in these Regulations. Any issues related to Utility Charges will be paused until the applicable deadline for filing the Utility Adjustment Petition has expired (and will only be accepted if Landlord did not file Utility Adjustment Petition by deadline).</p>
Downward Adjustment of Rent Petition based solely on overpayment by the Tenant of Rent related to Utility Charges	<p>Filed on or before December 18, 2023: Will be heard before March 1, 2024.</p> <p>Filed after December 18, 2023: May not be filed until the applicable deadline for filing the Utility Adjustment Petition has expired (and will only be accepted if Landlord did not file Utility Adjustment Petition by deadline).</p>

16. Extension of Statute of Limitations. If a Landlord fails to timely file a Utility Adjustment Petition by the applicable deadline in 2.c. above and a Tenant thereafter files a Petition for Downward Adjustment of Rent related to Utility Charges based on the Landlord's failure, the Hearing Officer assigned to the Petition for Downward Adjustment of Rent may, in their discretion, extend the period for which the Tenant may recover any unlawful Rents beyond the four (4) year statute of limitations.