

### **Mandatory Mediation Program with Binding Arbitration**

The proposed mediation/arbitration program is similar to the current program stipulated under the current RRSO. One of the objectives of the proposed new RRSO is to improve communication so that tenants will have a better understanding why rent may need to be increased above 5% and prevent large rent increases that displace tenants. This will be accomplished through either direct communication, mediation and/or arbitration. The proposed new RRSO also updates outdated language regarding mediation and simplifies the process.

Tenant and landlords will be encouraged to communicate regarding rent increases above a 5% threshold. Per the proposed the new RRSO, a landlord must provide a tenant with the contact information of the person designated to discuss rent increases and the tenant shall make a good faith effort to discuss the rent increase.

If direct communication is unsuccessful, mediation would be available to both parties. If mediation is unsuccessful, the case would be referred to a neutral third-party arbitrator who would render a binding decision based on review of evidence and testimony provided by each party. All decisions will be subject to appeal. This process will both protect tenants from large rent increases and protect landlords from escalating costs that will prevent a fair return on their investment. Page 3 illustrates the proposed arbitration/mediation process.

#### *Residential Rent Increase Threshold*

The 5% rent increase threshold will include increases in rent and housing service costs such as maintenance, repairs, parking, utilities included in rent per their lease agreement. The following is excluded from the rent increase threshold:

1. A rent increase after the covered rental unit has been voluntarily vacated;
2. A rent increase after lawful eviction;
3. A rent increase stipulated in a lease entered into on or before July 25, 2019;
4. Governmental-Utility Services costs where the lease agreements stipulate the utilities will be paid by the tenant, and the landlord provides supporting documentation of the utility service costs and method for determining the allocation of costs, if the utility is not separately metered;
5. An increase for capital improvements pre-approved through a landlord petition process, and total annual increase and capital improvement increase does not exceed 10%; and
6. Banked rent increase applied for years that a rent increase was not imposed where the total annual rent increase and banked rent increase does not exceed 10%.

Capital improvement increases and banked rent increases are subject to limitations but can be applied over time.

While utilities that have been passed through to the tenant per the terms of their lease have been excluded from the rent increase threshold, provisions have been added that require landlords to disclose information that substantiates increased utility service costs allocated to a unit using a ratio utility billing system (RUBS) or similar unmetered allocation arrangement. Additionally, tenants can request review of the utility costs if landlords fail to provide the required information or if the utility costs increase by 1% of the tenant's rent.

#### Rent Review Process Improvements

The proposed changes to the mediation/arbitration process in the existing RRSO include:

1. Moving the requirement that the tenant must make a good faith effort to discuss the rent increase or reduction in housing service with the landlord until after the tenant has filed a petition;
2. Elimination of requirement that 25% of the affected tenants must sign a petition if the property consists of 10 units or more;
3. Revising the role of the mediator to be consistent with current practices;
4. Addressing procedural issues, such as feasibility of scheduling time frames and required response times.
5. Addition of a landlord petition process to obtain approval of capital improvement pass-through prior to issuing the capital improvement pass-through increase to avoid the redundancy of multiple petitions being filed regarding the same property.

#### Justifications for Rent Increases above 5% (Standards of Review)

Rent increases above five percent would be allowed if justified based on established criteria. The Standards of Review in Section 9 of the proposed new RRSO establish the criteria for evaluating rent increases above five percent. The standards of review both protect the landlord's right to a fair return and ensure that a tenant is not overburdened by financial decisions made by the landlord. The justifications for increasing rent above 5% in the proposed new RRSO include:

1. Unavoidable increases in maintenance and operating expenses;
2. Rent increases from previous years that were not applied, subject to limitations (banking);
3. Capital improvement costs, including cost of seismic retrofit and cost financing of capital improvement costs, subject to limitations;
4. Rent increases necessary to meet constitutional fair return requirements.

Eliminated from these provisions is debt service, not associated with a corresponding capital improvement in the units, as a justification for increasing rent. Debt service related to capital improvements has been incorporated into capital improvement costs. Loans obtained to acquire a building should be based on existing rent and therefore would not require increased debt service.

Also added to the standards of review are the grounds for denial of a rent increase or a reduction of rent. Grounds for denial of a rent increase include open and persistent housing code violations, landlord failure to pay the rent program service fee, and landlord failure to provide the tenant with proper notice of rent increase, banked rent increase or documentation related to Government-Utility Costs. Grounds for reduction of rent include substantial deterioration of the unit, other than as a result of normal wear, and tear and reduction of housing service.

**Proposed Mediation and Binding Arbitration Process**

