

Mandatory Mediation Program with Binding Arbitration

The proposed mediation/arbitration process will be very similar to the current process stipulated under the current RRSO. One of the objectives is to improve communication so that tenants will have a better understanding why rent may need to be increased above 5%. This will be accomplished through either direct communication, mediation or arbitration. Staff recommends modifications that will update outdated language and simplify the process. In general, tenant and landlords will be encouraged to communicate regarding the rent increases. 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 increase and protect landlords from escalating costs that will prevent a fair return on their investment. Page 3 illustrates the proposed arbitration/mediation process.

Process Improvements

The proposed changes to the mediation/arbitration process 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.

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

While five percent is the proposed rent increase threshold for determining who would be eligible to utilize the mediation/arbitration program, rent increases above five percent would be allowed if justified based on established criteria. The Standards of Review in Section 9 of the RRSO establish the criteria for evaluating rent increases above five percent. These criteria include rental history, unavoidable increases due to maintenance or operating expenses, cost of substantial rehabilitation or capital improvements, or increased cost of debt service. 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. Staff recommends modifying standards to clarify and explicitly state justifications for increasing rent above 5%. These justifications would include:

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

4. Rent increases necessary to meet constitutional fair return requirements.

Staff recommends eliminating debt services as a justification for increasing rent. Debt service related to capital improvements will be incorporated into capital improvement costs, however, tenants should not be required to pay increases in debt service unrelated to investment in the property. Loans obtained to acquire a building should be based on existing rent and therefore would not require increased debt service. As suggested by housing service providers, staff will clarify language regarding condition of the property to explicitly state that rent increases will be suspended until open code enforcement violations have been address.

Proposed Mediation and Binding Arbitration Process

