



CITY OF MOUNTAIN VIEW

MEMORANDUMCSFRA, Community Development Department and
City Attorney's Office

DATE: July 23, 2019

TO: CSFRA Subcommittee

FROM: Anky van Deursen, CSFRA Program Manager
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SUBJECT: **CSFRA Subcommittee Meeting**

To assist the Subcommittee, this memo provides a comparison of the Community Stabilization and Fair Rent Act to the 2020 Voter Initiative. In addition, staff has provided a list of clarifying changes to address issues that have arisen in the administration of the CSFRA.

BACKGROUND

On November 7, 2016 voters approved a Charter Amendment to initiate rent stabilization in the City of Mountain View for certain rental units known as the Community Stabilization and Fair Rent Act ("CSFRA"). The express purpose of the CSFRA is to promote neighborhood and community stability and healthy housing and affordability for renters in the City of Mountain View by controlling excessive rent increases and arbitrary evictions to the greatest extent allowable under California law, while ensuring landlords a fair and reasonable return and guaranteeing fair protections for renters, homeowners and businesses.

On November 27, 2018 City Council accepted the Certificate of Sufficiency of "The Mountain View Homeowner, Renter, and Taxpayer Protection Initiative" ("Initiative"). This certification means the signatures on the petition for the Initiative were sufficient to place it on the ballot. Because it is a charter amendment, the Initiative must be presented to the voters during a general municipal election or a statewide general election. The City Council will make a decision whether to place this measure on the March 3, 2020 or November 3, 2020 ballot. It must be presented to the voters no later than the November 3, 2020 election. The City Council must take action by December 6, 2019 to place a measure on the March 2020 ballot and by August 7, 2020 for the November 2020 ballot.

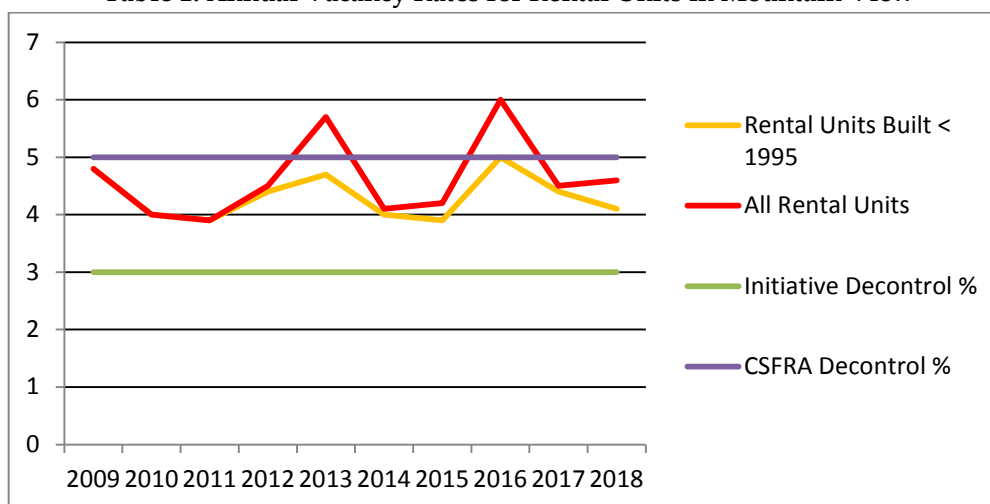
This portion of the memo compares the CSFRA to the proposed 2020 Initiative and identifies administrative implications for each of the proposed changes. The subcommittee is likely to focus on the key changes enumerated below.

KEY CHANGES OF INITIATIVE

1. Suspension of rent stabilization

- a. Under the CSFRA, the Rental Housing Committee (“RHC”) is empowered at its discretion, to suspend the CSFRA if the **average annual vacancy rate in Covered Rental Units exceeds 5%** (CSFRA Section 1718). An annual vacancy rate at or under 5% is a generally accepted standard percentage to indicate an affordable housing emergency.
- b. The Initiative requires the suspension of rent stabilization, just cause eviction protections and the RHC itself **if the average annual vacancy rate for All Rental Units equals or exceeds 3% for 6 consecutive months**. The RHC is required to review the vacancy rates on a quarterly basis. Rent stabilization would be re-imposed if the annual average vacancy rate falls below 3% for 6 consecutive months. The table below shows that the vacancy rate percentages for both Covered Rental Units and All Rental Units in Mountain View over the past 10 years, has exceeded 3%.
- c. Additional Information

Table 1: Annual Vacancy Rates for Rental Units in Mountain View



Administrative implications

- Who and how would the RHC be suspended and reinstated upon vacancy rate fluctuations?
- How to manage fluctuating staff requirements throughout suspension/reinstatement periods?
- Who would monitor changes in vacancy rates while the RHC is suspended?
- What happens to rent levels after suspension if rent stabilization is reinstated?

2. Applicability of rent stabilization

- a. The CSFRA covers all households living in Controlled Rental Units (rent increase limitations and just cause requirements for multi-family rental properties built before January 31, 1995, and just cause requirements only for multi-family rental properties built between February 1, 1995 and December 23, 2016 (effective date of the CSFRA)).
- b. The Initiative introduces a means tested program, and would limit application of rent stabilization to those households whose average annual income does not exceed 100% AMI or in cases where the rental housing agreement fails to contain the required notice informing tenants of the rent regulations. Rental households need to apply annually to be eligible for rent stabilized increases, and carry the burden of proof.

3. Base Rent

- a. The CSFRA Base Rent is the rent amount in effect on October 19, 2015. If a tenancy started after October 19, 2015, Base Rent is the initial rent amount at the start of the tenancy. The initial rent for new tenancies may be set at market rate, after which the rent increase limitations of the CSFRA are applicable again. Legal rent for Covered Rental Units consists of the Base Rent plus any allowed lawful rent increases (through Annual General Adjustments of rent and petitions).
- b. The Initiative redefines Base Rent to be the rent paid in the first year the tenant becomes eligible for rent stabilization by filing an annual application to the City's Rental Housing Committee. To be eligible, a tenant's annual household income must not exceed 100%.

Table 2: 2019 Average Median Income adjusted for household size, for Santa Clara County according to the United States Department of Housing and Urban Development

HH Size	1	2	3	4	5	6
100% AMI	92,000	105,100	118,250	131,400	141,900	152,400

Administrative implications

The Initiative means-tested components and changes to the definition of base rent require tenants to apply annually to be eligible for rent stabilization. An administrative process would need to be implemented to accept applications, verify income eligibility and determine rent level, base rent, reviewing previous rent increases and rent level. With over 15,000 covered rental units, the workload of CSFRA staff and consequently the budget will be impacted and the annual rental housing fee would likely increase.

4. Relocation Assistance

- a. Under the CSFRA, the following Just Causes for termination, temporary vacancies due to necessary/substantial repairs, terminations due to owner move-in, withdrawal of units from the rental market and demolition, require tenant relocation assistance. The CSFRA sets the eligibility criteria for relocation assistance to households whose income does not exceed 120% of annual median income for Santa Clara County as adjusted for household size according to the United States Department of Housing and Urban Development.
- b. The Initiative lowers this eligibility criterion to those households whose income does not exceed 100% of average median income.

No additional administrative impact.

5. Capital Improvements in the Petition Process

- a. Under the CSFRA a landlord can file a petition for upward rent adjustment in order to guarantee a fair rate of return. The CSFRA provides that a hearing officer can only consider those capital improvements necessary to bring the property in compliance or maintain compliance with applicable local codes affecting health and safety as a factor to determine if a landlord is receiving a fair rate of return.
- b. The Initiative would remove the restrictions as set by the CSFRA and allow a hearing officer to consider all costs of planned and completed capital improvements on the property in the fair return analysis.

Administrative implications

- The Initiative change may result in an increased number of landlord petitions and consequently an increase in the workload of CSFRA staff and Hearing Officer costs with implications for the budget and the annual rental housing fee.

- c. The City Council is considering a mandatory seismic retrofit program for soft story rental units, the vast majority of which are covered by the CSFRA. The subcommittee may want to proactively address this issue. Staff conducted research to identify potential best practices and recommends a streamlined petition process (based on comparison of the six jurisdictions in California that have both rent stabilization and mandatory soft-story retrofit programs).

6. Rental Housing Committee

- a. The CSFRA establishes a Rental Housing Committee consisting of 5 members and one alternate member and assigns the RHC powers and duties, including setting rent at fair and equitable levels, establishing Rules and Regulations and determining Annual General Adjustments of rent. The CSFRA empowers the RHC to request funding, including city funds for reasonable and necessary expenses.
- b. The Initiative expressly prohibits the RHC from receiving city funding unless 4 or more Council members approve. The Initiative also prohibits members of the RHC from receiving compensation/benefits.

Administrative implications

- City Funds were provided at the startup of the CSFRA program in 2017, but these funds were refunded in the following fiscal year. Since then no city funds have been used for the CSFRA program and RHC members do not receive any compensation or benefits. The RHC is also paying to defend the City and RHC in two pending CSFRA lawsuits.

7. Rental Housing Dispute Resolution Program

- a. The CSFRA does not require the implementation of an alternative program if the CSFRA were to be suspended in case the vacancy rate exceeds 5%.
- b. The Initiative requires the implementation of a Rental Housing Dispute Resolution Program ("RHDRP") during the suspension of the rent stabilization program if the vacancy rate exceeds 3%. This RHDRP Program consists of the following key components:
 - Conciliation and mediation in instances where disputes arise between landlords and tenants regarding rent increases over 7%, security deposits, 30 and 60 day notices to vacate, maintenance and repairs and service reductions, and tenants termination prior to expiration of a lease;
 - Non-binding arbitration for disputes regarding rent increases over 7% and service reductions (the arbitrator's decision would be advisory);
 - Definition of standards of reasonableness of rent increases over 7%,

including market rents;

- One rent increase per 12 months allowed, unless higher frequency agreed upon by parties in writing;
- Required notification of tenants of the RHDRP in their rent increase notice, mandatory registration of rental units and payment of a registration fee.

Legal considerations

- Although one rent increase per year is foreseen in the RHDRP program, if the signed lease contains a different clause with i.e. the option of more than one rent increase per 12 months, the lease provisions prevail.

Administrative implications

- Implementation of a RHDRP, specifically registration requirement, and an arbitration program, increases the workload of CSFRA staff and/or third party consultants, and has implications for the budget and related annual rental housing fees.

8. Annual Rental Housing Fee

- a. The CSFRA requires the RHC to finance its expenses by charging the landlords an annual rental housing fee to adequately cover the budget but does not limit the fee.

Table 3: CSFRA Annual Rental Housing Fees

CSFRA Annual Rental Housing Fees	
FY19/20	\$101
FY18/19	\$124
FY17/18	\$155

- b. The Initiative restricts the annual Rental Housing Fee for 2019 to a maximum of \$100 and limits annual rental housing fee increases to no more than the CPI-All Urban Consumers percentage.

Administrative implications

- The Rental Housing Fees have gradually declined since the startup of the program due to the implementation of efficient and effective administrative processes. Certain components of the Initiative could severely impact the costs of the program such as the tenant income eligibility requirement, and changes to consideration of capital improvements with the possibility of increased petitions. At the same time, the Initiative limits the amount of cost recovery.

9. Just Cause Evictions

- a. Per the CSFRA, a landlord may terminate a tenancy for one of the following nine reasons: 1. Failure to pay rent; 2. Breach of lease; 3. Nuisance; 4. Criminal activities; 5. Failure to give access; 6. Temporary vacancy due to necessary/substantial repairs; 7. Owner move-in; 8. Withdrawal of units from rental market or 9. Demolition. The CSFRA requires a “Written Notice to Cease” (warning notice) for cause No. 2 to 5 giving tenants the opportunity to cure any alleged violation or problem prior to service of a Notice of Termination.
- b. The Initiative proposes to remove the requirement to provide this warning notice before issuing a termination notice based on criminal activities (No. 4).

The Initiative does not propose any changes to the following key provisions:

A. Rent Stabilization Units

The CSFRA defines which rental units are covered under the CSFRA and stipulates which type of units are partially or fully exempt from rent stabilization and/or just cause evictions.

Table 4: CSFRA Rental Units subject to CSFRA

Status	Rent Increases	Just Cause	Base Rent (Rent Roll Back)
First Certificate of Occupancy:			
Before Feb. 1, 1995	√	√	√
Between Feb. 1, 1995 – Dec. 23, 2016	Exempt	√	Exempt
After December 23, 2016	Exempt	Exempt	Exempt
Single Family Homes; Condominiums; Duplexes; Companion Units; Units in hotels, motels, less than 30 days; Units in hospitals, medical care facilities, dormitories, etc.; Government owned or managed or subsidized rental units	Exempt	Exempt	Exempt

B. Allowable General Adjustment (“AGA”) of Rent

Currently Base Rent can be adjusted on an annual basis with a rent increase percentage as determined by the Rental Housing Committee before June 30 of each year, calculated based on the annual change of the CPI (Consumer Price Index of all urban consumers, all items, San Francisco, Oakland, Hayward region as published by US Dept. of Labor). The Initiative does not propose any changes to this Section, except that it only applies to households whose annual income does not exceed 100% AMI, upon filing of an annual application.

C. Banking

The CSFRA allows for banking of allowable AGA rent increases to a maximum of 10% annual increase.

STAFF SUGGESTIONS FOR POTENTIAL AMENDMENTS

1. Clarify relationship of RHC with City (“independent from City Council, City Manager and City Attorney; staffing; can City Council remove RHC members).
2. Clarify application of the CSFRA. Does it apply to short term rentals over 30 days? Corporate Housing? Redwood Villa?
3. Should mobile homes be expressly covered or exempted?
4. Any changes to notices landlords are required to provide tenants?
5. Clarify definition of single family homes & duplexes? Should it matter how many units are located on a parcel?
6. Clarify how to calculate allowed rent increases when utilities are invoiced by a third party vendor.
7. Review of regulations to determine whether they should be incorporated into CSFRA?
 - Maintenance of Net Operating Income (MNOI)
 - Hardship petitions
 - Tenant Buyout protections
 - Co-tenancy Regulations
 - Vega Adjustments
8. Allow landlords to pass through of a % of Annual Rental Housing Fee to tenants?
9. Consider changing CSFRA from a charter provision to an ordinance that can be amended by the City Council.
10. Can rent be re-controlled after a landlord causes a termination?
11. Consider any enforcement options?
12. Require a Rent Registry?
13. Require disclosure to potential purchases that property is subject to CSFRA?

14. Clarify precedential value of decisions from petitions and appeals?

OTHER CONSIDERATIONS

As currently drafted, AB1482 would impose a statewide rent cap and impose just cause eviction. This bill passed the Assembly and is now in the Senate where it has been referred to the Senate Appropriations Committee for consideration.