



MEMORANDUM

CSFRA, Community Development Department

DATE: October 14, 2019

TO: Council Community Stabilization and Fair Rent Act Subcommittee

FROM: Anky Van Deursen, CSFRA Program Manager
Wayne Chen, Assistant Community Development Director
Aarti Shrivastava, Assistant City Manager/Community Development Director

SUBJECT: **Potential City-Initiated 2020 Ballot Measure to Amend the Community Stabilization and Fair Rent Act**

RECOMMENDATION

That the Community Stabilization and Fair Rent Act (CSFRA) Subcommittee (Subcommittee):

1. Provide input and feedback regarding draft CSFRA amendment language.
2. Review additional administrative amendments to the CSFRA.
3. Clarify Subcommittee direction regarding Consumer Price Index (CPI)/flat rate.

BACKGROUND

Since the formation of the CSFRA Subcommittee in June 2019, the Subcommittee has held three meetings to discuss potential CSFRA amendments. Additionally, the Rental Housing Committee (RHC) has provided input twice—once during a Special Meeting and another during one of its Regular Meetings.

On September 17, 2019, the full City Council received information on the process and input received to date (Attachment 1). The Council directed staff to primarily focus on two areas for CSFRA amendments: (1) the relationship of the Council and the RHC; and (2) a separate individual rent increase process for certain qualifying capital improvements.

Regarding the relationship of the Council and RHC, the Council:

- Clarified it did not seek “oversight” over the RHC, and the intent is for the RHC to have full independence to implement the CSFRA.
- Recommended Council have oversight of the RHC regarding any budgetary impacts to the City’s General Fund, including legal actions that could impact the General Fund.
- Wants the ability to remove RHC members (Council is already the body that appoints RHC members) similar to Council’s authority to remove members of advisory bodies.
- Seeks the ability to request consultations with or assign work items to the RHC. One example the Council mentioned is for the Council to be able to designate the RHC as the body that implements/administers a future mobile home park rent stabilization ordinance.

Regarding a separate individual rent increase process for certain, qualifying capital improvements, the Council:

- Agreed on broad parameters for a separate individual rent increase process.
- Confirmed the separate individual rent increase process should be for certain capital improvements related to code requirements, environmental sustainability, and improvements that extend the useful life of the building.
- Agreed the RHC should have the independence to identify the specific capital improvements under the broad categories and to design and implement such a process, including what percent/amount can be passed through for what improvements, the amortization rate/schedule, sunsetting the pass-through amount, etc.

Additionally, the Council indicated that the CSFRA should be amended to clarify mobile homes are not covered under the program, and rent stabilization for mobile homes should be addressed in a separate ordinance.

Finally, the Council discussed whether the annual general adjustment (AGA) should continue to be based on inflation (CPI) or if a flat rate should be considered. Ultimately,

the Council did not make a determination and referred the issue back to the Subcommittee for further evaluation.

ANALYSIS

The following analysis is based on Council direction regarding the relationship between Council and the RHC and the separate individual rent increase process for certain qualifying capital improvements. Staff, with the assistance of the City's legal consultants, has developed draft CSFRA amendments based on Council's direction. A summary table of the draft amendments is included as Attachment 2, and the full text is included in Attachment 3. This section discusses each draft amendment item, and staff seeks input from the Subcommittee on the draft language to ensure it accurately reflects Council input and direction. Staff notes the process has had a relatively short turnaround time and recommends the draft amendments as attached be considered as working documents that may be subject to further refinement to ensure the appropriate language/wording is incorporated.

Staff is requesting the Subcommittee review the draft CSFRA language for each potential amendment and provide feedback. With each individual amendment, staff is requesting the Subcommittee consider the following questions:

1. *Does the proposed language in the amendment clearly convey the purpose and intent of Subcommittee and Council direction?*
2. *Is there any additional input or clarification the Subcommittee would like to provide in the proposed amendment?*

In addition, staff may have additional clarifying questions for each individual amendment.

Relationship between the City Council and the RHC

Council expressed interest in oversight over the RHC regarding potential budgetary impacts to the City's General Fund, including legal actions that would impact the General Fund. In addition, Council wanted the ability to appoint CSFRA rental property owners who do not live in Mountain View to the RHC as well as the ability to remove RHC members. Lastly, Council wanted the ability to request consultations with or assign work items to the RHC, such as implementation of a mobile home rent stabilization ordinance.

Council Oversight Limited to Budgetary Impacts to the City's General Fund, Including Legal Actions that Would Impact the General Fund

The Subcommittee had discussed broader Council oversight over the RHC related to decisions including persons, units, City funds, pass-through accounts, and suspending the CSFRA. At its September 2019 meeting, Council direction was narrower in scope and stipulated RHC oversight only for budgetary impact to the City's General Fund, including legal actions that would impact the General Fund. The CSFRA already gives Council oversight authority over issues related to General Fund impacts and requires Council approval before the RHC can initiate affirmative litigation (i.e., filing a lawsuit or intervening in an existing lawsuit as compared to defending against a lawsuit).

Currently, Section 1709(k) of the CSFRA stipulates the RHC shall be an "integral part of the government of the City but shall exercise its powers and duties under the CSFRA independent from the City Council, City Manager, and City Attorney." The provision of "integral" but "independent" has caused ambiguity. To resolve the ambiguity, in addition to authorizing any Council oversight authority over the RHC, language would need to be incorporated or modified to clarify the meaning of "integral" and "independent" in this context and to establish City authority over certain parts of the CSFRA as directed by Council.

In addition, Section 1709(j) of the CSFRA empowers the RHC to request and receive funding when and if necessary from any available source, including the City, for its reasonable and necessary expenses. Currently, the Council is not obligated by the CSFRA to respond or fund a request for funding from the RHC, and Section 1709(j) has been amended to clarify that receipt of such funding request is subject to Council approval.

Additionally, Section 1709(j)(2), which provided for the City to fund the initial costs of the RHC, is proposed to be deleted since the initial implementation phase has already been completed. Deleting this section, which is about initial costs, could help definitively confirm that the City has authority over any funding requests from the RHC.

The draft amendments pertaining to this issue can be found in the Summary Table (Attachment 2), Topic Nos. 1, 2, and 3.

Appointment and Removal of RHC Members

Section 1709(b) of the CSFRA authorizes the Council to appoint Mountain View residents to the RHC. However, the CSFRA does not specifically give Council the authority to remove RHC members. Section 1709(b) is proposed to be amended to give the Council clear authority to remove RHC members, similar to the Council's authority to remove other advisory commission members consistent with the City Charter.

The draft amendment pertaining to this issue can be found in Attachment 2, Topic No. 4.

Eligibility of RHC Members

Council believes having RHC members with relevant subject matter expertise would be helpful, including CSFRA landlords and property owners. However, a majority of CSFRA property owners do not reside within Mountain View. The current draft amendment would allow the Council to appoint nonresident CSFRA landlords to the RHC only if inadequate applications are received. However, it was unclear whether Council desired the ability for nonresident CSFRA landlords to apply or to appoint such nonresident CSFRA landlords only if there are inadequate applications. The Subcommittee may wish to clarify its intent regarding this issue of eligibility.

The draft amendment pertaining to this issue can be found in Attachment 2, Topic No. 5.

Request the RHC to Consult on Certain Topics

The Council would like the ability to request input from the RHC with regard to certain topics related to the CSFRA or more in general related to rent stabilization and the rental market. This request for consultation is already available to the City Council and does not expressly need to be codified in the CSFRA (see CSFRA 1709(d)(11)). Therefore, there is no draft amendment language in Attachment 3 pertaining to this issue.

Delegate Other Duties to the RHC

The Subcommittee and City Council may want to use the experience, expertise, and infrastructure of the RHC for certain related work, such as implementation and administration of a future mobile home ordinance. The CSFRA currently does not specify the RHC's scope of work to include items that might be related to rent

stabilization but are not specific to CSFRA. Council agreed to provide funds for work outside of the responsibilities defined in the CSFRA. The draft amendment to the CSFRA in Section 1709(d) adds a new Subsection 16 that provides authorization for Council to delegate duties to the RHC, provided Council either provides financing for such activities or additional financing authority to the RHC to cover the costs of such activities. Additionally, CSFRA Section 17 could be interpreted to prohibit the Council from delegating new responsibilities to the RHC (which is counter to Council direction), so that section is also proposed to be amended.

The draft amendments pertaining to this issue can be found in Attachment 2, Topic Nos. 6 and 7.

Separate Individual Rent Increase Process for Certain Qualifying Capital Improvements

The Council recommended tasking the RHC to design a separate individual rent increase process for certain qualifying capital improvements that would not require that the property owner to demonstrate that the increase was necessary to maintain a fair rate of return as is currently required by the CSFRA. Council provided general direction and parameters and delegated the design and implementation of this process to the RHC. Council established the following broad categories, under which specific capital improvements to be determined by the RHC would qualify for the separate individual rent increase process: (1) code-required capital improvements; (2) environmental sustainability improvements; and (3) improvements that extend the life of the building.

Furthermore, Council recommended the following guidelines for such separate individual rent increase process: (1) improvements must benefit the tenant; (2) environmental sustainability improvements must lead to a reduction of costs to the tenants; and (3) luxury improvements do not qualify.

As part of this component, Council also stated the RHC would design and implement the separate individual rent increase process. The program design components include, but are not limited to, how much of the cost can be passed through and for which improvements, an amortization schedule, and a potential sunset clause. A new Section 1710(e) (and other minor changes) have been drafted to amend the CSFRA to allow for individual rent increases for specified capital improvements and to stipulate RHC authority to adopt regulations to implement a process for such increases, including adopting amortization schedules, the percentage of the increase that can be passed through to the tenant, and the specific capital improvements eligible for such an

increase.

The draft amendments pertaining to this issue can be found in Attachment 2, Topic Nos. 8, 9, 10, and 11.

Mobile Homes Excluded from CSFRA

Council agreed with the Subcommittee that mobile homes should not be covered under the CSFRA but by a separate ordinance instead and that the CSFRA should be amended to definitively state that mobile homes are not covered under the CSFRA.

The draft amendment pertaining to this issue can be found in Attachment 2, Topic No. 12. Note that further evaluation might still be needed to ensure language is appropriately drafted.

Inflation-Based (CPI) Versus Flat-Rate Annual General Adjustment

Both the Subcommittee and Council discussed using a flat rate, such as 5 percent, instead of using the CPI for the AGA of rents as currently required under the CSFRA. The CSFRA also currently provides a 2 percent floor and a 5 percent ceiling (regardless of what the CPI is), which allows landlords to “bank” unused AGA and to issue annual rent increases up to 10 percent with the use of banked amounts. The CPI has averaged approximately 3.5 percent annually over the past several years. The Subcommittee did not make a recommendation to the Council. The Council also did not make a determination on this issue and referred it back to the Subcommittee for further deliberation. The RHC provided input to the Council, stating it believes the CPI should continue to be used.

Staff seeks the Subcommittee’s input on clear direction for whether the CSFRA amendment should include a modification of the AGA methodology. Any amendment language will need to be incorporated after this fourth Subcommittee meeting so draft language can be presented at the Subcommittee’s fifth and final meeting, to be held on November 6, 2019.

To facilitate the Subcommittee’s deliberation, the following context is provided:

- The majority of rent-stabilized cities use inflation as the basis for allowable annual rent adjustments, and most of those cities set the allowable increase at less than 100 percent of the CPI (the CSFRA is 100 percent of the CPI). However, some cities use a fixed 5 percent.

Table 1: Annual Adjustment of Rent Rates in Rent-Stabilized Jurisdictions

Jurisdictions	Annual Rent Increases	Other Provisions
Alameda	70 percent CPI-U	With banking
Berkeley	65 percent CPI-U	No banking
Beverly Hills	100 percent CPI-U (3 percent to 8 percent)	
East Palo Alto	80 percent CPI-U	
Los Angeles	100 percent CPI-U (3 percent to 10 percent)	
Mountain View	100 percent CPI-U (2 percent to 5 percent)	With banking
Oakland	100 percent average CPI-U and CPI-less shelter (maximum 10 percent)	With banking
Richmond	100 percent CPI-U	
San Francisco	60 percent CPI-U (maximum 7 percent)	
Santa Monica	75 percent CPI-U	No banking
West Hollywood	75 percent CPI-U	No banking
Jurisdictions	Fixed Percentage	Other Provisions
Hayward	5 percent	With banking
San Jose	5 percent	No banking
Los Gatos	5 percent	No banking

Generally, the articulated rationale for an inflation-based methodology has been the CPI is a widely used measure of inflation and, therefore, the ability to raise rents should, at least in part, have some connection to that rate of change in costs. For a fixed flat rate, the articulated rationale has often included simplicity and certainty. Staff notes, from an administrative perspective, either method would result in a relatively simple procedure and would not pose a significant administrative burden.

Vacancy decontrol allows rent-stabilized units to go to market rents upon tenant turnover. Data show the turnover rate for units covered under the CSFRA is relatively high, with an average of 20 percent of all units turning over annually. Staff’s research, and in discussion with other rent-stabilized cities, is vacancy decontrol, along with the ability to petition for rent increases, provides landlords with options to increase rents beyond the allowable annual increase, whether inflation-based or flat rate.

The Subcommittee and Council discussed a “good actor” concept as a hybrid approach to the AGA – keep the CPI but modify the CSFRA to allow landlords who are in good

standing, have been and are in compliance with the CSFRA, and have fully registered their rental properties to raise rents annually at have a higher rate, such as 5 percent. This would likely require a significant administrative component. Standards would need to be developed to define “good standing,” and landlords would need to demonstrate such standing, which would need to be reviewed and verified. Additionally, there is currently no requirement for mandatory registration of units, but the good actor concept would need registration for tracking and to facilitate compliance. Finally, the CSFRA already has what is essentially a good actor concept, as the CPI-based AGA is only available to those landlords who have been in compliance with the CSFRA (CSFRA 1707(f)).

Council also discussed an option to add a rental assistance program for up to 18 to 24 months and/or a displacement fund in case higher annual rents would no longer be affordable to certain households. The program would fund the difference between rents based on CPI versus a higher flat rate. If the Subcommittee wishes to pursue this option, staff seeks input on what funding source would be used. Depending on the source, particularly if it is City funding, staff would want to determine if there are any considerations that need to be further evaluated. For example, this program would subsidize rents payable to landlords. Therefore, if public funds were involved, additional research might include if there are any issues with using public funds to allow landlords to receive higher rents than they would otherwise receive.

The City of San Jose recently decided whether to use the CPI or the flat-rate methodology. Two options were considered (Table 2), and Option 2 was chosen. The first option included CPI along with a package of various components, such as banking and allowing partial pass-through of annual fees. The second option included a 5 percent flat rate but does not allow banking or pass-through of fees. In evaluating these two options, it appears both seek to achieve a balance so landlords have some flexibility, but they are packaged to mitigate the impact of potential rent increases in different ways.

Table 2: AGA Options in San Jose

Option 1	Option 2
100 percent CPI AGA (2 percent floor, 8 percent ceiling)	5 percent AGA
Banking (limit 5 percent)	No banking
Capital improvement petition for:	Capital improvement petition for:
Seismic and safety upgrades	Seismic and safety upgrades
Major system upgrades improving housing services	Major system upgrades improving housing services
Major maintenance replacements for a five-year period	
Pass-through of 50 percent of annual fees	No pass-through of annual fees

Question: Does the Subcommittee want to keep the AGA based on CPI or does it wish to pursue a flat rate or a different methodology?

Additional Administrative Amendments

In addition to the above, other administrative amendments to the CSFRA have been identified and discussed during this process. Most of these administrative amendments are related to ambiguities caused by the existing Charter language, or lack thereof, which has made CSFRA implementation challenging in these instances.

Prohibit RHC Members from Compensating Themselves

Currently, the CSFRA is silent regarding whether the RHC may compensate themselves for their services. Although the CSFRA grants the RHC budget authority, the RHC has chosen not to compensate itself to date. The draft amendment would prohibit the RHC from compensating themselves.

The draft amendment pertaining to this issue can be found in Attachment 2, Topic No. 13.

Exemptions for Nonprofit Homes for the Aged (CSFRA 1703(a)(2))

Currently, rental units in any hospital, convent, monastery, extended medical care facility, asylum, nonprofit home for the aged, or dormitory owned and operated by an accredited institution of higher education are exempt from the CSFRA. Proposed language clarifies that the exemption is for nonprofit entities that have an income tax exemption as approved by the U.S. Internal Revenue Service.

The draft amendment pertaining to this issue can be found in Attachment 2, Topic No. 14.

Exemptions for Affordable Housing (CSFRA 1703(a)(3))

Currently, rental units owned or operated or managed by a not-for-profit organization pursuant to a tax credit program are exempt from the CSFRA. While most affordable housing developments have historically been financed through the low-income housing tax credit program, there are a few that obtain their financing outside of the tax credit program. Additionally, staff anticipates there may be more affordable housing projects in the future that could rely on funding sources outside of tax credits. As such, the proposed language is amended to exempt affordable housing developments with regulatory restrictions restricting the housing to low-, very low-, or extremely low-income households, not just those with tax credits. Proposed language has been included in Section 1703(a)(3).

The draft amendment pertaining to this issue can be found in Attachment 2, Topic No. 15.

Exemptions (CSFRA 1704)

The proposed amendment seeks to maintain full exemption for rental properties with fewer than three dwelling units being used as rental housing. The CSFRA does not explicitly address situations where multiple duplex structures exist on a single property. The intent of the CSFRA seems to cover properties with three or more units on a lot, but the current language creates ambiguity. This proposed amendment seeks to clarify this situation by stating that rental units located on a single, legal parcel with fewer than three dwelling units on a single property are exempt from CSFRA requirements. The amendment also references State laws and clarifies what happens when the laws are amended.

The draft amendment pertaining to this issue can be found in Attachment 2, Topic Nos. 16 and 17.

CSFRA Staff as City Employees (CSFRA 1709(j))

The proposed amendment seeks to clarify staff working for the CSFRA program will be either City employees or independent third-party contractors, with the RHC providing the funds for staffing resources. The CSFRA imposes an obligation on the RHC to

implement the CSFRA but does not explicitly establish how or what staff is hired. On May 21, 2018, the RHC evaluated this issue and decided to staff the RHC with City employees. The RHC also uses other City resources/infrastructure such as Finance, IT, and HR to implement the CSFRA and for which the RHC provides funds. The City will continue to hire, train, supervise, and evaluate staff performance according to City processes, and the RHC will continue to fund these costs. This amendment will codify this process in the CSFRA.

The draft amendments pertaining to this issue can be found in Attachment 2, Topic Nos. 18 and 19.

Ellis Act Implementations (CSFRA 1705)

The CSFRA implements local authority regulating the permanent removal of rental units from the rental market under the State Ellis Act. The CSFRA ambiguously interprets two components of the Ellis Act related to removing units from the rental market and later returning the same units to the rental market. The proposed changes address two ambiguous issues. The first relates to multiple structures on the same legal parcel, and the second reflects the rents that may be charged when a previously withdrawn unit is returned to the rental market. The draft clarifies: (1) if a single property contains two buildings with at least four units each, a landlord may choose to withdraw either or both buildings from the rental market under the Ellis Act; and (2) if a unit is returned to the rental market within five years, it must be rereanted at the previous rental rate plus any annual general adjustments.

The draft amendments pertaining to this issue can be found in Attachment 2, Topic Nos. 20, 21, and 22.

Findings (Section 1701(t))

The addition of this section is necessary per State law, AB 1482. AB 1482 prohibits rent gouging and imposes some just-cause protections Statewide. The law allows for local control, but requires a written finding indicating that local law is applicable.

The draft amendment pertaining to this issue can be found in Attachment 2, Topic No. 23.

Definitions (Section 1702(h) and (m))

The definition of "Housing Services" in Section 1702(h) omits "heat" and a relevant verb.

The draft amendment pertaining to this issue can be found in Attachment 2, Topic Nos. 24.

Effective Date of the CSFRA (Section 1703(a)(5))

The CSFRA refers to its own effective date, which was unknown when the CSFRA was placed on the ballot in mid-2016. The effective date was established after the ballot measure was passed and implementation began. Proposed language adds the effective date (December 23, 2016) into the CSFRA text.

The draft amendments pertaining to this issue can be found in Attachment 2, Topic No. 25 and 26.

Revised CPI Publication (Section 1707(a)(l))

The Federal government revised the geography and publication schedule for the CPI applicable to Mountain View; revision of the CPI definition reflects the change.

The draft amendment pertaining to this issue can be found in Attachment 2, Topic No. 27.

Remand Decisions in Appeal (Section 1711(j))

When a hearing officer decision regarding a petition to increase/decrease rent is appealed to the RHC, the RHC often remands portions of the decision back to the hearing officer to clarify or revise one or more issues. Staff proposes a clarification in the CSFRA to provide clear authority to remand decisions.

The draft amendment pertaining to this issue can be found in Attachment 2, Topic No. 28.

"Covered" instead of "Controlled" (Section 1718)

The CSFRA uses an undefined term in the context of the vacancy rate necessary to suspend the implementation of the CSFRA; staff proposes using the defined term in its place.

The draft amendment pertaining to this issue can be found in Attachment 2, Topic No. 29.

FISCAL IMPACT

The Fiscal Year 2019-20 Adopted Budget includes \$20,000 for the exploration of changes to the CSFRA. However, it is estimated that preparation of the Charter amendment language will cost approximately \$55,000 if a City-sponsored initiative was placed on the March 2020 ballot and \$75,000 if on the November 2020 ballot. Staff anticipates bringing a Council request for an additional \$35,000 (difference between the estimated \$55,000 and the \$20,000 currently budgeted) to fund the work for a March 2020 ballot measure.

In addition, the budget does not include funds for placing a measure on the ballot, which is estimated at approximately \$131,600 for a March 2020 ballot and \$60,000 for the November 2020 ballot.

PUBLIC NOTICING

Agenda posting. In addition, a link to this report was sent to the RHC, 2020 Initiative sponsors, City interest list, and public speakers from the August 19, 2019 CSFRA Subcommittee meeting and September 17, 2019 City Council meeting who provided an e-mail address.

AVD-WC-AS/6/CDD
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- Attachments:
1. September 17, 2019 City Council Report
 2. Summary Table of Draft CSFRA Amendments
 3. Full Text of Draft CSFRA Amendment Language