City of Mountain View

MEMORANDUM

Rent Stabilization Program,
Community Development Department

DATE: June 20, 2022

TO: Rental Housing Committee

FROM: Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Anky van Deursen, Program Manager

SUBJECT: **Amendment to Chapter 2: Definitions of the CSFRA Regulations; Amendment to Chapter 4: Petition Process of the CSFRA Regulations; Amendment to Chapter 2: Definitions of the MHRSO Regulations; Amendment to Chapter 5: Petition Process of the MHRSO Regulations**

RECOMMENDATION

To review and adopt amendments to the Community Stabilization and Fair Rent Act ("CSFRA" or "the Act") Regulations and to the Mobile Home Rent Stabilization Ordinance ("MHRSO" or "the Ordinance") to clarify the calculation of Base Rent where a rent concession was provided by Landlord[1] (or Park Owner or Mobile Home Landlord) to Tenant[2] (or Mobile Home Owner or Mobile Home Tenant) during the initial term of the tenancy and to establish a statute of limitations on the recovery of back rent due where a Tenant (or Mobile Home Owner or Mobile Home Tenant) files a Petition on the basis of unlawful rent related to concessions.

BACKGROUND

Beginning on or around December 2021, a number of landlords and tenants reached out to CSFRA Program staff to express confusion about how to comply with the CSFRA's definition of Base Rent when a Landlord offers or provides a concession of Rent to a Tenant during the initial term of the tenancy. As a result, proposed regulations addressing these issues were agendized for the Rental Housing Committee's ("RHC" or "Committee") March 28, 2022 meeting. Due to correspondence received ahead of the March 28 meeting, the RHC elected to postpone this agenda item during the meeting and directed staff to obtain additional stakeholder input. Stakeholder meetings with Landlords and Tenants were convened on April 28, 2022 to seek input on how to address the issue of Base Rent where rent concessions, discounts, or reduction of rent are provided during the initial term of the tenancy. Subsequently, the RHC held a Study Session at its meeting on May 23, 2022. The RHC evaluated the purposes of the CSFRA and the MHRSO, the authority of

[1] Throughout this staff report, the term "Landlord" is used to refer to Landlords, as defined in the CSFRA, and to Mobile Home Park Owners and Mobile Home Landlords, as those terms are defined in the MHRSO.

[2] Throughout this staff report, the term "Tenant" is used to refer to Tenants, as defined in the CSFRA, and to Mobile Home Owners and Mobile Home Tenants, as those terms are defined in the MHRSO.

the RHC to establish regulations to further the purposes of the CSFRA and the MHRSO, the language of the CSFRA itself including the definition of "Base Rent," summaries of stakeholder input, a review of the other California jurisdictions with rent stabilization programs that have adopted regulations to address concessions, and the purpose of adopting such regulations in Mountain View (see Attachments 3, 4, and 5 for more information). The RHC then proceeded to provide direction to staff regarding drafting proposed regulations.

SUMMARY OF MAY 23, 2022 STUDY SESSION

At its May 23, 2022 meeting, the Committee heard recommendations from staff regarding next steps related to the calculation of Base Rent where rent concessions are provided by the Landlord during the initial term of the tenancy. The Committee also heard from numerous members of the public representing both Landlords and Tenants, including residents of Mobile Home Parks.

After discussion among the Committee members, the RHC Chair called for straw polls on several questions that were raised either by members of the public or Committee members, including whether there was a need for regulations to clarify the definition of Base Rent, whether such regulations should address retroactive application of the regulations, including potentially some limitation on recovery of rent refunds based on concessions that may have been offered several years ago, whether any such regulation should clarify that the tenant's failure to pay rent lawfully owed does not reduce base rent and whether some concessions, such as free rent in the first month, should be treated differently from other types of concessions such as a reduced rent for the entire initial term of the tenancy. All Committee members, including the alternate, participated in the straw polls. Below are the results of the polls and the direction provided to staff:

1. **Does the calculation of "Base Rent" require clarification to address the issue of rent concessions provided in the initial term of the tenancy?**

   Ayes: 5
   Nays: 1
   Abstentions: 0

2. **Should any proposed regulations address the issue of retroactive application?**

   Ayes: 4
   Nays: 1
   Abstentions: 1

3. Should the calculation of "Base Rent" exclude any Rent that a Tenant fails to pay or withholds in violation of the Rental Agreement during the initial term of the tenancy?

Ayes: 6
Nays: 0
Abstentions: 0

4. Should all types of concessions and discounts be treated in the same way when calculating the Base Rent?

Ayes: 3
Nays: 3
Abstentions: 0

Straw Poll No. 4 resulted in a tie vote when counting the alternate's votes. Eliminating the alternate's vote on the poll resulted in 3 yes votes and 2 no votes. As such, the final direction from the RHC to staff was to include all types of concessions and to treat them the same way when calculating Base Rent.

PROPOSED AMENDMENTS

Based on the input received and the direction provided by the RHC, staff recommends the following proposed amendments to the CSFRA and MHRSO regulations.

A. Chapter 2 Amendment: Clarification of Calculation of Base Rent

Section 1702.b of the CSFRA defines "Base Rent" as the following:

> "The Base Rent is the reference point from which the lawful Rent shall be determined and adjusted in accordance with this Article.
>
> (1) Tenancies commencing on or before October 19, 2015. The Base Rent for tenancies that commenced on or before October 19, 2015 shall be the Rent in effect on October 19, 2015.
>
> (2) Tenancies commencing after October 19, 2015. The Base Rent for tenancies that commenced after October 19, 2015 shall be the initial rental rate charged upon initial occupancy, provided that amount is not a violation of this Article or any provision of state law. ***The term 'initial***

> ***rental rate' means only the amount of Rent actually paid by the Tenant for the initial term of the tenancy.***" (Emphasis added)

This definition is restated in Chapter 2 of the CSFRA Regulations.

Similarly, Section 46.2(c) of the MHRSO defines "Base Rent" as the following:

> "'Base rent' is the reference point from which the lawful Rent shall be determined and adjusted in accordance with this chapter.
>
> 1. The base rent for tenancies that commenced on or before March 16 of the base year shall be the rent in effect on that date.
>
> 2. The base rent for tenancies that commenced after March 16 of the base year shall be the initial rental rate charged upon initial occupancy, provided that amount is not in violation of this chapter or any provision of state law***. The 'initial rental rate' means only the amount of rent actually paid by the Tenant for the initial term of the tenancy.***" (Emphasis added.)

This definition is restated in Chapter 2 of the MHRSO Regulations.

The language of the proposed amendments to Chapter 2 of the CSFRA and MHRSO Regulations include the following elements (see Attachments 1 and 3):

a. Impacted Tenancies. The language of the current proposed amendments seeks only to clarify the calculation of Base Rent as it relates to CSFRA-covered tenancies commenced after October 19, 2015, or as it relates to Mobile Home Space or Mobile Home tenancies commenced after March 16, 2021, and only where the Landlord has provided a rent concession during the initial term of the tenancy.

b. Base Rent Calculations. The proposed amendment provides that where a temporary rent concession is provided by the Landlord during the initial term of the tenancy, the Base Rent is the average amount of Rent actually demanded to be paid and paid by the Tenant. A "rent concession" includes both: (1) one or more months' free Rent; or (2) a dollar or percentage amount reduction of the Rent provided over the course of the initial term of the tenancy. Pursuant to the Committee's direction, the proposed amendment also clarifies that neither a Tenant's withholding of or failure to pay Rent nor a Rent reduction imposed pursuant to a Hearing Officer's or the Committee's final decision in a petition based on failure to maintain a habitable

premises or a decrease in housing services or maintenance are to be considered in the calculation of the Base Rent.

- *Example 1:* if a Tenant agrees to pay $1,000 per month for 12 months for a Rental Unit and the Landlord provides a concession of two free months, then the Base Rent for the Rental Unit will be $833.33 ((10 x $1,000)/12) on the amount stated in the Rental Agreement.

- *Example 2*: If, on the other hand, if the Landlord provides a 25% discount over the course of the 12 months, then the Base Rent for the Rental Unit shall be $750 (($1,000 x 12) x 75%), regardless of the rental amount noted in the Rental Agreement.

c. Initial Term. Lastly, the proposed amendment of Chapter 2 clarifies that the "initial term of the tenancy" means either the initial term as agreed upon by the Landlord and Tenant in the Rental Agreement or for month-to-month Rental Agreements or Rental Agreements with terms longer than 12 months.

- *Example 1:* Where a Rental Agreement provides for an initial term of six (6) months, then Base Rent is calculated by averaging the rent actually demanded to be paid and paid by the Tenant over the six (6) months.

- *Example 2:* If a Rental Agreement provides for an initial term of fifteen (15) months, then Base Rent is calculated by averaging the rent actually demanded to be paid and paid by the Tenant over twelve (12) months. If the Rental Agreement is a month-to-month agreement, then the Base Rent will be calculated using the rent paid for the first twelve (12) months of occupancy.

B. CSFRA Regulations Chapter 4 and MHRSO Regulations Chapter 5 Amendment: Retroactivity and Petitions

Pursuant to the Committee's direction that the proposed regulations address retroactivity, staff recommends that the Committee adopt an amendment to Chapter 4 of the CSFRA Regulations and Chapter 5 of the MHRSO Regulations clarifying the remedies available to a Tenant who files a Petition based on the collection of unlawful Rents related to "rent concessions."

The language of the proposed amendments to Chapter 4 of the CSFRA Regulations and Chapter 5 of the MHRSO Regulations include the following elements (see Attachments 2 and 4):

a. *Remedies for Tenancies that Commenced on or before September 1, 2022:* Specifically, the proposed amendment would provide for a Tenancy that commenced on or before September 1, 2022, that the Tenant shall be entitled to a roll-back of the Rent to the lawful rent and a refund of any Rent that was overpaid within one (1) year prior to the date of the filing of the Petition.

   For example, a Tenant received a discount of 25% over the first 12 months of his tenancy and paid $750 per month during the initial 12 months of their Tenancy from June 1, 2019 to May 31, 2020. Beginning June 1, 2020, the rent concessions expired and the Tenant's Rent was improperly raised to $1,000/month. Tenant has continued to pay $1,000 per month since that time. On June 1, 2022, Tenant filed a Petition based on unlawful Rent relating to the rent concessions. In this scenario, the Tenant's rent would be rolled back to $750 per month. However, the Tenant would only be entitled to recover overpaid rent for the 12 months prior to the filing of the petition (i.e., $250 x 12 = $3,000) rather than all 24 months they overpaid (i.e., $250 x 24 = $6,000).

b. *Remedies for Tenancies that Commenced on or after September 1, 2022:* On the other hand, where rent concessions are provided for a Tenancy that commences on or after September 1, 2022, the Tenant shall be entitled to the roll-back of the Rent. Any refund of any overpaid Rent will only be limited by any applicable statutes of limitations in State law.

c. *Former Tenants:* Lastly, the proposed amendments would provide that a former Tenant who has vacated a Rental Unit must file any petition for unlawful Rent relating to rent concessions within six (6) months after vacating the Rental Unit.

Section 1714(a) of the Act provides that a Tenant may file a civil suit against a Landlord for the Landlord's demand or retention of excessive rent in violation of the Act or the Regulations. Section 1714(b) states that in certain cases, where there is a showing that the Landlord has acted willfully or with oppression, fraud or malice, the Tenant shall be awarded treble damages. At the May 23, 2022 meeting, questions were raised about

whether Sections 1714(a) and (b)[3] would permit Tenants to recover not only several years of overpaid Rent, but also treble damages thereupon. It important to note that claims based upon statutes which provide for mandatory recovery of damages in addition to actual losses, such as treble damages, are considered penal, and thus are governed by the one-year statute of limitations in Cal. Civil Code § 340(a). *See, e.g.*, *G.H.I.I. v. MTS, Inc.* (1983) 147 Cal.App.3d 256, 277; *Holland v. Nelson* (1970) 5 Cal.App.3d 308, 312. The proposed amendments do not address this issue since it is adequately and more appropriately addressed by State law.

LEGAL DISCUSSION

At the May 23, 2022 meeting, both members of the Committee and the public expressed questions regarding: (1) the authority of the Committee to adopt the proposed regulations; and (2) the legality of the proposed regulations, including retroactive application of the regulations, due-process rights, and impairment of contract issues. Members of the RHC requested a more in-depth legal analysis of these issues. This section of staff's report is intended to address these questions. In summary, as explained below, the Committee has authority to adopt regulations interpreting the CSFRA and MHRSO, and the proposed regulations are not a retroactive application of law, do not violate due-process rights, and do not impair contracts.

A. Rental Housing Committee Authority

The purpose of the CSFRA is "to promote neighborhood and community stability, 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 rate of return on their investment…" CSFRA, § 1700. To achieve this purpose, the CSFRA imposes a system of rent and eviction controls on certain residential properties in the City. CSFRA, §§ 1705, 1706. The CSFRA also establishes the RHC to administer and implement its provisions. CSFRA, § 1709. The Committee is expressly empowered to "[e]stablish rules and regulations for the administration and enforcement" of the Act and has a duty to "[s]et Rents at fair and equitable levels to achieve the purposes" of the Act. *Id.* at subd. (d). The Committee must

[3] The RHC members' questions were specifically focused on these provisions of the CSFRA. Nonetheless, Section 46.11(d) of the MHRSO similarly provides: "A park owner or mobile home landlord who demands, accepts, receives, or retains any payment of rent in excess of the lawful rent shall be liable to the tenant in the amount by which the payment or payments have exceeded the lawful rent. In such a case, the rent shall be adjusted to reflect the lawful rent pursuant to this chapter and its implementing regulations. Additionally, ***upon a showing that the park owner or mobile home landlord has acted willfully or with oppression, fraud or malice, the tenant shall be awarded treble damages***." (Emphasis added)

"issue and follow such rules and regulations as will further the purpose of the" Act. *Id.* at subd. (e).

Similarly, the findings in the MHRSO state that "[t]he city council finds and declares that it is necessary to protect mobile home residents from unreasonable rent increases, while at the same time protecting the right of park owners and mobile home landlords to receive a fair return on their property and rental income sufficient to cover increases" in certain operational costs. MHRSO, § 46.1(g). As with the CSFRA, the MHRSO imposes a system of rent control on both Mobile Home Space and Mobile Home tenancies, and eviction controls on Mobile Home tenancies. MHRSO, §§ 46.5, 46.6, 46.8. The MHRSO also empowers the Committee to "[e]stablish rules and regulations for the administration of" the Ordinance and to "[s]et rents at fair and equitable levels to achieve the purposes of" the Ordinance. MHRSO, § 46.9(a)(1);(3).

"Rent control agencies are not obliged by either the State or Federal Constitution to fix rents by application of any particular method or formula." *Carson Mobilehome Park Owners' Ass'n v. City of Carson* (1983) 35 Cal.3d 184, 191; *see also Colony Cove Properties*, *supra*, Cal.App.4th at 867 ("The Supreme Court has held that rent control ordinances may incorporate 'any of a variety of formulas' for calculating rent increases and satisfy the fair return standard.") "[S]election of an administrative standard by which to set rent ceilings is a task for local governments…and not the courts." *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 681. As such, municipalities have adopted different formulas for calculating rent ceilings. *See, e.g.*, *Kavanua v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 768; *Fisher*, *supra*, 37 Cal.3d at 682; *Carson Mobilehome Park Owners' Ass'n*, *supra*, 35 Cal.3d at 188; *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 167; *West Hollywood Concerned Citizens v. City of W. Hollywood* (1991) 232 Cal.App.3d 486, 489; *Palos Verdes Shores Mobile Estates, Ltd. v City of Los Angeles* (1983) 142 Cal.App.3d 362, 371.

A court's review of an administrative agency's regulations is limited to "whether the challenged provisions are consistent and not in conflict with the enabling statute and reasonably necessary to effectuate its purpose." *Fox v. San Francisco Residential Rent etc Bd.* (1985) 169 Cal.App.3d 651, 655 (citing *Woods v. Superior Court* (1981) 28 Cal.3d 668, 679). So, while true that a legislative declaration of an existing statute's meaning is not binding or conclusive in construing a statute, administrative regulations are generally 'shielded by a presumption of' [citation] and presumed to be '*reasonable and lawful*.'" *Id.* In enacting rules and regulations, a rent control board is "empowered to 'fill up the details' of the enabling legislation." *Id.* at 656 (citing *Knudsen Creamery Co. v. Brock* (1951) 37 Cal.2d 485, 492-493.) "[A] rent control board's interpretation of a rent control ordinance and its implementing regulations is entitled to considerable deference." *Colony Cove Properties, LLC v. City of Carson* (2013) 220 Cal.App.4th 840, 866. The party challenging the

regulations has the burden "to prove the board's decision is neither reasonable nor lawful." *Id.* The role of the court is to decide whether the rent control board reasonably interpreted the legislative mandate. *Fox, supra*, 169 Cal.App.3d at 655.

B. Due-Process Considerations

"Every California city possess the general power to 'make and enforce within its limits all local, police, sanitary, and other ordinances, and regulations not in conflict with general laws.'" *Fisher*, *supra*, 37 Cal.3d at 704 (citing Cal. Const., Art. XI, § 7). Moreover, charter cities have even greater authority, i.e. "exclusive power to legislate over 'municipal affairs.'" *Id.* (citing Cal. Const., Art. XI, § 5, subd. (a)). Regulation of residential rents is a valid exercise of a city's police powers. *Pennell v. City of San Jose* (1988) 485 U.S. 2, 12; *Carson Mobilehome Park Owners' Ass'n*, *supra*, 35 Cal.3d at 187; *Birkenfeld, supra*, 17 Cal.3d at 160.

A city's exercise of a police power is limited by the State and Federal Constitutions' prohibition against the government's deprivation of a person's property without due process of law. Cal. Const., Art. I, §§ 7, 15; U.S. Const., 14th Amend., § 1. Generally, a rent control measure does not violate due process so long as it serves a legitimate governmental purpose and permits landlords to earn a fair and reasonable rate of return. *Santa Monica Beach, Ltd. v. Superior Court* (1999) 19 Cal.4th 952, 962. "[I]n the context of price regulation, it is the result reached and not the method employed which is controlling." *Kavanua, supra*, 16 Cal.4th at 678. In fact, a rent regulation that serves a legitimate purpose is not unconstitutional even if it interferes with the rental rates in a preexisting contract. *Interstate Marina Dev. Co. v. County of Los Angeles* (1984) 155 Cal.App.3d 435; *Berman v Downing* (1986) 184 Cal.App.3d Supp. 1, 5.

Due-process considerations may arise where a regulation applies retroactively. "A basic canon of statutory interpretation is that statutes do not operate retrospectively unless the Legislature plainly intended them to do so." *Western Security Bank v. Superior Ct.* (1997) 15 Cal.4th 232, 243. A statute is considered retroactive "when it substantially changes the legal consequences of past events." *Id.* The retroactivity of a statute is "a policy determination for the Legislature and one to which courts defer absent 'some constitutional objection' to retroactivity." *Id.* at 244; *see also Leavenworth Properties v. City and County. of San Francisco* (1987) 189 Cal.App.3d 986, 994 ("It is well settled that a legislative body may give laws retrospective application where it clearly evinces that intent and no vested constitutional rights are infringed.").

However, "a statute that merely *clarifies*, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment." *Western*

Security Bank, *supra*, 15 Cal.4th at 243. A legislative enactment that makes material changes to statutory language in an effort only to clarify the meaning of the statute has no retrospective effect "because the true meaning of the statute remains the same." *Id.*; *see also Nourafchan v. Miner* (1985) 169 Cal.App.746 (providing there was no issue of retroactivity where charter amendment sought to codify existing rules, regulations, and practices of rent control board). One example is when a legislature "promptly reacts to the emergency of a novel question of statutory interpretation." *Western Security Bank, supra*, 15 Cal.4th at 243. If an amendment is enacted "soon after controversies [arise] as to the interpretation of the original act," then the amendment should be regarded as a clarification rather than a substantial change. *Id.*

The proposed amendments to the CSFRA and MHRSO Regulations do not violate due process. For one, the proposed amendments are reasonably related to the Act's and the Ordinance's legitimate purpose of stabilizing housing by preventing excessive rent increases for Tenants. The proper calculation of Base Rent—as the amount actually paid by the Tenant—is integral to ensuring that Tenants are not suddenly subjected to large, unexpected increases at the end of their initial lease term, thereby leading to their displacement and community destabilization.

Moreover, the proposed amendments are not retroactive. These amendments seek only to clarify, not amend, the calculation of Base Rent where a Landlord has provided or provides a rent concession during the initial term of the Tenancy. In the case of the CSFRA, it may only be altered or changed by the voters because it is a voter-approved charter amendment. Likewise, the City Council is the legislative body authorized to amend the MHRSO. As such, the Committee only has the power to clarify by "filling in the gaps" of the Act and the Ordinance. Additionally, the proposed regulations do not alter the legal consequences of Landlords' prior actions. Under the Act, the Ordinance, and their accompanying Regulations, Tenants can already file petitions for downward adjustment of rent based on the collection of unlawful Rent related to rent concessions. In fact, several tenants have already filed unlawful rent petitions relating to the issue of rent concessions.

Ultimately, the Act, the Ordinance, and the Regulations do not violate Landlords' substantive due-process rights because Landlords continue to be guaranteed a fair and reasonable rate of return. Pursuant to the Act, the Ordinance, and the Regulations, Landlords may petition for an upward adjustment of rent should the implementation of the proposed regulations affect their return on their investment.

FISCAL IMPACT

The adoption of the proposed amendments to Chapters 2 and 4 of the CSFRA Regulations and to Chapters 2 and 5 of the MHRSO Regulations is not anticipated to impact the budget of the RHC.

PUBLIC NOTICING—Agenda posting.

KT-AvD/JS/8/CDD/RHC
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Attachments:
1. Draft Resolution to Adopt to Chapter 2 and 4 of the CSFRA Regulations
   Exhibit A: Amendment to CSFRA Regulations Chapter 2 and 4
2. Draft Resolution to Adopt Amendments to Chapter 2 and 5 of the MHRSO Regulations
   Exhibit A: Amendment to MHRSO Regulations Chapter 2 and 5
3. March 28, 2022 RHC Memo Clarifying Base Rent and Concessions
4. April 28, 2022 Summary of Stakeholder Meetings
5. May 23, 2022 RHC Memo Clarifying Base Rent and Concessions