



**DATE:** November 12, 2019

**CATEGORY:** Unfinished Business

**DEPT.:** Community Development

**TITLE:** **Potential 2020 Community Stabilization and Fair Rent Act Amendments**

### **RECOMMENDATION**

1. Adopt a methodology to set the Annual General Adjustment of rent in the Community Stabilization and Fair Rent Act (Attachment 5 to the Council report).
2. Approve the draft amendments to the Community Stabilization and Fair Rent Act (Attachment 3 to the Council report).
3. Approve the ballot question and placement of the City-Initiated Community Stabilization and Fair Rent Act Charter amendment on the ballot for March/November 2020.
  - a. Adopt a Resolution Calling for the Holding of a Special Municipal Election on Tuesday, March 3, 2020 and Requesting the Board of Supervisors of the County of Santa Clara to Consolidate the Special Municipal Election with the Statewide Primary Election to be Held on that Date Pursuant to §10403 of the Elections Code for the Purpose of Submitting to the Voters a Proposed Charter Amendment and Related Actions, to be read in title only, further reading waived (Attachment 6 to the Council report).
  - b. Direct the City Attorney to prepare an impartial analysis of the ballot measure.
  - c. Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write and sign the argument.
  - d. Determine whether to print the full text of the amendment in the Voter Information Guide.

- e. Direct the City Clerk and the City Attorney to take all necessary related actions for submitting the measure to the voters on March 3, 2020.
4. Determine whether or not to place the Voter-Initiated “The Mountain View Homeowner, Renter, and Taxpayer Protection Initiative” Community Stabilization and Fair Rent Act Charter amendment on the ballot in March 2020. If so, take the following actions:
    - a. Adopt a Resolution Calling for the Holding of a Special Municipal Election on Tuesday, March 3, 2020 and Requesting the Board of Supervisors of the County of Santa Clara to Consolidate the Special Municipal Election with the Statewide Primary Election to be Held on that Date Pursuant to §10403 of the Elections Code for the Purpose of Submitting to the Voters a Proposed Initiative Charter Amendment, and Related Actions, to be read in title only, further reading waived (Attachment 10 to the Council report).
    - b. Direct the City Attorney to prepare an impartial analysis of the ballot measure.
    - c. Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write and sign the argument.
    - d. Determine whether to print the full text of the amendment in the Voter Information Guide.
    - e. Direct the City Clerk and the City Attorney to take all necessary related actions for submitting the measure to the voters on March 3, 2020.
  5. Appropriate \$225,100 from the General Operating Fund Reserve for the Community Stabilization and Fair Rent Act amendments. (Five votes required)

## **BACKGROUND**

### **City-Initiated Ballot Measure**

On May 21, 2019, the City Council adopted its Fiscal Year 2019-21 Major Goals and associated work plan items. One of the work plan items is “Hold a study session to explore modifications to CSFRA for the 2020 election.” On June 25, 2019, the Council approved formation of the CSFRA Subcommittee to facilitate this process.

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

Additionally, on September 17, 2019, the full City Council received information on the process and input received to date. 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. Council also referred the issue of the Annual General Adjustment (AGA) back to the Subcommittee for further deliberation.

On October 14, 2019, the Subcommittee held its fourth and final meeting. The Subcommittee reviewed draft language of proposed CSFRA amendments based on Subcommittee and Council direction and approved the amended language as proposed by staff with minor modifications (Attachment 2). The Subcommittee did not reach a final recommendation regarding a potential modification of the AGA methodology, but instead discussed three alternatives for Council consideration (Attachment 5). Ultimately, the Subcommittee recommends that the Council: (1) adopt the changes as incorporated in a summary table of the draft amendments (Attachment 3); and (2) determine if the AGA should remain as is or be modified to include one of the potential options. The full text of the proposed amended CSFRA, excluding AGA options, is included as Attachment 4. Please note the full text of the proposed amended CSFRA includes the current use of 100 percent of the Consumer Price Index (CPI) to determine the AGA. If Council opts for one of the other three options, as listed in Attachment 5, the CSFRA amendments will be updated to reflect Council's decision.

### **Voter-Initiated Ballot Measure**

On November 27, 2018, Council accepted the Certificate of Sufficiency of the Voter-Initiated Ballot Measure, entitled "The Mountain View Homeowner, Renter, and Taxpayer Protection Initiative" (Attachment 7). This certification means the signatures on the petition for the Voter Initiative were sufficient to place it on the ballot. Because it is a Charter amendment, the Voter Initiative must be presented to the voters during a general municipal election or a Statewide general election. The next elections that meet this requirement will be in March and November of 2020, and Council has the option of placing the measure on either ballot.

The following is a summary of the Voter Initiative's key amendments:

- Sets an income eligibility requirement.
- Suspension of the CSFRA is based on a lower vacancy rate of 3 percent.
- Modification to the just-cause provision.
- Restriction on the use of City funds.
- Sets a maximum rental housing fee.
- All capital improvements are eligible for the petition process.
- Establishes a Rental Housing Dispute Resolution Program during suspension of the CSFRA.

The full text of the Voter Initiative can be found in Attachment 9.

Both the Voter-Initiated CSFRA amendments as well as the City-Initiated CSFRA amendments need to be placed on the ballot of either March or November 2020, which is why both items are part of this report, but they do not have to be placed on the same ballot.

## **ANALYSIS**

This section includes discussion and questions on the City-Initiated CSFRA amendments and a separate subsection to discuss the Voter-Initiated measure.

### **City-Initiated CSFRA Amendments**

Staff, with the assistance of the City's legal consultants, has developed draft CSFRA amendments based on Council and Subcommittee direction. This subsection asks Council the question on AGA, followed by a summary of the draft amendments. Staff seeks approval and/or input from Council on the draft CSFRA language to ensure it accurately reflects input and direction.

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

Both the Subcommittee and Council discussed amending the AGA. Currently, the AGA allows annual rent increases equal to 100 percent of the change in the CPI, with a 2 percent floor and a 5 percent ceiling (regardless of what the CPI is). The CSFRA also allows landlords to "bank" unused AGA for implementation in future years and

authorizes maximum 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 RHC provided input to Council, stating it believes the CPI should continue to be used. The Subcommittee continued its discussion and provided three options for Council to make a decision regarding the desired AGA. The Subcommittee Chair also requested that the Council consider a fourth option, which has been included below. The Subcommittee has not discussed the fourth option. Therefore, the following options are provided to determine the AGA:

1. Keep the AGA unchanged at 100 percent CPI, in which case no amendments need to be made (Attachment 4).
2. Set the AGA at 100 percent CPI plus 1 percent with a prohibition of banking (Attachment 5, Option 2).
3. Set the AGA at a flat rate of 4 percent or 5 percent with a prohibition of banking (Attachment 5, Option 3).
4. Set the AGA at a flat rate of less than 5 percent with an allowance of banking, as proposed by the Subcommittee Chair (Attachment 5, Option 4).

Staff seeks Council input on whether the CSFRA amendment should include a modification of the AGA methodology and, if so, which option Council prefers. Amendment language for each of the options is included in a Summary Table in Attachment 5.

As mentioned, the full text of the proposed amended CSFRA (Attachment 4) includes the current use of 100 percent of the CPI to determine the AGA. If the Council opts for one of the other three options, as listed above and in Attachment 5, the associated language of that option will replace or revise any language to reflect the Council's decision and should be included in the motion.

*Question 1: Does the Council want to keep the AGA based on 100 percent CPI or does it wish to pursue one of the other options provided?*

#### *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.

The Subcommittee recommended the following:

- Clarify that if no adequate qualifying applications from Mountain View residents have been received, Council may appoint a non-Mountain View resident for a vacant position (Section 1709(b)).

The draft amendments pertaining to this issue can be found in the Summary Table (Attachment 3), Topic Nos. 1, 2, 3, 4, 5, 6, and 7.

#### *Separate Individual Rent Increase Process for Certain Qualifying Capital Improvements*

The Council and Subcommittee tasked the RHC to design a separate individual rent increase process for certain qualifying capital improvements that would not require the property owner to demonstrate 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 useful 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.

The Subcommittee recommended the following:

- Clarify the RHC shall (instead of “may”) adopt separate procedures for specified capital improvements (Section 1710).
- Clarify the capital improvement process also includes an improvement to a covered rental unit requested by the tenant and agreed upon by the landlord (Section 1710(e)(1)(D)).
- Clarify the RHC shall (instead of “may”) publish a list of eligible capital improvements (Section 1710(e)(2)(A)).

- Clarify any rent increase authorized by the special capital improvement process is excluded when calculating an annual rent increase (Section 1710(2)(G)).

The draft amendments pertaining to this issue can be found in the Summary Table (Attachment 3), 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. It should be noted that Council has a major goal work plan item to consider mobile home rent stabilization, and Council will have a preliminary discussion that is tentatively scheduled in early 2020.

The draft amendment pertaining to this issue can be found in Attachment 3, Topic No. 12.

#### **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. The Subcommittee reviewed the draft amendments and recommended adopting these changes:

- Prohibit RHC members from compensating themselves (Topic No. 13)
- Exemptions for nonprofit homes for the aged (CSFRA 1703(a)(2)) (Topic No. 14)
- Exemptions for affordable housing (CSFRA 1703(a)(3)) (Topic No. 15)
- Exemptions under State law and for duplexes (CSFRA 1704) (Topic No. 16 and 17)
- CSFRA staff as City employees (CSFRA 1709(j)) (Topic No. 18 and 19)
- Ellis Act implementations (CSFRA 1705 and 1702(m)) (Topic Nos. 20, 21, and 22)
- Definitions (Section 1702(h)) (Topic No. 23)

- Effective date of the CSFRA (Section 1703(a)(5)) (Topic Nos. 24 and 25)
- Revised CPI publication (Section 1707(a)(l)) (Topic No. 26)
- Remand decisions in appeal (Section 1711(j)) (Topic No. 27)
- “Covered” instead of “Controlled” (Section 1718)(Topic No. 28)
- Revise internal reference (Section 1702(r)) (Topic No. 29)
- Findings under State law (Section 1701(t)) (Topic No. 30)
- Application of State law (Section 1707(e)) (Topic No. 31)

Two additional administrative amendments are proposed in the current draft language, which were not considered by the Subcommittee:

1. *Rental Housing Fee (Topic 29)*. This administrative adjustment corrects an internal reference that quoted an incorrect section of the CSFRA.
2. *10 Percent Annual Rent Increase Limit (Topic 31)*. The CSFRA determines that an overall rent increase in any 12-month period shall not exceed 10 percent of rent charged to a tenant. To avoid any conflict with State law, this change clarifies that applicable State law may further constrain rent increases in some circumstances.

### **Placement and Timeline for City-Initiated Ballot Measure**

If the Council wishes to place the City-initiated measure on an upcoming ballot, the options are as follows:

- *March 2020*: If the Charter amendment is to be submitted to the voters on March 3, 2020, Council must adopt a resolution at a regular meeting at least 88 days prior to the election date, which is December 6, 2019, in order for the City Clerk to transmit the resolution to the Registrar of Voters. November 12 (this Council meeting) is the last regular meeting currently scheduled prior to the December 6 deadline. The Charter amendment will become effective if approved by a majority of voters and will take effect 10 days after the date the City Council certifies the results of the election. The certification of the results would take place in April.
- *November 2020*: If the Charter amendment is to be submitted to the voters on November 3, 2020, the Council must adopt a resolution at a Regular Meeting no



later than July 21, 2020 in order for the City Clerk to transmit the resolution to the Registrar of Voters at least 88 days prior to the election date, which is August 7, 2020. The Charter amendment will become effective if approved by a majority of voters and will take effect 10 days after the date the City Council certifies the results of the election. The certification of the results would take place in December 2020.

The Subcommittee recommended that the City-initiated measure be placed on the March 2020 ballot.

A draft resolution calling the election for the City-initiated measure is included as Attachment 6.

*Question 2: Does the Council wish to place the City-initiated measure on the March 2020 or November 2020 ballot?*

***City-Initiated Ballot Question and Placement March/November 2020***

If Council wishes to place the amendments on the ballot (whether March 2020 or November 2020), the following is recommended language for the ballot question, which must be no more than 75 words:

Shall the City Charter be amended to: clarify the Rental Housing Committee (RHC) independently implements the Community Stabilization and Fair Rent Act and other duties delegated by the City Council to protect renters; prohibit paying RHC members; clarify the City Council may remove RHC members; exempt mobile homes; authorize additional rent increases for certain capital improvements; [allow annual rent increase equal to [a four/five percent flat rate/the existing rate plus one percent]]; add technical revisions; and comply with State law?	YES	NO
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***Ballot Arguments and Impartial Analysis***

Elections Code Section 9282(b) provides that when a measure is placed on the ballot by the City Council, written arguments for and against the measure may be filed by the following: the City Council or any member or members of the Council authorized by the Council; any individual voter who is eligible to vote on the measure; a bona fide association of citizens; or any combination of voters and associations.

As such, the Council may authorize the City Council or any member or members of the City Council to submit an argument in favor of the measure. Elections Code Section 9287(a) provides that if more than one argument for or against any City measure is submitted, the City elections official (City Clerk) shall give preference and priority in the following order: (a) the legislative body, or member or members of the legislative body authorized by that body; (b) the individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure; (c) bona fide associations of citizens; (d) individual voters who are eligible to vote on the measure.

If the Council chooses not to submit an argument, the City Clerk will follow the priorities described in Elections Code Section 9287(a) in selecting an argument to be printed in the County Voter Information Guide. In the past, the Council has authorized arguments/rebuttal arguments on ballots measures.

Council may also direct the City Attorney to prepare an impartial analysis of the measure. When a measure is placed on the ballot, either by petition or at the direction of Council, the Council may direct the City Attorney to prepare an impartial analysis of the measure. The analysis is limited to 500 words or less, and is printed in the County Voter Information Guide immediately preceding the arguments for and against the measure.

With the assumption that the amendments will go to the voters in March 2020, in accordance with the Elections Code, the City Clerk has set the argument deadlines as follows:

Argument:	November 25, 2019
Rebuttal Arguments:	December 5, 2019
Impartial Analysis (City Attorney):	December 5, 2019

*Question 3: If the Council proceeds with the March 2020 ballot for the City-initiated measure, does the Council wish to draft an argument for the measure and direct the City Attorney to prepare an Impartial Analysis?*

***Printing of the Full Text of City-Initiated Charter Amendment in the Voter Information Guide***

Council has the option to direct that the full text of the measure be printed in the County Voter Information Guide or including a statement following the impartial analysis that the full text is available by calling the elections official's office (City Clerk's Office) and requesting a copy at no cost. The text of the ordinance would also be posted

on the City website. For 2016 and 2018 ballot measures, the full text of the measure was not printed in the County Voter Information Guide. The County Registrar of Voters estimates approximately \$6,345 per 800-word page printed in the County Voter Information Guide. The full text is estimated to be approximately 14 pages and, therefore, approximately \$89,000.

*Question 4: Does the Council want to include full text of the City-initiated measure in the Voter Information Guide?*

### **Voter-Initiated CSFRA Charter Amendment**

On November 27, 2018, Council accepted the Certificate of Sufficiency of the Voter-Initiated Ballot Measure, entitled “The Mountain View Homeowner, Renter, and Taxpayer Protection Initiative” (Attachment 10). This voter-initiated measure intends to amend certain provisions within the City Charter that regulates rents, establishes just-cause eviction protections, requires relocation assistance, and allows for decontrol. The City Attorney’s ballot summary of this voter-initiated Charter amendment can be found in Attachment 8. The certification means the signatures on the petition for the Voter Initiative were sufficient to place it on the ballot. Because it is a Charter amendment, the Voter Initiative must be presented to the voters during a general municipal election or a Statewide general election. The next elections that meet this requirement will be in March 2020 and November 2020. The full text of the “The Mountain View Homeowner, Renter, and Taxpayer Protection Initiative” can be found in Attachment 9.

### ***Voter-Initiative Ballot Question and Placement, March/November 2020***

Council also needs to make a determination on the voter-initiated ballot measure election date and the ballot question language. Council may place the voter-initiated Charter amendment on the ballot in March or November 2020. To place the voter initiative on the March 2020 ballot, Council must adopt a resolution at a regular meeting at least 88 days prior to the election date, which is December 6, 2019 for the March 2020 election, in order for the City Clerk to transmit the resolution to the Registrar of Voters. November 12 (this Council meeting) is the last regular meeting currently scheduled prior to the December 6 deadline. To place the voter initiative on the November 2020 ballot, Council must adopt a resolution by the August 7, 2020 deadline established by the Elections Code. If no action is taken tonight to place the measure on the March 2020 ballot, staff will return to Council in 2020 to place the voter-initiated measure on the November 2020 ballot. The proponents may withdraw the measure at any time up to 88 days before the election.

A draft resolution calling the election for the voter-initiated measure is included as Attachment 10.

If the Council decides to place the Council-initiated Charter amendment and the voter-initiated Charter amendment on the ballot during the same election, staff recommends additional language be added to the Council-initiated Charter amendment to clarify that it will prevail in its entirety if both are approved and the Council-initiated Charter amendment receives more votes than the voter-initiated amendment.

*Question 5: Does the Council wish to place the voter-initiated measure on the March 2020 ballot?*

If Council places the voter-initiated amendments on the March 2020 ballot, then the following subsections/questions shall be discussed. If Council does not take action to place the voter-initiated measure on the March 2020 ballot, the following items in this report do not need to be discussed at this time and will be brought back to the Council in 2020 at the appropriate time.

***Ballot Question***

The following is the ballot question for the voter-initiated measure.

Shall the City Charter be amended to: limit protections under the Community Stabilization and Fair Rent Act (CSFRA) only to households earning 100 percent of median income or less; limit CSFRA annual fee to \$100; prohibit paying RHC members; and suspend the CSFRA when vacancy rates equal or exceed 3 percent and enact a replacement program during suspension including a rental registry and nonbinding mediation program for rent increases over 7 percent and other disputes?	YES	NO
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Elections Code Section 9282(a) provides that for measures placed on the ballot by petition, the persons filing the initiative petition may file a written argument in favor of the measure. The Council may submit an argument against the measure, and determine the authors/signers, and who should file it. Staff requests guidance whether the Council wishes to draft the language of the argument and select the authors/signers of an argument and/or rebuttal.

As with the City-initiated measure, Council may direct the City Attorney to prepare an impartial analysis of the measure.

*Question 6: If the Council wishes to proceed with the March 2020 ballot for the Voter Initiative, does the Council wish to draft an argument and direct the City Attorney to prepare an impartial analysis?*

***Printing of the Full Text of the Voter Initiative in the Voter Information Guide***

If Council places the Voter Initiative on the March 2020 ballot, Council has the option to direct that the full text of the measure be printed in the County Voter Information Guide, as discussed in the City-Initiated section above. The full text is estimated to be approximately 12 pages and, therefore, approximately \$79,000.

*Question 7: If Council places the Voter Initiative on the March 2020 ballot, does Council want to include full text in the Voter Information Guide?*

**SUMMARY OF QUESTIONS**

*Question 1: Does the Council want to keep the AGA based on 100 percent CPI or does it wish to pursue one of the other options provided?*

*Question 2: Does the Council wish to place the City-initiated measure on the March 2020 or November 2020 ballot?*

*Question 3: If the Council proceeds with the March 2020 ballot for the City-initiated measure, does the Council wish to draft an argument for the measure and direct the City Attorney to prepare an Impartial Analysis?*

*Question 4: Does the Council want to include full text of the City-initiated measure in the Voter Information Guide?*

*Question 5: Does the Council wish to place the voter-initiated measure on the March 2020 ballot?*

*Question 6: If the Council wishes to proceed with the March 2020 ballot for the Voter Initiative, does the Council wish to draft an argument and direct the City Attorney to prepare an impartial analysis?*

*Question 7: If Council places the Voter Initiative on the March 2020 ballot, does Council want to include full text in the Voter Information Guide?*

## **FISCAL IMPACT**

### **Budget Appropriation Request**

City staff, working with its legal consultant, has been working on the preparation of CSFRA amendments since July 2019. While \$25,000 was initially budgeted for the effort, more funds are necessary. Additionally, funds are needed to place a measure on the ballot. It is estimated that the total cost will amount to \$250,100 for the March 2020 ballot. This includes approximately \$63,500 for staff, \$50,000 for the costs of legal services, and approximately \$131,600 for placing a measure on the ballot. The CSFRA 2019-20 Budget for personnel costs is budgeted at \$685,000. CSFRA staff has been assisting in the preparation of the CSFRA amendments. It is estimated that 10 percent of the CSFRA staff time has been spent on the amendments, which cannot be charged to the CSFRA.

The Subcommittee recommended that the amendments be placed on the March 2020 ballot. Please note that the requested budget items are based on the amendments being scheduled for the March 2020 ballot. If the Council chooses to place the amendments on the November 2020 ballot, the budget request will change.

If the Council decided to place the CSFRA amendments on the November 2020 ballot, the total budget cost would be approximately \$203,500. City Charter Section 1105 authorizes appropriations for these purposes upon approval by five affirmative votes of the Council.

## **CONCLUSION**

Therefore, based on Subcommittee input, staff is requesting the City Council provide additional clarification and direction based on the summary of seven questions above, and take corresponding actions in accordance with the Recommendation on Page 1.

## **PUBLIC NOTICING**

Agenda posting. In addition, a link to this report was sent to the RHC, 2020 Initiative proponents, City interest list, and public speakers from the October 14, 2019 CSFRA Subcommittee meeting and September 17, 2019 City Council meeting who provided an e-mail address.

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- Attachments:
1. September 17, 2019 City Council Meeting Staff Report
  2. October 14, 2019 CSFRA Subcommittee Meeting Staff Report
  3. Summary Table of Draft CSFRA Amendments
  4. Full Text of Draft CSFRA Amendment Language
  5. Summary Table of Draft Options for AGA Determination
  6. Draft Resolution Calling the Election for a City-Initiated Measure
  7. Resolution 18273, November 27, 2018, Accepting the Certification of Sufficiency of "The Mountain View Homeowner, Renter and Taxpayer Protection Initiative" Petition
  8. City Attorney's Ballot Title and Summary of "The Mountain View Homeowner, Renter and Taxpayer Protection Initiative"
  9. Full Text of "The Mountain View Homeowner, Renter and Taxpayer Protection Initiative"
  10. Draft Resolution Calling the Election for the "The Mountain View Homeowner, Renter and Taxpayer Protection Initiative"