From: Ron Granville <rgranville@wres.com>
Sent: Monday, March 28, 2022 1:16 PM
To: Rental Housing Committee <RHC@mountainview.gov>; susynalmond@yahoo.com; matt.grunewald.rhc@gmail.com; nmhl.rhc@gmail.com; julian.pardo.de.zela@gmail.com; emily00@gmail.com; grosas730@gmail.com; ktiedemann@goldfarblipman.com; McCarthy, Kimbra <Kimbra.McCarthy@mountainview.gov>; Quinn, Jannie <Jannie.Quinn2@mountainview.gov>; van Deursen, Anky <Anky.vanDeursen@mountainview.gov>; Rental Housing Committee <RHC@mountainview.gov>; susynalmond@yahoo.com; matt.grunewald.rhc@gmail.com; nmhl.rhc@gmail.com; julian.pardo.de.zela@gmail.com; emily00@gmail.com; grosas730@gmail.com; ktiedemann@goldfarblipman.com; McCarthy, Kimbra <Kimbra.McCarthy@mountainview.gov>; Quinn, Jannie <Jannie.Quinn2@mountainview.gov>; van Deursen, Anky <Anky.vanDeursen@mountainview.gov>
Cc: Joshua Howard - California Apartment Association, Tri County Division (JHoward@caanet.org) <JHoward@caanet.org>
Subject: Agenda Item #7.3 – Draft Amendments to Chapter 2 of CSFRA Regulations

Dear Chair Almond and Committee Members,

As a rental housing provider in Mountain View, I am deeply troubled by the Rental Housing Committee's (RHC) proposal to re-define "base rent" and severely limit our use of concessions or incentives to work with renters to help them find housing or encourage them to not move.

This proposal was brought forward without any stakeholder input or review. Our company is very concerned that this proposal will deter a landlord of a unit subject to the CSFRA from issuing concessions or working with tenants to ease the cost of moving into a unit. Concessions are a key tool we use to fill vacant units and reduce the upfront costs tenants must pay when moving into a new rental home. The proposed regulation, as drafted, discourages us from this practice and, in many respects, contradicts the stated goals of the CSFRA.

Our company is committed to providing quality housing to Mountain View residents. We hope the RHC will consider a new model of stakeholder engagement and work to convene rental housing providers when new regulations are proposed and seek feedback prior to bringing them forward to the RHC for ratification. Going forward, we ask that the RHC staff convene stakeholders before putting items like this on the agenda so we have a chance to provide input on how these regulations affect housing providers, our business operations, and our residents with the goal of helping the RHC draft and adopt regulations that work for both landlords and tenants.

We urge you to reject the proposed regulation which will hurt rental housing providers and tenants, alike. At a minimum, however, we ask that you defer the proposed amendment to Chapter 2 of the CSFRA Regulations on the March 28,

2022 RHC agenda to engage with stakeholders and evaluate the legal, operational, and practical impacts of this proposal.

Sincerely,

Ron Granville, CPM®
CEO
Woodmont Real Estate Services
1050 Ralston Avenue | Belmont | CA | 94002
(p) 650.802.1653 | (f) 650.591.4577
rgranville@wres.com www.wres.com
BRE License No. 00688241

From: Nazar Elwazir <nelwazir@eqr.com>
Sent: Monday, March 28, 2022 1:24 PM
To: Rental Housing Committee <RHC@mountainview.gov>; susynalmond@yahoo.com; matt.grunewald.rhc@gmail.com; nmhl.rhc@gmail.com; julian.pardo.de.zela@gmail.com; emily00@gmail.com; grosas730@gmail.com; ktiedemann@goldfarblipman.com; McCarthy, Kimbra <Kimbra.McCarthy@mountainview.gov>; Quinn, Jannie <Jannie.Quinn2@mountainview.gov>; van Deursen, Anky <Anky.vanDeursen@mountainview.gov>
Subject: Agenda Item #7.3 – Draft Amendments to Chapter 2 of CSFRA Regulations

Subject Line: Agenda Item #7.3 – Draft Amendments to Chapter 2 of CSFRA Regulations

Dear Chair Almond and Committee Members,

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Sincerely,

Nazar

Nazar Elwazir
First Vice President - Investments
415-767-7179
nelwazir@eqr.com

Equity Residential
333 Third Street Suite 210
San Francisco, CA 94107

EquityResidential.com| *live remarkably*

From: Karen Bowman <KBowman@Sares-Regis.com>
Sent: Monday, March 28, 2022 1:35 PM
To: Rental Housing Committee <RHC@mountainview.gov>; susynalmond@yahoo.com; matt.grunewald.rhc@gmail.com; nmhl.rhc@gmail.com; julian.pardo.de.zela@gmail.com; emily00@gmail.com; grosas730@gmail.com; ktiedemann@goldfarblipman.com; Quinn, Jannie <Jannie.Quinn2@mountainview.gov>; van Deursen, Anky <Anky.vanDeursen@mountainview.gov>; McCarthy, Kimbra <Kimbra.McCarthy@mountainview.gov>
Cc: Joshua Howard <JHoward@caanet.org>
Subject: Agenda Item #7.3 – Draft Amendments to Chapter 2 of CSFRA Regulations

Dear Chair Almond and Committee Members,

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We urge you to reject the proposed regulation which will hurt rental housing providers and tenants, alike. At a minimum, however, we ask that you defer the proposed amendment to Chapter 2 of the CSFRA Regulations on the March 28, 2022, RHC agenda to engage with stakeholders and evaluate the legal, operational, and practical impacts of this proposal.

Sincerely,

Karen Bowman

KAREN BOWMAN, CPM | Vice President of Operations

1900 S. Norfolk, Suite 105, San Mateo, CA 94403
650-539-0547 x102 (O) | 650-294-8459 (D)

kbowman@sares-regis.com

SRG RESIDENTIAL

From: Bob Talbott <btalbott@blvdresidential.com>
Sent: Monday, March 28, 2022 2:03 PM
To: Rental Housing Committee <RHC@mountainview.gov>; susynalmond@yahoo.com; matt.grunewald.rhc@gmail.com; nmhl.rhc@gmail.com; julian.pardo.de.zela@gmail.com; emily00@gmail.com; grosas730@gmail.com; ktiedemann@goldfarblipman.com; McCarthy, Kimbra <Kimbra.McCarthy@mountainview.gov>; Quinn, Jannie <Jannie.Quinn2@mountainview.gov>; van Deursen, Anky <Anky.vanDeursen@mountainview.gov>
Cc: Joshua Howard <jhoward@caanet.org>; Scott Mencaccy <smencaccy@blvdresidential.com>; Yaakov Strauss <ystrauss@blvdresidential.com>; Sabrina Cosentino <scosentino@blvdresidential.com>
Subject: Agenda Item #7.3 – Draft Amendments to Chapter 2 of CSFRA Regulations

Dear Chair Almond and Committee Members,

We manage 4 apartment communities in Mountain View and I am deeply troubled by the Rental Housing Committee's (RHC) proposal to re-define "base rent" and severely limit our use of concessions or incentives to work with renters to help them find housing or encourage them to not move.

As this proposal was brought forward without any stakeholder input or review it has taken us by surprise. Our company is very concerned that this proposal, as drafted, will ability to make use of a valuable leasing tool. We use concessions lease vacant apartments and to reduce the upfront costs residents must pay when moving into a new rental home. They have been vitally important to us during the past two years during the pandemic as we struggled to re-lease apartments vacated by workers who left the area to work remotely. The proposed regulation, as drafted, discourages us from this practice and, in many respects, contradicts the stated goals of the CSFRA.

Our company is committed to providing quality housing to Mountain View residents. We hope the RHC will consider a new model of stakeholder engagement and work to convene rental housing providers when new regulations are proposed and seek feedback prior to bringing them forward to the RHC for ratification. Going forward, we ask that the RHC staff convene stakeholders before putting items like this on the agenda so we have a chance to provide input on how these regulations affect housing providers, our business operations, and our residents with the goal of helping the RHC draft and adopt regulations that work for both landlords and tenants.
We urge you to reject the proposed regulation which will hurt rental housing providers and tenants, alike. At a minimum, however, we ask that you defer the proposed amendment to Chapter 2 of the CSFRA Regulations on the March 28, 2022 RHC agenda to engage with stakeholders and evaluate the legal, operational, and practical impacts of this proposal.

Thank you.

Robert C. Talbott
Chief Executive Officer

BLVD RESIDENTIAL

T: 650.328.5050
E: btalbott@blvdresidential.com
4080 Campbell Ave.
Menlo Park, CA 94025
DRE#:1145332

From: Andrew Bonin <abonin@eqr.com>
Date: March 28, 2022 at 2:26:51 PM PDT
To: Rental Housing Committee <RHC@mountainview.gov>, susynalmond@yahoo.com, matt.grunewald.rhc@gmail.com, nmhl.rhc@gmail.com, julian.pardo.de.zela@gmail.com, emily00@gmail.com, grosas730@gmail.com, KTiedemann@goldfarblipman.com, "McCarthy, Kimbra" <Kimbra.McCarthy@mountainview.gov>, "Quinn, Jannie" <Jannie.Quinn2@mountainview.gov>, "van Deursen, Anky" <Anky.vanDeursen@mountainview.gov>
Cc: Joshua Howard <jhoward@caanet.org>
Subject: Agenda Item #7.3 – Draft Amendments to Chapter 2 of CSFRA Regulations

Dear Chair Almond and Committee Members,

As a rental housing provider in Mountain View, I am deeply troubled by the Rental Housing Committee's (RHC) proposal to re-define "base rent" and severely limit our use of concessions or incentives to work with renters to help them find housing or encourage them to not move.
This proposal was brought forward without any stakeholder input or review. Our company is very concerned that this proposal will deter a landlord of a unit subject to the CSFRA from issuing concessions or working with tenants to ease the cost of moving into a unit. Concessions are a key tool we use to fill vacant units and reduce the upfront costs tenants must pay when moving into a new rental home. The proposed regulation, as drafted, discourages us from this practice and, in many respects, contradicts the stated goals of the CSFRA.

Our company is committed to providing quality housing to Mountain View residents. We hope the RHC will consider a new model of stakeholder engagement and work to convene rental housing providers when new regulations are proposed and seek feedback prior to bringing them forward to the RHC for ratification. Going forward, we ask that the RHC staff convene stakeholders before putting items like this on the agenda so we have a chance to provide input on how these regulations affect housing providers, our business operations, and our residents with the goal of helping the RHC draft and adopt regulations that work for both landlords and tenants.

We urge you to reject the proposed regulation which will hurt rental housing providers and tenants, alike. At a minimum, however, we ask that you defer the proposed amendment to Chapter 2 of the CSFRA Regulations on the March 28, 2022 RHC agenda to engage with stakeholders and evaluate the legal, operational, and practical impacts of this proposal.

Best,
Andrew

Andrew Bonin
VP, Investments
925.325.4146 cell
abonin@eqr.com

Equity Residential
333 3rd Street, Ste 210
San Francisco, CA 94107

EquityResidential.com| *live remarkably*

From: Michael Pierce <Michael.Pierce@eprodesse.com>
Sent: Monday, March 28, 2022 2:50 PM
To: Rental Housing Committee <RHC@mountainview.gov>; susynalmond@yahoo.com; matt.grunewald.rhc@gmail.com; nmhl.rbc@gmail.com; julian.pardo.de.zela@gmail.com; emily00@gmail.com; grosas730@gmail.com; ktiedemann@goldfarblipman.com; kimba.mccarthy@mountainview.gov; Quinn, Jannie <Jannie.Quinn2@mountainview.gov>; anky.vanduerssen@mountainview.gov
Cc: Joshua Howard <JHoward@caanet.org>
Subject: Agenda Item #7.3 - Draft Amendments to Chapter 2 of CSFRA Regulations

Dear Rental Housing Committee Chair Almond & Committee Members,

We are a rental housing provider in Mountain View, and I am deeply troubled by the Rental Housing Committee's proposal to re-define "base rent" and severely limit our use of concessions or incentives to work with renters to help them find housing or encourage them to not move.

This proposal was brought forward without the opportunity for us and other stakeholders to provide input or review and comment in detail. Our company is very concerned that this proposal will deter us and other landlords of units subject to the CSFRA from issuing concessions or working with tenants to ease the cost of moving into a unit. Concessions are a key tool we use to fill vacant units and reduce the upfront costs tenants must pay when moving into a new rental home. The proposed regulation, as drafted, discourages us from this practice and, in many respects, contradicts the stated goals of the CSFRA.

Our company is committed to providing quality housing to Mountain View residents. We hope the Rental Housing Committee will consider a new model of stakeholder engagement and work to convene rental housing providers when new regulations are proposed and seek feedback prior to bringing them forward to the Rental Housing Committee for ratification. Going forward, we ask that the staff for the Rental Housing Committee convene stakeholders before putting items like this on the agenda so that we have a chance to provide input on how these regulations affect housing providers like us. Making these changes without housing provider input will drastically affect our business operations and our residents, and can negatively impact the goal of helping the Rental Housing Committee draft and adopt regulations that work for both landlords and tenants.

We urge you to reject the proposed regulation which will hurt rental housing providers and tenants, alike. At a minimum, however, we ask that you defer the proposed amendment to Chapter 2 of the CSFRA Regulations on the March 28, 2022 Rental Housing Committee's agenda to engage with stakeholders like us and evaluate the legal, operational, and practical impacts of this proposal.

Very truly yours,

Michael

Michael D. Pierce, President
CA DRE License #01190465
Prodesse Property Group
Prodesse Investments, Inc.
1065 E. Hillsdale Boulevard, Suite 317
Foster City, CA 94404
(650) 578-9661 ext. 222
(650) 578-9009 fax

Michael.Pierce@eProdesse.com

Visit our rental portal at http://residential.eprodesse.com

From: Oceania Vaillancourt <ovaillancourt@eqr.com>
Sent: Monday, March 28, 2022 2:56 PM
To: Rental Housing Committee <RHC@mountainview.gov>; susynalmond@yahoo.com; matt.grunewald.rhc@gmail.com; nmhl.rhc@gmail.com; julian.pardo.de.zela@gmail.com; emily00@gmail.com; grosas730@gmail.com; ktiedemann@goldfarblipman.com; McCarthy, Kimbra <Kimbra.McCarthy@mountainview.gov>; Quinn, Jannie <Jannie.Quinn2@mountainview.gov>; van Deursen, Anky <Anky.vanDeursen@mountainview.gov>
Cc: jhoward@caanet.org
Subject: Agenda Item #7.3 – Draft Amendments to Chapter 2 of CSFRA Regulations

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Our company is committed to providing quality housing to Mountain View residents. We hope the RHC will consider a new model of stakeholder engagement and work to convene rental housing providers when new regulations are proposed and seek feedback prior to bringing them forward to the RHC for ratification. Going forward, we ask that the RHC staff convene stakeholders before putting items like this on the agenda so we have a chance to provide input on how these regulations affect housing providers, our business operations, and our residents with the goal of helping the RHC draft and adopt regulations that work for both landlords and tenants.

We urge you to reject the proposed regulation which will hurt rental housing providers and tenants, alike. At a minimum, however, we ask that you defer the proposed amendment to Chapter 2 of the CSFRA Regulations on the March 28, 2022 RHC agenda to engage with stakeholders and evaluate the legal, operational, and practical impacts of this proposal.

Sincerely,

Oceania Vaillancourt
Assistant Vice President - Property Management
415.767.7181

Equity Residential
333 Third Street, Suite 210
San Francisco, CA 94107

EquityResidential.com - *live remarkably*

From: Jeff Zell <jeff@zell.com>
Sent: Monday, March 28, 2022 3:11 PM
To: matt.grunewald.rhc@gmail.com; grosas730@gmail.com; emily00@gmail.com; julian.pardo.de.zela@gmail.com; nmhl.rhc@gmail.com; susynalmond@yahoo.com; Rental Housing Committee <RHC@mountainview.gov>
Subject: RHC Meeting

Dear Chair Almond and Committee Members,
As a rental housing provider in Mountain View, I am deeply troubled by the Rental Housing Committee's (RHC) proposal to re-define "base rent" and severely limit our use of concessions or incentives to work with renters to help them find housing or encourage them to not move.
This proposal was brought forward without any stakeholder input or review. Our company is very concerned that this proposal will deter a landlord of a unit subject to the CSFRA from issuing concessions or working with tenants to ease the cost of moving into a unit. Concessions are a key tool we use to fill vacant units and reduce the upfront costs tenants must pay when moving into a new rental home. The proposed regulation, as drafted, discourages us from this practice and, in many respects, contradicts the stated goals of the CSFRA.
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We urge you to reject the proposed regulation which will hurt rental housing providers and tenants, alike. At a minimum, however, we ask that you defer the proposed amendment to Chapter 2 of the CSFRA Regulations on the March 28, 2022 RHC agenda to engage with stakeholders and evaluate the legal, operational, and practical impacts of this proposal.
Sincerely,
Jeff Zell

From: Regan Avery [redacted]
Date: March 28, 2022 at 3:34:00 PM PDT
To: Rental Housing Committee <RHC@mountainview.gov>, susynalmond@yahoo.com, matt.grunewald.rhc@gmail.com, nmhl.rhc@gmail.com, julian.pardo.de.zela@gmail.com, emily00@gmail.com, grosas730@gmail.com, KTiedemann@goldfarblipman.com, "McCarthy, Kimbra" <Kimbra.McCarthy@mountainview.gov>, "Quinn, Jannie" <Jannie.Quinn2@mountainview.gov>, "van Deursen, Anky" <Anky.vanDeursen@mountainview.gov>
Subject: RHC Item #7.3 - Draft Amendments to Chapter 2 of CSFRA Regulations

Dear RHC Committee Members & Chair Almond:
I am Co-President of ACCO Management/Avery Construction, a company that has been based in Mountain View since 1960 and owns and manages over 500 apartments in the city.
I am very concerned about the Committee's proposal (Item 7.3) to require us to amortize our move-in special monies into our "base rent" calculations. This proposal would be an administerial nightmare for our company to the extent that we would no longer offer these specials (which obviously benefit new residents during a time when moving expenses often amount to almost a month's rent). The size of the special varies by market conditions, and I can say we offered a move-in special continuously to some degree since the pandemic began. All incoming residents were grateful for it. The size of the special changed over the last two years no less than 6 times. When you add the fact that at any point in time there is a range of lease terms available, the number of permutations in our resident base that would need these new derivative calculations is massive. I am not aware of any property management software that could do this calculation over our 500 apartments, forcing us to add staff to create and manage a manual accounting system just to determine base rent on an ongoing basis, as well as generate any new lease options/letters (given our software does these calculations based on a resident's current rent rate as shown in the lease).
The regulatory burden in Mountain View for housing providers is extreme relative to other local cites, and this proposal would add to that distinction. Again, this proposal is not a minor technical adjustment. This proposal would force us to eliminate the specials for new residents who rely on these concessions to afford their choice in an apartment home.
Lastly, was the apartment industry consulted prior to this proposal being put on the agenda? If not, I ask that the RHC reject this proposal. Going forward I ask the RHC consult local housing industry members before putting forth proposals that can have potentially detrimental consequences to the rental community for perpetuity.
Sincerely,
Regan Avery
Co-President
ACCO Management

From: Heather Martinez <hmartinez1@eqr.com>
Sent: Monday, March 28, 2022 3:36 PM
To: Rental Housing Committee <RHC@mountainview.gov>; susynalmond@yahoo.com; matt.grunewald.rhc@gmail.com; nmhl.rhc@gmail.com; julian.pardo.de.zela@gmail.com; emily00@gmail.com; grosas730@gmail.com; ktiedemann@goldfarblipman.com; McCarthy, Kimbra <Kimbra.McCarthy@mountainview.gov>; Quinn, Jannie <Jannie.Quinn2@mountainview.gov>; van Deursen, Anky <Anky.vanDeursen@mountainview.gov>
Cc: jhoward@caanet.org
Subject: Agenda Item #7.3 – Draft Amendments to Chapter 2 of CSFRA Regulations

Dear Chair Almond and Committee Members,

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Our company is committed to providing quality housing to Mountain View residents. We hope the RHC will consider a new model of stakeholder engagement and work to convene rental housing providers when new regulations are proposed and seek feedback prior to bringing them forward to the RHC for ratification. Going forward, we ask that the RHC staff convene stakeholders before putting items like this on the agenda so we have a chance to provide input on how these regulations affect housing providers, our business operations, and our residents with the goal of helping the RHC draft and adopt regulations that work for both landlords and tenants.

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Sincerely,

Heather Martinez
Community Manager
650.967.1424

Reserve at Mountain View
870 E. El Camino Real Mountain View, CA 94040

EquityApartments.com - *live remarkably*

From: Yvonne Hill <yhill1@eqr.com>
Sent: Monday, March 28, 2022 3:43 PM
To: Rental Housing Committee <RHC@mountainview.gov>; susynalmond@yahoo.com; matt.grunewald.rhc@gmail.com; nmhl.rhc@gmail.com; julian.pardo.de.zela@gmail.com; emily00@gmail.com; grosas730@gmail.com; ktiedemann@goldfarblipman.com; McCarthy, Kimbra <Kimbra.McCarthy@mountainview.gov>; Quinn, Jannie <Jannie.Quinn2@mountainview.gov>; van Deursen, Anky <Anky.vanDeursen@mountainview.gov>
Cc: jhoward@caanet.org
Subject: Agenda Item #7.3 – Draft Amendments to Chapter 2 of CSFRA Regulations

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Respectfully,

Yvonne Hill, ARM
Regional Manager | San Francisco

Equity Residential
333 Third Street, Suite 210
San Francisco, CA 94107
650.246.4975 office

Equity Residential.com - live remarkably

From: Shanna Dion <sdion@eqr.com>
Sent: Monday, March 28, 2022 3:59 PM
To: Rental Housing Committee <RHC@mountainview.gov>; susynalmond@yahoo.com; matt.grunewald.rhc@gmail.com; nmhl.rhc@gmail.com; julian.pardo.de.zela@gmail.com; emily00@gmail.com; grosas730@gmail.com; ktiedemann@goldfarblipman.com; McCarthy, Kimbra <Kimbra.McCarthy@mountainview.gov>; Quinn, Jannie <Jannie.Quinn2@mountainview.gov>; van Deursen, Anky <Anky.vanDeursen@mountainview.gov>
Cc: Joshua Howard <JHoward@caanet.org>
Subject: Agenda Item #7.3 – Draft Amendments to Chapter 2 of CSFRA Regulations

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Sincerely,

Shanna Dion

Vice President Property Management | **San Francisco**
333 Third Street, Suite 210
San Francisco CA 94107
Ph: 415-767-7175

EquityResidential.com - *live remarkably*

March 28, 2022

City of Mountain View
Rental Housing Committee
Susyn Almond, Chair
Nicole Haines-Livesay, Vice Chair
Julian Pardo de Zela
Emily Ramos
M. Guadalupe Rosas
Matthew Grunewald, Alternate
500 Castro Street
Mountain View, California 94041

VIA PDF E-MAIL
rhc@mountainview.gov
susynalmond@yahoo.com
nmhl.rhc@gmail.com
julian.pardo.de.zela@gmail.com
emily00@gmail.com
grosas730@gmail.com
matt.grunewald.rhc@gmail.com

Re: Proposed Amendment to CSFRA Regulations, Chapter 2, to Change the Definition of "Base Rent"

Dear Chair Almond and Members of the Committee:

I write on behalf of the California Apartment Association to object to the Committee's proposed adoption of a new definition of "base rent" that would exclude temporary rent concessions or rebates from the base rent calculation. That regulation, despite being characterized by the staff report as merely a "clarification" of existing law, is actually an improper substantive alteration of the CSFRA.

A. The Regulation Is Inconsistent with the Plain Language of the CSFRA.

Currently "base rent" for tenancies commencing after October 19, 2015, is defined by Section 1702(b)(2)[1] as "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."

Essential to a proper understanding of this term, however, is the accompanying definition of "rent," which is "[a]ll *periodic* payments

[1] Section references herein are to the CSFRA unless otherwise noted.

[CES2223.010]

and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises and attendant Housing Services, including all payment and consideration demanded or paid for parking, Utility Charges, pets, furniture, and/or subletting." (Section 1702(p), emphasis added.)

The proposed Regulation would define the initial rental rate as the sum total of compensation across the entire initial term, whereas the Ordinance itself defines "rent" with respect to individual "periods" (typically months) within the initial term of the tenancy. Thus—contrary to the proposed regulatory amendment—the construction of "base *rent*" that more fully comports with the language of these two provisions of the Ordinance is that if a tenant is lawfully charged and "actually" pays a given rental rate for any "period[]" within the initial term, that rental rate is the "base rent." Thus, if a tenant's rent is $1,000 per month and the tenant pays that amount for ten of the twelve months but is given a concession for two months, the "base rent" would nevertheless be $1,000 per month.

To hold otherwise would lead to absurd and deeply unfair results, the avoidance of which is a fundamental rule of statutory construction. *Collins v. Woods*, 158 Cal. App. 3d 439, 443 (1984) ("We must avoid this interpretation as it leads to an unfair and absurd result.").

For example, if a tenant defaults on a given month's rental payment, and therefore does not "actually" pay it, is the tenant to be rewarded, and the landlord punished, for that failure by an ongoing limitation on the landlord's ability to raise rental rates in subsequent years? While such a scenario might normally seem implausible, the last two years have demonstrated its salience. State law has prevented landlords from evicting tenants who default on rent in many instances, at least if those tenants pay 25% of the rent due. Civ. Code § 1179.03(g)(2)(B). If a tenant paid the first six months of rent under a new tenancy, and from there on out paid only the minimum necessary to

avoid eviction, the proposed regulation would purport to reduce the unit's "base rent" by the tenant's deficiency, effectively compounding the effect of that failure year after year, by limiting the amount by which the landlord can increase rents in subsequent years.

As another example, it is well-established that tenants are permitted to withhold some or all of the rent due for the duration of any period during which there are substantial habitability issues with the unit, so long as the issues are not attributable to the tenant or the tenant's guest. *See Green v. Superior Court of San Francisco*, 10 Cal. 3d 616 (1974). But such issues need not be attributable to malfeasance by the landlord either, and it would be manifestly unfair to punish the landlord in perpetuity for temporary harm to a rental unit. For example, if a rental unit is damaged by a fire through no fault of the landlord or tenant, and it takes two months to fully remedy the damage, the tenant may be entitled to a reduction in rent during that period. That reduction is justifiable on a temporary basis as a means of compensation for the reduced consideration that the tenant received under the lease during those months. *See id.*; Section 1710(c). But the Committee's proposed Regulation would effectively make that reduction permanent—it would automatically[2] reduce the landlord's ability to lawfully increase rents in *every subsequent year* by 16.67% (two months divided by twelve months). This, too, would be an unfair and absurd result.

Perhaps in recognition of such problems, staff proposes another subtle amendment to Chapter 2, section (b)(2), of the Committee's regulations. Currently, that regulation tracks the language of the CSFRA itself exactly, providing that "[t]he term 'initial rental rate' means only the amount of Rent actually paid by the Tenant for the initial term of the tenancy." The proposed amendment, however, alters this to provide, "The term 'initial rental rate' means only the amount of Rent

[2] This automatic effect further highlights the inconsistency with the CSFRA. Rent reductions for a decrease in housing services are to be granted by petition. (Section 1710(c).) By enacting the amended Regulation, the Committee would bypass this petitioning requirement, at least in a subset of cases.

actually required to be paid by the Tenant for the initial term of the tenancy." (Emphasis added.)

The problems with this amendment, however, are two-fold. First, while this modification *might* address the failure to pay rent during the COVID period, discussed above, it doesn't necessarily solve the "withholding" example. And, more importantly, this regulatory change conflicts with the actual text of the CSFRA itself. "An agency invested with quasi-legislative power to adopt regulations has no discretion to promulgate regulations that are inconsistent with the governing statute, in that they '"alter or amend the statute or enlarge or impair its scope."' *Colmenares v. Braemar Country Club, Inc.*, 29 Cal. 4th 1019, 1029 (2003) (quoting *Carmel Valley Fire Protection Dist. v. State of Cal.,* 25 Cal. 4th 287, 300 (2001)).

That Staff felt the need to add the highlighted language seems to hint at a recognition of the problems that their proposal to average rent across an entire year creates, but that is a problem of the Regulation's own making. Focusing on whether a given rental rate was lawfully paid in any given "period" during the initial term of the tenancy, as Section 1702(p), directs, avoids these problems in the first place.

Simply put, the proposed amendments are inconsistent with the plain language of the CSFRA itself and should be rejected.

B. Retroactive Application of the Amendment Violates Housing Providers' Right to Due Process.

We are concerned that Staff's characterization of this amendment as merely a "clarification" is an attempt to justify its retroactive application. But any effort to apply it retroactively, when landlords were not reasonably on notice of this unprecedented interpretation, would work a fundamental unfairness in violation of due process. *See, e.g., Myers v. Philip Morris Cos., Inc.*, 28 Cal. 4th 828, 845-47 (2002) (declining to apply a statute retroactively where it would raise serious constitutional questions under the due process clause) (citing *Eastern Enters. v. Apfel*, 524 U.S. 498, 548-49 (1998) (Kennedy, J., concurring)); *Eastern Enters.*, 524 U.S. at 557 (Kennedy, J., concurring)

("administrative order [w]as 'arbitrary, capricious, an abuse of discretion,' [citation] because 'the inequity of . . . retroactive policy making . . . is the sort of thing our system of law abhors' (ellipses in original) (quoting *Nat'l Lab. Rel. Bd. v. Guy F. Atkinson Co.*, 195 F.2d 141, 149, 151 (9th Cir. 1952))). Retroactive application of the proposed regulatory amendment would call into question as many as *seven years* of rent increases, imposed in good faith, based on an interpretation that landlords cannot reasonably have been expected to anticipate.[3]

We recognize that in some narrow circumstances, regulations that seek to "clarify" the law may be given retroactive effect if they are (2) adopted shortly after the interpretive question arises and (2) close enough in time to reasonably suggest that the "clarification" comports with the intent of the original enacting body, *see W. Sec. Bank v. Superior Court*, 15 Cal. 4th 232, 243-44 (1997); *Hunt v. Superior Court*, 21 Cal. 4th 984, 1008 (1999). Those conditions are not present here, given that seven years have elapsed since the adoption of the CSFRA. *See, e.g., Peralta Cmty. Coll. Dist. v. Fair Empl. & Hous. Comm'n,* 52 Cal. 3d 40, 52 (1990) (rejecting legislative attempt, during 1987-1988 session, to "clarify" the meaning of former § 12970 of the Fair Employment & Housing Act, adopted in 1980, *see* Cal. Stats. 1980, ch. 992, § 4).

And even when such circumstances are present, "a legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute. Ultimately, the interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts." *W. Sec. Bank*, 15 Cal. 4th at 244.

Moreover, such purported "clarifications" will not be applied retroactively if they fill gaps that "had not previously been spelled out" by elaborating in detail on topics about which the law was previously silent. *See Lee v. Amazon.com, Inc.*, __ Cal. App. 5th __, No. A158275,

[3] The staff report indicates that some landlords and tenants have been advised in accordance with the proposed regulatory amendment when they "have reached out with questions." At best, this would amount to an improper "underground regulation" and cannot provide the notice to landlords more generally that the due process clause would require.

2022 Cal. App. LEXIS 202, at *46-48 (Ct. App. Mar. 11, 2022) (rejecting retroactive application of purportedly "clarifying" regulations of California Environmental Protection Agency's Office of Environmental Health Hazard Assessment).

That is undeniably the case here. Landlords in Mountain View have not previously been apprised of the fact that the monthly rent that they lawfully charged tenants during the initial term of the tenancy, in accordance with the Costa-Hawkins Rental Housing Act, Civ. Code § 1954.50 et seq., and which the tenant "actually paid" (Section 1702(b)) as one of the "*periodic* payments" of "rent" (Section 1702(p)), would be subject to reduction based on temporary concessions or—especially—rebates. This is a substantive, unanticipated change in the law that would work a fundamental unfairness if applied to rent increases imposed prior to the effective date of the Regulation.

C. Conclusion.

We urge you to reject the proposed Regulation, which is inconsistent with the plain language of the CSFRA. At the very least, however, we urge you to delay consideration of the amendment and conduct stakeholder outreach to work towards a regulation that is more equitable and does not deprive housing providers of their right to due process.

Sincerely,

Christopher E. Skinnell

cc: Kimbra McCarthy, City Manager (kimbra.mccarthy@mountainview.gov)
Jannie Quinn, City Attorney (jannie.quinn@mountainview.gov)
Karen Tiedemann, Counsel to the RHC (ktiedemann@goldfarblipman.com)
Anky van Duersen, Staff to the RHC (Anky.vanDeursen@mountainview.gov)

PROMETHEUS

March 28, 2022

VIA EMAIL

City of Mountain View
Rental Housing Committee rhc@mountainview.gov
Susyn Almond, Chair susynalmond@yahoo.com
Nicole Haines-Livesay, Vice Chair nmhl.rhc@gmail.com
Julian Pardo de Zela julian.pardo.de.zela@gmail.com
M. Guadalupe Rosas grosas730@gmail.com
Matthew Grunewald, Alternate matt.grunewald.rhc@gmail.com
Emily Ramos emily00@gmail.com

Dear Chair Almond and Members of the Rental Housing Committee:

We write in opposition to the proposed amendment to the CSFRA Regulations, Chapter 2 regarding the definition and calculation of Base Rent, on public policy and legal grounds.

From a public policy perspective, the proposed amendment makes housing *less available* and *less secure* for tenants as it dis-incentivizes housing providers from working with their tenants to adjust rent to their tenants' situations. It punishes housing providers who have voluntarily provided rental relief to help tenants during the pandemic or for other reasons. Moreover, it ignores the fact that concessions remove barriers to entry to housing by reducing the amount of money required at move in.

Concessions undeniably increase affordability and this proposed amendment to CSFRA will cause housing providers to cease offering concessions. The proposed amendment therefore directly opposes the key purposes of CSFRA: "The purpose of [CSFRA] is to promote neighborhood and community stability, healthy housing, and *affordability for renters*." (Section 1700 Title and Purpose, emphasis added.) CSFRA also recognizes that relocation costs are high, and rent concessions like first month's free rent reduce the cost of relocating. (See, for example, Section 1700 Findings, subpart (s): "WHEREAS nearly all rental housing requires that prospective tenants pay three months' rent up front in order to secure a lease - generally representing the first month's rent, last month's rent, and security deposit, imposing accumulated relocation expenses on a displaced household frequently in excess of $10,000.00.")

These public policy considerations led the California Legislature to exclude discounts, incentives, concessions and credits in determining the gross rental amount in the state-wide rent control law (AB 1482). Los Angeles likewise excludes concessions for these same policy reasons. It does not appear that these important policy considerations have been addressed or even considered by RHC.

From a legal perspective, the proposed amendment exceeds the RHC's authority, conflicts with the intent and purpose of the CSFRA, conflicts with the plain language of CSFRA, violates due process and unconstitutionally interferes with the contractual rights of the parties to the lease.

The RHC's authority is to promulgate rules and regulations, not to add new restrictions or rewrite CSFRA. Section 1709 (d) defining RHC's powers and duties limits RHC's authority to "establish rules and regulations for administration and enforcement of this article." Nowhere in CSFRA are concessions addressed, in fact that term is not used at all. The proposed amendment *rewrites* CSFRA by including "concessions" into an "averaged" rent and neither of these concepts is included in CSFRA's definition of Base Rent (Section 1702(b)):

> "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."

This attempt to re-define Base Rent should be rejected because, for leases that include concessions, the "initial rental rate" *is* the monthly gross rent – it does not include concessions because those concessions are a credit or rebate on the initial rental rate. That is the understanding of the parties to the contract – both agree that the rental rate is a certain amount and the parties agree that there will be a rebate or credit given. The "amount of rent actually paid by the Tenant" is the contractual monthly rental amount that is due and payable by the Tenant per the Lease – concessions are not part of the calculus. To take the Staff Report's example of $1000 monthly rent with two months' free rent to its logical end point, if Tenant pays only the "averaged" amount including concessions, and therefore after the first two months of "free rent" pays only $833.33 a month, rather than the $1000 per month, there is of course a default under the terms of the lease because the monthly rent due is $1000 not $833.33. Indeed, to take the argument further, if Base Rent is limited to the amount paid regardless of the definition of Rent, logic and the parties' intent when entering into the lease, then a tenant deciding to skip a rent payment would force a lowered calculation of Base Rent, which is surely not intended by CSFRA. Had CSFRA intended "Base Rent" to include *reductions* to rental amount set forth in the lease to account for concessions, this would have been written into CSFRA, but it was not and the RHC's attempt to do so now exceeds RHC's authority.

In fact, the definition of "Rent" in CSFRA argues against using concessions to *reduce* Base Rent and instead includes non-monetary consideration paid by tenant to housing provider as part of Rent. The tenant moving into housing provider's housing in exchange for consideration, including a concession like free rent is non-monetary consideration which is easily monetized to include the value of the free rent "paid" by tenant. The definition of Rent includes "All periodic payments and *all nonmonetary consideration* including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises and attendant Housing Services, including all payment and consideration demanded or paid for parking, Utility Charges, pets, furniture, and/or subletting." Under this definition, and reading CSFRA as a harmonious whole whenever reasonable pursuant to the principles of statutory interpretation, the value of tenant moving into the unit or remaining in the unit in

exchange for a rent concession is non-monetary consideration received by landlord and must be added to the "amount of rent actually paid" by tenant.

Finally, the proposed amendment appears to be retroactive, applying to tenancies after October 19, 2015. Not only is this a denial of due process, it also will cause confusion and uncertainty for tenants and housing providers alike and raise the question of whether rent roll backs will apply. Therefore, at a minimum, and without waiving any of the objections herein, the amendment if adopted must be prospective, effective only from date of adoption forward.

For all of the foregoing reasons, we request that the proposed amendment be rejected altogether, or alternatively, that it be tabled to allow for additional analysis, legal review and consideration, including adequate public notice and comment as required by due process.

Very truly yours,

Theresa J McFarland

Theresa "Tessa" McFarland
General Counsel

cc: Jannie Quinn, Esq., City Attorney (jannie.quinn@mountainview.gov)
Karen Tiedemann, Esq., Special Counsel to the RHC (ktiedemann@goldfarblipman.com)
Nazanin Salehi, Esq., Special Counsel to the RHC (nsalehi@goldfarblipman.com)
Kimbra McCarthy, City Manager (kimbra.mccarthy@mountainview.gov)
Anky van Duersen, Staff to RHC (Anky.vanDeursen@mountainview.gov)

VASONA
MANAGEMENT
Inc.

March 28, 2022

Dear Chair Almond and Committee Members,

I have just been made aware of a proposal to re-deinfe "base rent" and severely limit our use of concession or incentives to with renters to help them find housing or encourage them to not move.

This proposal was a complete surprise and seems to be considered without any stakeholder input or reviews. This proposal will discourage Landlords from providing rental concessions or incentives to needy renters by limiting and curtailing the legal rent increase limit. Concessions are a key tool Landlords use to fill vacant units, and in certain cases, incent resident to stay plus reduce upfront costs for new residents. The proposed regulation, as drafted, discourages housing providers from offering this tool and seems to contradict the stated goals of the CSFRA. Plus, in all honesty, it may not be entirely legal.

Please consider the rejection of the proposed regulation which will hurt both rental housing providers and well as residents. At an absolute minimum, this proposal requires discussion with all stakeholders.

Sincerely,

Killian Byrne

Vasona Management

1500 E. Hamilton Ave., Suite 210 Campbell, CA 95008
Phone (408) 354-4200 FAX (408) 354-7653

California Apartment Association
1530 The Alameda, Suite 100
San Jose, CA 95126
408.342.3500 ▪ caanet.org

March 28, 2022

Via Electronic Mail Only

Susyn Almond
Chairperson
Mountain View Rental Housing Committee
500 Castro Street
Mountain View, CA

RE: RHC March 28, 2022 Agenda – Draft Amendments to Chapter 2 of CSFRA Regulations

Dear Chair Almond and Committee Members:

The California Apartment Association (CAA) opposes the proposed amendment to Chapter 2 of the Community Stabilization and Fair Rent Act (CSFRA) Regulations to clarify the definition and calculation of "Base Rent."

This regulation, as drafted, is a monumental shift in policy that is not only ill considered, but also deceivingly framed as nothing more than a technical clarification. The proposed regulation is bad policy that disincentivizes landlords from reducing barriers to housing and is inconsistent with California's statewide rent control law which uses a commonsense approach for calculating Base Rent when a landlord provides a concession.

The amendment is also subject to significant legal scrutiny as it conflicts with the plain language of the CSFRA and infringes upon the procedural due process rights and contracts rights of rental housing providers throughout the City.

The Proposed Regulation Discourages Housing Affordability

The stated purpose of the CSFRA was to reduce displacement and promote community stability. Far from serving these goals, the proposed amendment does the opposite and disincentivizes the use of a key tool to reduce the cost of accessing housing. A tool that, it's worth noting, costs the City nothing. The proposed amendment would, at best, discourage housing providers from working with their residents to remain in their homes by reducing balances owed or reducing the upfront costs for families to move into vacant units through the use of move-in specials. At worst, the regulation penalizes landlords for these practices.

Rent concessions are a critical tool housing providers use to lease-up vacant units and increase access to housing. As the CSFRA itself recognizes, moving can be costly. See CSFRA Section 1701(s), which states in relevant part, "nearly all rental housing requires that prospective tenants pay three months' rent up front in order to secure a lease - generally representing the first month's rent, last month's rent, and security deposit." Rent concessions help to offset these costs,

as they often take the form of a one-time rent discount that minimize the upfront costs a tenant must pay when moving into a new unit.

The proposed amendment penalizes housing providers who offer these one-time bonuses to promote housing stability and security. By adopting the amendment as written, many rental owners will likely discontinue the use of rent concessions in rent negotiations as they will be forced to treat such discounts as permanent reductions rather than a one-time cost. The proposed regulation also discourages housing providers from working with tenants who are struggling, as any reduction in the amount a tenant owes is then considered a permanent rent reduction.

In short, far from serving the CSFRA's goals of making housing more affordable and secure, the proposed regulation punishes housing providers who provide discounts and flexibilities that help renters access and stay in rental housing.

The Proposed Regulation Conflicts with the Plain Language of the CSFRA

In addition to being bad policy that is diametrically opposed to the stated purposes behind the passage of CSFRA – and which is being adopted with zero input from stakeholders – the proposed regulation is also susceptible to serious legal challenges. First, the proposed regulation is not simply a "clarification" as characterized by the staff report but would instead serve to rewrite the definition of "base rent" in a way that is inconsistent with the language of the CSFRA itself.

To be clear, the CSFRA's current definition of base rent does not require that rent concessions, rebates, or discounts offered to a tenant be included in its calculation. Rent concessions, discounts or rebates are nowhere mentioned in the definition of base rent (or anywhere within the CSFRA), nor is there any reference to the monthly averaging calculation as is cited in the proposed regulation. CAA understands that RHC's position is that the definition of base rent has always required the inclusion of rent concessions and the proposed regulation would simply clarify and confirm this requirement. The RHC's own actions, however, belie that conclusion. Indeed, the very fact that the RHC is considering this regulation demonstrates that the current definition of base rent does not currently require the factoring in of rent concessions, or at the very least, is unclear as to whether rent concessions must be included.

Additionally, the CSFRA's definition of base rent suggests, if not requires, rent concessions to <u>not</u> be included in the calculation of base rent. Section 1702(b) provides the Base Rent for tenancies commenced on or after October 19, 2015, is the "initial rent rate charged upon initial occupancy," and that "initial rental rate" means "only the amount of Rent actually paid by the Tenant for the initial term of the tenancy." Additionally, the accompanying definition of "rent," is "[a]ll periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises and attendant Housing Services, including all payment and consideration demanded or paid for parking, Utility Charges, pets, furniture, and/or subletting." (Section 1702(p)).

The definition of "rent" informs what base rent is to include in two important ways. First, base rent includes "all nonmonetary consideration." A concession like free rent is a non-monetary consideration received by a landlord in exchange for the value of a tenant moving into the unit or remaining in the unit. Thus, rent concessions should be added to the "amount of rent actually paid" by the tenant, not discounted from that amount as the proposed regulation would. Second,

the definition of base rent is based on periodic payments, typically months, within the initial term of tenancy. Thus, if a tenant pays their monthly rental rate, even if they do not pay some months because they were given concessions, their base rent is still their monthly rental rate they "actually pay" when they do pay. The base rent in such a circumstance does not turn into an averaged amount, accounting for the concessions, as the proposed regulation and staff report outlines (e.g., a tenant with a monthly rental rate of $1,000 who received two months of rent concessions, still actually pays $1,000 when he or she makes monthly payments; the tenant never "actually paid" $833.33 per month).

Indeed, even Section 1702(b)'s reference to only the rent "actually paid" – which appears to be the authority on which the RHC is relying for the proposed amendment – lends at least as much support to the opposite conclusion as it does to the position taken by the RHC, as it requires the base rent to be adjusted based on what was *not* paid rather than what was *actually* paid. Reducing the base rent by the amount of any concession provided would adjust the base rent based on amounts the tenant did not pay rather than looking to the monthly rental rate actually paid by the tenant. Moreover, taking the RHC's interpretation of this language (i.e. an average of the exact amount tendered by a tenant to the landlord over the entire initial rent term) to its logical end would lead to untenable and unintended results. Specifically, tenants who were delinquent on their rent or otherwise did not pay the full amount of their rent – either without their landlord's approval or because the landlord agreed to write off some portion of delinquent payments – would be rewarded with a lower base rent calculation because they would have "actually paid" less rent. This would be unfair to paying tenants and landlords alike and clearly was not intended by the CSFRA.

All this is to say, the current definition of base rent does not require rent concessions be included in its calculation, and therefore the proposed regulation is in conflict with the CSFRA. "[R]egulations that alter or amend the statute or enlarge or impair its scope are void." (*Physicians & Surgeons Laboratories, Inc. v. Department of Health Services* (1992) 6 Cal.App.4th 968, 982). The proposed regulation should be rejected on this basis.

The Proposed Regulation Could Reopen Seven Years of Rent Increases in Violation of Constitutional Rights

Additionally, the proposed regulation could serve to reopen *seven years* of rent increases issued in good faith, if the rent increases were based on base rents that did not factor in rent concessions. Landlords could also be required to pay rent credits for those seven years if the rent increases are rolled back – which could be a very large sum given the number of years and units owned. Adding insult to injury, landlords could also face administrative penalties, and civil liability, including attorney's fees, for issuing rent increases that are now deemed to not comply with the CSFRA. (Section 1714). Landlords would be put in this fundamentally unfair position through no wrongdoing of their own but because the proposed regulation altered the definition of base rent in a way they could not have reasonably foreseen, and in violation of their constitutionally protected contract and due process rights.

The United States Constitution prohibits the government from passing any law "impairing the [o]bligation of [c]ontracts." (United States Constitution, Article 1, Section 10). The proposed regulation, however, would do just that. The proposed regulation would reopen for negotiation and possible modification seven years of rent increases, despite the fact that the rental rates were agreed to and contracted for in the lease agreements. It is industry standard for leases that include rent concessions, for the "initial rental rate" to be stated as the monthly gross rent. The landlord and tenant understand that there is a contractual monthly amount and concessions are

not included in that amount because the concessions are treated as a credit or rebate on the initial rental rate.

The "threshold inquiry" when evaluating whether a law violates the Contract Clause asks whether the law substantially impairs an existing contractual relationship. (*Energy Reserves Grp., Inc. v. Kansas Power & Light Co.* (1983) 459 U.S. 400, 411). The proposed regulation certainly does that. Indeed, the proposed regulation would render meaningless the agreed to rental rate term in the contractual agreement between the landlord and tenant, allowing that term to now be challenged and modified. Accordingly, the proposed regulation would severely impair landlords' contractual rights to both rely on and enforce the terms of their lease agreements in violation of the Contracts Clause, and should be rejected on this basis.

In addition to infringing on constitutionally protected contract rights, the proposed regulation would work a profound unfairness on landlords in violation of due process. A fundamental pillar of the due process protections afforded by the California and United States Constitution is that before the government can infringe on a person's life, liberty or property interests, a fair procedure must be used - at a minimum reasonable notice and an opportunity to respond must be provided. (Cal. Const., Art, I § 1; U.S. Const. Amend. XIV § 1, *Nasir v. Sacramento County Off. of the Dist. Atty.* (1992) 11 Cal.App.4th 976, 985).

The proposed regulation is poised to significantly impair landlords' property interests without providing adequate procedural protections. Specifically, landlords could be placed in the untenable position of having seven years of rent increases issued in good faith reopened for negotiation, paying rent credits for those seven years in the case of rollbacks, and fighting administrative and civil actions and paying any resulting liability - all through no fault of their own and without any reasonable notice that the RHC would materially alter the definition of base rent. Landlords should not now be punished for this unanticipated change in the law. To do so would be manifestly unfair and violate constitutionally guaranteed due process protections.

State Law Provides a Reasonable Standard to Address Concessions

In 2019, the California State Legislature adopted AB 1482 (Chiu), which established a statewide framework for tenant protections including, but not limited to: (1) statewide rent control that limits rent increases to 5% plus inflation, and (2) eviction protections that apply to most rental properties in the state. Recognizing move-in and lease renewal concessions as a critical and vital tool to promote access to housing and housing stability, AB 1482 included a provision that concessions may be excluded from the calculation of base rent when the landlord calculates a rent increase under AB 1482 so long as these discounts are separately listed and identified in the lease or rental agreement. AB 1482 therefore strikes a reasonable balance by allowing housing providers to preserve their base rent exclusive of one-time discounts or concession, while ensuring transparency by requiring these amounts to be separately identified in the rental agreement.

Although rental units subject to the CSFRA are, in many respects, exempt from the requirements of AB 1482, the RHC should give consideration to the language in AB 1482 which provides a framework for calculating rent increases when a landlord and tenant agree to a concession.

AB 1482 states, in pertinent part, "an owner of residential real property shall not, over the course of any 12-month period, increase the gross rental rate for a dwelling or a unit more than 5 percent plus the percentage change in the cost of living, or 10 percent, whichever is lower, of the lowest gross rental rate charged for that dwelling or unit at any time during the 12 months prior

to the effective date of the increase. *In determining the lowest gross rental amount pursuant to this section, any rent discounts, incentives, concessions, or credits offered by the owner of such unit of residential real property and accepted by the tenant shall be excluded. The gross per-month rental rate and any owner-offered discounts, incentives, concessions, or credits shall be separately listed and identified in the lease or rental agreement or any amendments to an existing lease or rental agreement.*" (emphasis added)

To provide the clarity the RHC is seeking to offer under the proposed amendment to Chapter 2, **CAA recommends that the RHC follow the approach taken by AB 1482 which provides an allowance for rental concessions, transparency for the concession, and clearly recognizes that it is a one-time incentive, not an ongoing component of the base rent.**

Using this approach, the RHC will create a consistent standard across Mountain View for *all* rental units even those not subject to the CSFRA's rent stabilization component as units built between 1995-2007 would be included under AB 1482. This approach further eliminates the risk that tenants will lose access to rent discounts and concessions that are both popular and help reduce barriers to housing, while at the same time ensuring that such discounts and concessions are clearly disclosed so there is not future confusion.

Lack of Stakeholder Engagement is a Chronic Problem

While the concerns with the proposed amendment are serious in and of themselves, perhaps most concerning is that they are symptomatic of a larger issue: the RHC's lack of engagement with stakeholders, both on the proposed amendment and nearly every other matter that comes before it. When the CSFRA was being implemented in 2017, the City went to great lengths to work closely with landlords, tenants, and the rental housing industry to seek feedback on the pending regulations that were being developed. However, once seated, the RHC and its staff have never once reached out to the California Apartment Association or its members for input or feedback on any matter coming before the RHC. The first time many stakeholders learn of important items coming before the RHC is when the agenda is posted and then, the only opportunity for input is in two-minute segments as part of public comment on an agenda item before the RHC.

Going forward, the RHC needs to adopt a better mechanism to engage stakeholders on major regulations before they're posted to the agenda. Failure to do so will only further perpetuate additional animosity, acrimony, and distrust between the rental housing owners and the RHC. The continued failure to seek out the feedback of those whom the RHC seeks to regulate denies the RHC from receiving critical input that could be helpful in drafting regulations that both protect renters and balance the operational needs of the rental housing providers.

Conclusion

Like many businesses, housing providers have struggled over the past two years to provide an essential service while grappling with increased costs, supply shortages, and constantly changing public health orders. Housing providers have been asked to serve as the first line of defense against housing insecurity as two crises – a global pandemic and long-running housing shortage – have collided. They have been asked to have compassion, be flexible, work with tenants, and reduce barriers to housing. The RHC proposes to repay those efforts with a policy that directly penalizes the precise actions housing providers were asked to take.

The RHC's actions are not only deeply unfair to housing providers, they seemingly serve nobody's interests. Tenants will not benefit from their landlords being disincentivized from offering concessions and discounts. The proposed regulation is nothing more than regulation for regulation's sake. It is a deeply flawed, legally questionable solution in search of a problem that does not exist. CAA urges the RHC to reject the proposed regulation.

Sincerely,

Joshua Howard
Executive Vice President, Local Government Affairs
California Apartment Association

CC:
Kimbra McCarthy, Mountain View City Manager
Jannie Quinn, Mountain View City Attorney
Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Anky vanDeursen, CSFRA Program Manager