



CITY OF MOUNTAIN VIEW

MEMORANDUM

City Attorney's Office

DATE: July 24, 2017

TO: Rental Housing Committee

FROM: Jannie L. Quinn, City Attorney

SUBJECT: CSFRA Effective Date

RECOMMENDATION

Adopt a Resolution of the Rental Housing Committee of Mountain View Establishing the Effective Date of the Community Stabilization and Fair Rent Act.

INTRODUCTION

The Community Stabilization and Fair Rent Act ("CSFRA") is an initiative Charter Amendment that was approved by the voters on November 7, 2016. Section 1720 provides:

"This Amendment to the City Charter shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council. The Mayor and City Clerk are hereby authorized to execute this Article to give evidence of its adoption by the voters."

The City Council declared the results of the November 7, 2016 election on December 13, 2016. Consequently, the CSFRA was to go into effect on December 23, 2016. On December 21, 2016, the California Apartment Association ("CAA") filed a lawsuit challenging the constitutionality of the CSFRA. The court signed a temporary restraining order ("TRO") stating the effective date of the CSFRA and enjoining the City of Mountain View from enforcing the CSFRA (Attachment 1). The TRO remained in effect until April 5, 2017 when the court issued an order denying the request for a preliminary injunction (Attachment 2).

There appears to be a dispute regarding the effective date of the CSFRA. The City has either received or is aware of correspondence from those directly impacted by the CSFRA. These letters disagree on the effective date. Correspondence from CAA

updated in May 2017 and in a letter dated July 17, 2017 and letters from the Mills Legal Clinic at Stanford Law School dated May 26, 2017 and July 13, 2017 are attached as Attachments 3 and 4 to this staff report. The effective date is a significant issue because it impacts the implementation of the CSFRA. Both landlords and tenants desire certainty on this issue. In particular, did the rent rollback provision in the CSFRA become effective on December 23, 2016 or April 5, 2017? The effective date will determine whether any refund may be owed to tenants for this time period.

ANALYSIS

From a legal perspective, CAA and proponents both have interesting legal arguments regarding the effective date. CAA will argue the temporary restraining order prevented the CSFRA from becoming effective and, therefore, it only became effective when the TRO ended. Thus, the effective date is April 5, 2017. The proponents will argue December 23, 2016 is the effective date based on the CSFRA, and since it was an initiative passed by the voters, only the voters can change the effective date of the charter amendment. Case law does not provide clear direction on this issue.

There are three ways to establish an effective date for the CSFRA. First, the City contemplated filing a declaratory relief action to resolve the controversy created by the conflicting positions taken by the CAA and the proponents regarding the effective date. This approach offered the most expedient and cost-effective option to resolve the dispute regarding the effective date of the CSFRA. However, when informed the City was considering this approach, neither the CAA nor the proponents were inclined to support such an approach and in fact may challenge this approach, resulting in an unnecessary use of resources and exposure to attorney fees. Based on the opposition expressed by CAA and the proponents, staff does not recommend this approach.

The two remaining options are for the Rental Housing Committee (RHC) to adopt a resolution establishing the effective date or wait for a tenant petition for unlawful rent to reach the RHC on appeal and rule on the effective date of the CSFRA at that time. Adopting a resolution provides a faster route to a court determination as both of these options are likely to lead to an eventual determination by the court as it is not possible for the RHC to select both dates.

It is likely the RHC's decision will be challenged and the matter will ultimately be decided by the court. To get this issue before the court, the RHC must take a position on the effective date. The RHC has the option to select either December 23, 2016 or April 5, 2017 by adopting the attached resolution (Attachment 5) or wait for an unlawful rent petition to be filed and reach the RHC on appeal. In terms of a recommendation on the date to select, staff would recommend the RHC adopt a resolution establishing the effective date of December 23, 2016 based on the explicit

language in the CSFRA, California law establishing that a ballot measure may only be amended by another vote of the people, unless the measure authorizes amendment by the legislative body, and the absence of any language in the Temporary Restraining Order suggesting that the Court intended to reform the CSFRA to modify the effective date.

FISCAL IMPACT

The fiscal impact is uncertain at this time. If the RHC establishes an effective date and litigation is filed to challenge the date established by the RHC, there is potential exposure to an attorney fees' claim. Likewise, in the absence of any action by the RHC, litigation to request the RHC/City establish an effective date is also a possibility and would result in the same exposure.

PUBLIC NOTICING – Agenda posting.

JLQ/KB/3/CDD/RHC
010-07-24-17M-E

- Attachments:
1. Temporary Restraining Order
 2. Order Denying the Request for a Preliminary Injunction
 3. Correspondence from California Apartment Association
 4. Letters from Mills Legal Clinic at Stanford Law School
 5. Resolution