



**MEMORANDUM**

CSFRA, Community Development Department

**DATE:** September 4, 2019

**TO:** Council Community Stabilization and Fair Rent Act Subcommittee

**FROM:** Tim Wong, Housing and Neighborhood Services Manager  
Aarti Shrivastava, Assistant City Manager/Community Development Director

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

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**RECOMMENDATION**

That the Community Stabilization and Fair Rent Act Subcommittee finalize Subcommittee input on potential CSFRA amendments to be forwarded to the City Council for consideration at the September 17, 2019 meeting.

**BACKGROUND**

In November 2016, the voters approved the Community Stabilization and Fair Rent Act (CSFRA) as a Charter amendment, which went into effect December 23, 2016. The CSFRA enacted stabilization of rents to multi-family residential rental units constructed prior to 1995 and just-cause termination protections for multi-family units constructed prior to the effective date of the CSFRA on December 23, 2016.

On November 27, 2018, the City Council accepted the Certificate of Sufficiency of “The Mountain View Homeowner, Renter, and Taxpayer Protection Initiative” (“2020 Initiative”). The 2020 Initiative was put forth by John Inks and Bryan Danforth to modify the CSFRA. The Council has the option to place this initiative on either the March 3, 2020 or November 3, 2020 ballot.

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.

### *CSFRA Subcommittee First Meeting*

The Subcommittee held its first meeting on July 23, 2019, during which the Subcommittee set a process/timeline and identified four initial areas to explore for potential amendments. On August 12, 2019, the Rental Housing Committee (RHC) held a special meeting to provide its input for potential CSFRA amendments, including those initially identified by the Subcommittee. RHC's input was summarized for the Subcommittee's second meeting held on August 19, 2019 (see Attachment 1).

### *CSFRA Subcommittee Second Meeting*

On August 19, 2019, the Subcommittee held its second meeting to receive stakeholder input, including from the RHC, landlord and tenant stakeholders, and the general public (see Attachment 2). The Subcommittee received formal presentations from the RHC and both the landlord and tenant groups, as well as input from the general public. The Subcommittee then provided additional input on the areas it would like to further explore for possible amendments. The Analysis section below summarizes Subcommittee input and provides a discussion and some questions for further deliberation.

## **ANALYSIS**

The following input and analysis is based on the three general areas identified by the Subcommittee at its first two meetings. Staff seeks specific input on which elements below, or other elements, the Subcommittee wishes to forward to the full Council to consider during the upcoming Study Session on September 17, 2019. In addition, staff seeks Subcommittee input on several questions below.

### **RHC Administrative Flexibility and Council Oversight**

The Subcommittee identified a desire to clarify the relationship of the RHC to the City. Section 1709 (k) of the CSFRA states that: "The Committee shall be an integral part of the government of the City, but shall exercise its powers and duties under this Article independent from the City Council, City Manager, and City Attorney, except by request of the Committee." This wording has caused ambiguity and challenges in implementing the CSFRA.

The RHC stated that it wished to be autonomous from the City and Council, and it was concerned about Council influence. The Subcommittee stated at its second meeting that it supports RHC autonomy but that the Council should have oversight of the RHC and CSFRA. The Subcommittee discussed giving RHC autonomy and flexibility to

implement the CSFRA, to make interpretations and administrative decisions, and to make and adopt policies as needed. However, the Subcommittee also felt that there should be Council oversight when the RHC decisions involve units, persons, City General Funds, significant pass-throughs, and suspending the CSFRA. The Subcommittee also wanted the RHC to adhere to the same policies governing other City advisory bodies, including procedures to remove Committee members if needed. Finally, the Subcommittee discussed the mechanism by which Council could make decisions and provide oversight, and mentioned the possibility of using supermajority voting. There was only initial discussion, so additional analysis and direction would be needed to determine the structure of the RHC and Council relationship.

Staff seeks additional clarity from the Subcommittee about the balance between Council oversight and RHC autonomy/administrative flexibility, how that balance would be articulated within the Charter, and how issue areas under Council purview would be elevated to the Council. While the Subcommittee mentioned certain areas of oversight (such as decisions regarding units, persons, etc.)—which could suggest Council oversight over certain parts of the CSFRA and not other parts—decisions involving units or persons could potentially relate to most or all of the CSFRA, which, in practical terms, could mean oversight over the entire CSFRA.

Therefore, the Subcommittee’s overall discussion could mean either: (1) the RHC has expanded and/or clarified administrative flexibility, but Council would have overall oversight of the RHC and all aspects of the CSFRA; or (2) RHC has expanded and/or clarified administrative flexibility and also autonomy from the Council in certain areas of the CSFRA, but Council would have oversight over RHC decisions in specific areas. In either case, the Council would have greater oversight authority over the RHC/CSFRA program, either in part or in whole, that it currently does not have, and the RHC would have clarified/expanded administrative flexibility that it currently does not have.

*Question 1: Is the Subcommittee’s intent for the Council to have oversight authority in part or in whole over the RHC and CSFRA?*

If the Subcommittee seeks to have partial Council oversight, then there is the question of what issues the RHC has autonomy over and what issues the Council has oversight over. Additionally, in this “limited oversight” model or if the Subcommittee is interested in Council oversight over the whole program, then there is the question of how RHC decisions get elevated to the Council. For example, as mentioned above, the Subcommittee suggested that Council has oversight over significant pass-throughs or when the CSFRA is suspended. Staff is seeking input from the Subcommittee on how

RHC decisions in areas over which Council has purview would be elevated to Council (for example, there could be guiding principles that provide a general framework or specific thresholds that are more detailed and specific).

*Question 2: Does the Subcommittee have input on which issues and how issues get elevated to the Council in areas where Council has oversight?*

At its second meeting, the Subcommittee also discussed how to flexibly and sustainably administer the CSFRA, and whether clarifying language or modifications should be made within the CSFRA Charter language or outside the Charter via an ordinance or procedures/regulatory documents. In general, two Subcommittee members felt that additional, specific language within the Charter itself would not be as flexible and could, therefore, be more challenging to administer. This same issue applies to the question of balance between Council oversight and RHC administration. Staff believes that, at minimum, Section 1709(k) would need to be modified to achieve the Subcommittee's desire for greater Council oversight. Other sections might need to be modified or new sections added to the Charter to further clarify the oversight relationship between the Council and RHC, which could be very detailed. Alternatively, the Subcommittee might wish to consider just a general statement in the Charter that clearly establishes the oversight relationship between the Council and RHC. Given the workload that would be associated with drafting detailed language, timing of the March 2020 ballot initiative, and desire for greater administrative/implementation flexibility, a general statement or principle in the Charter – with more detailed procedures/regulations developed outside the Charter – would better accomplish the Subcommittee's goals for flexibility and Council oversight.

*Question 3: Does the Subcommittee support general language in the Charter amendment for Council oversight, with details developed in procedures/regulations outside of the Charter?*

### **Mobile Home Rent Stabilization**

The Subcommittee recommended that any mobile home rent stabilization program should be separate from the CSFRA amendment process, but that such a program could be prepared concurrently. This would mean a mobile home program separate and distinct from the CSFRA. This would also allow more time for a mobile home rent stabilization ordinance to be developed (i.e., does not need to be limited to the March 2020 ballot measure timeline). Given staff resources at the present, it may be difficult to meet that ballot initiative timeline.

## **Streamlined Petition Process for Capital Improvements**

### *Capital Improvements under Current CSFRA*

The current CSFRA allows landlords to recover the costs of certain capital improvements by filing a petition for an upward adjustment of rent and demonstrating that the increase is necessary for the landlord to maintain a fair rate of return. The RHC has adopted the “maintenance of net operating income” (MNOI) standard for determining whether a landlord is maintaining a fair return. The MNOI process requires that a landlord provide evidence of the properties net operating income in the year prior to the effectiveness of the CSFRA and comparing that to the Net Operating Income in the current year. If the Net Operating Income in the current year as increased by an inflationary index adopted by the RHC is less than the Net Operating income in the year prior to the CSFRA becoming effective, then the landlord is entitled to a rent increase. For purposes of petitions for an upward adjustment of rent, the RHC has adopted the CPI-Rent of Primary Residence as the inflationary index while the CSFRA uses the CPI-U index for determining the annual general adjustments.

The CSFRA states: “Among other factors to be considered when ensuring a fair rate of return, subsections (a)(2) and (a)(3) of Section 1710 require inclusion of capital improvements “necessary to bring the Property into compliance or maintain compliance with applicable local codes affecting health and safety,” and excludes the costs of “capital improvements that are not necessary to bring the Property into compliance or maintain compliance with applicable local codes affecting health and safety.”

Landlords seeking a rent adjustment under fair return would need to submit all required information regarding the capital improvement expense as well as all other operating expenses to demonstrate need for a fair return. A hearing officer reviews the information and makes a determination on the amount of rent adjustment allowed under fair return, if any. In the past two fiscal years, 12 petitions were filed and completed the fair return process, with 11 petitions resulting in upward rent adjustments. On average, the petitions have taken just over three months from submittal to hearing officer decision; however, if a landlord or tenant appeals a decision, then that would extend the process. There have been landlord and tenant appeals of landlord petitions.

### *Streamlined Petition Process*

At its first two meetings, the CSFRA Subcommittee discussed exploring a “streamlined” petition process for certain capital improvements. At its second meeting, the Subcommittee agreed that a streamlined process should apply to certain capital improvements related to health and safety requirements, such as for soft-story seismic retrofits. At the same meeting, the Subcommittee also discussed other capital improvements to consider for possible inclusion in a streamlined petition process, specifically improvement related to environmental sustainability and improvements to extend the useful life of the building. Finally, the Subcommittee discussed having Council oversight over a streamlined petition process, such as determining what portion of capital improvement costs should be passed through to the tenants for different types of capital improvements.

If the Subcommittee and ultimately the Council want to allow for a streamlined petition process, staff’s preliminary analysis, in coordination with legal counsel, is that a separate process would need to be created and would be distinct from the current MNOI fair return process. The following are additional considerations for the Subcommittee’s deliberation:

- A separate streamlined petition process would require a relatively substantial workload to draft clear, well-written, workable provisions. Given the timing of the ballot initiative, it is recommended that higher-level language be included in the Charter amendment to clarify that the Council and/or RHC has the authority to develop a separate process for certain capital improvements and that the RHC be authorized to adopt regulations to implement the process that provide the necessary detail. This would also allow greater flexibility to make future modifications should it be needed.
- Because certain capital improvements can already be passed through via the petition process, it would be helpful if the Subcommittee could provide additional input on the specific issues or concerns that a separate “streamlined” petition process is intended to address, such as whether the current petition process is too lengthy, requires too much paperwork, or other concerns. In other words, input on the specific problem(s) a separate process is intended to solve and/or what specifically needs “streamlining” will help inform how a separate petition process/program could be structured.

*Question 4: What are some specific issues/concerns/problems with the current petition process that the creation of a separate streamlined petition process would be intended to solve? Are there any specific areas that are priorities for streamlining?*

- The Subcommittee discussed capital improvements related to environmental sustainability and those that extend the useful life of a building. Given the limited turnaround time between Subcommittee meetings, staff has been able to conduct only limited research but, at a high level, it appears that there are six jurisdictions in California with rent-stabilization programs that use the fair return standard for upward rent adjustments AND that also have a separate petition process for certain capital improvements. Each program is set up differently depending on the requirements in each jurisdiction. However, they are all quite detailed and have some shared characteristics, including:
  - Every program includes a detailed list of specific items or categories that are allowed for a separate petition process. This list includes items that are in health and safety requirements, as well as items that are voluntary or are not specifically in codes or ordinances.
  - Every program includes a set of parameters/standards that informs why the specific items/categories were selected as items allowed for the separate petition process.
  - Each program has different requirements on the percent of total costs that are passed through to the tenants:
    - Percent of total cost that can be passed through for certain capital improvements. For example, certain improvements can be passed onto tenants in full (i.e., 100 percent of the cost) while other improvements are capped (i.e., can only pass through a limited amount, such as 60 percent of the cost)
    - Amortization period. Different programs have different amortization periods for different types of capital improvements, generally ranging between 5 and 20 years. This helps spread out the impact to the tenant while also balancing how quickly landlords can recover their costs. The RHC has adopted an amortization schedule as part of its adopted regulations.

- Sunset. Some jurisdictions sunset the pass-through, i.e., once the allowable pass-through amount is recovered by the landlord or when a rental unit is vacated, the pass-through is eliminated, then that amount goes away and rents are adjusted downward appropriately.
  - All of these details and more would need to be worked out. It is recommended that they be addressed outside the Charter in regulations implementing the CSFRA.
- Certain programs include language specified limitations to what types of capital improvement costs can be passed through to tenants. Examples of principles include: (1) allowing necessary/reasonable improvements but not “overimprovements” or luxury upgrades; or (2) requiring that the improvements provide a benefit to the tenant (this is particularly relevant for items that are not related to improvements necessary to comply with health and safety codes). The goal of these programs is to encourage landlords to maintain their properties while prohibiting excessive capital improvements to prevent large rent increases. It would be helpful if the Subcommittee could articulate any parameters or guiding principles that should be considered for a separate capital improvement petition process. This input will help staff analyze the types of capital improvements to be considered and to develop options for Subcommittee/Council consideration.

*Question 5: Does the Council have any parameters or guiding principles for balancing landlord and tenant interests regarding a separate capital improvement petition process?*

- “Extending the useful life of a building.” Staff’s preliminary assessment is that many, if not most, capital improvements to extend the useful life of a building are related to health and safety requirements, which would be covered under the current CSFRA petition process. It would be helpful if the Subcommittee could clarify if it feels that there are any specific improvements to extend the useful life of a building that are not related to health and safety requirements, or if there are particular improvements that are related to health and safety, that the Subcommittee wishes to consider under a separate petition process. This will also help staff assess and draft a potential list of specific capital improvements for Subcommittee/Council consideration.

*Question 6: Are there any specific examples of capital improvements regarding “the useful life of a building” that are not related to health and safety requirements, and any that are related to health and safety requirements, that the Subcommittee wishes to consider for a separate petition process?*

## **Other Items**

At its second meeting, the Subcommittee also provided input on the following items, summarized below and followed by staff's analysis.

### *CPI/Flat Rate*

The Subcommittee discussed the Annual General Adjustment (AGA) and the possibility of using a flat rate, such as 5 percent, instead of using the Consumer Price Index. The Subcommittee raised the notion that a flat rate could provide more certainty because the AGA would be constant. The CSFRA states the AGA is the CPI with a 2 percent increase floor and a 5 percent rent increase ceiling. The CPI has averaged approximately 3.5 percent annually over the past several years.

The majority of rent-stabilized cities use inflation as a basis by which to determine allowable rent adjustments, and most of those cities set the allowable increase at less than 100 percent of CPI (while the CSFRA is 100 percent of CPI). There are some local cities that do employ a flat rate.

### *Source of Income Discrimination*

The Subcommittee inquired about source of income (SOI) discrimination. California law already prohibits discrimination on the basis of source of income, but the State law does not prohibit landlords from refusing to rent to Section 8 voucher holders since Section 8 is not considered a source of income. Several cities and counties in California have passed laws prohibiting landlords from refusing to rent to Section 8 voucher holders. If the Subcommittee is interested in prohibiting SOI discrimination, it is recommended that it be addressed outside the CSFRA through a separate process, and it would be appropriate to first get Council approval to direct staff to undertake that work, with an understanding of the workload implications and tradeoffs.

Note that the CSFRA exempts housing in which a governmentally subsidized tenant resides if applicable Federal or State law or administrative regulation specifically exempts such units from municipal rent control. However, the Section 8 program does not specifically exempt units with voucher holders; therefore, CSFRA units with Section 8 tenants would remain under the provisions of CSFRA.

### *CSFRA Exemption for Single-Family Homes and ADUs*

As discussed at the second Subcommittee meeting, the CSFRA exempts single-family homes and accessory dwelling units (ADU). However, if a single-family home adds a detached ADU, the single-family home, if it is rented, is no longer exempt. Based on RHC as well as Subcommittee input that this was unlikely the CSFRA's intent and that single-family homes should remain exempt even with the addition of a detached ADU, staff's initial analysis is that this can be a relatively simple cleanup to clarify the intent as part of the ballot amendment process.

### *Exceed TRAO Requirements*

At its second meeting, the Subcommittee asked if the City could require tenant relocation assistance that exceeds those requirements as outlined in the CSFRA. The CSFRA currently defers to the City Council-adopted TRAO for determining the relocation assistance available to residents and also explicitly states that the City Council can increase the relocation assistance. Any increase in the relocation assistance would be done through modifying the City's existing TRAO. Note that potential modifications to the TRAO is part of staff's analysis related to the Council's antidisplacement work plan item for the Fiscal Years 2019-21 Major Goals cycle.

## **SUMMARY OF QUESTIONS**

*Question 1: Is the Subcommittee's intent for the Council to have oversight authority in part or in whole over the RHC and CSFRA?*

*Question 2: Does the Subcommittee have input on how issues get elevated to the Council in areas where Council has oversight?*

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*Question 6: Are there any specific examples of capital improvements regarding "the useful life of a building" that are not related to health and safety requirements, and any that are related to*

*health and safety requirements, that the Subcommittee wishes to consider for a separate petition process?*

### **FISCAL IMPACT**

No direct impact to this report. The Fiscal Year 2019-20 Adopted Budget includes \$20,000 for the exploration of changes to the CSFRA. The budget does not include funds for place a measure on the ballot.

### **PUBLIC NOTICING**

Agenda posting. Sent to RHC, 2020 Initiative sponsors, and public speakers from August 19, 2019 CSFRA Subcommittee meeting who provided an e-mail.

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Attachments: 1. RHC Special Meeting Report (August 12, 2019)  
2. CSFRA Subcommittee Second Meeting (August 19, 2019)