



## Complying with Mountain View's Rent Control Law

On November 8, 2016, Mountain View voters adopted the Community Stability and Fair Rent Charter Amendment, known as Measure V. This measure amended the Mountain View City Charter to enact a system of both rent control and eviction control on multi-family properties. While many elements of Measure V will likely be subjected to legal challenges, it is important that Mountain View landlords, managers, and operators understand the sweeping changes that the voters approved.

This document is intended to provide general guidance to Mountain View's rental housing providers on Measure V, which went into effect on April 5, 2017 following a court order.

### RENT ROLLBACK

Measure V is retroactive. It requires that, for tenancies that commenced on or before October 19, 2015, rents be rolled back to the rent that was being charged to the tenant on October 19, 2015. For any tenancy that was established between October 20, 2015 and April 5, 2017 (the effective date of Measure V), it requires that the rent be rolled back to the amount the tenant paid at the start of the tenancy.

### Rent Rollback Procedure

The rent rollback is effective as a matter of law, and Measure V does not specifically require that tenants be given written notice of the rent rollback. The City of Mountain View ("City") has provided a template that can be used to notify tenants of the rolled back rental rate, referred to as "Base Rent" by Measure V. This form is available on the City's website (<http://www.mountainview.gov/depts/comdev/preservation/rentstabilization.asp>), and is also attached at the end of this paper. While not required, providing written notice to tenants of the rolled back rental rate may be helpful for owners to maintain a record of compliance and can help to avoid confusion.

### Rent Refunds

The authors of Measure V have stated they did not intend for landlords to refund rents but simply to "reset" rents to the level charged on October 20, 2015. The City has interpreted Measure V to mean that no refunds are required for any rent payments that were *collected* prior to the issuance of the court order on April 5, 2017 that allowed Measure V to take effect. However, the ultimate authority to decide the question of whether any refunds are required rests with the members of the Rental Housing Committee (who were appointed by the City Council on April 18, 2017). **CAA does not agree with or endorse the position that any refunds are required for rents which were collected prior to April 5, 2017. Until the Rental Housing Committee makes a decision on whether any refunds are required, CAA encourages all owners and managers subject to Measure V to seek the advice of their attorneys regarding whether to issue any refunds.**

### RENT CONTROL REGULATIONS

Measure V limits rental increases on rental properties in buildings of three or more units that first received a Certificate of Occupancy before February 1, 1995.



Under Measure V, an annual rent increase, or "Annual General Adjustment" (AGA), is limited to the annual change to the amount of the Consumer Price Index (CPI), with a floor of 2% and a ceiling of 5%.

By June 30 of each year, the Mountain View Rental Housing Commission will announce the amount of the AGA which can then be effective for rent increases on September 1 of that year; the AGA will generally remain in effect until August 30 of the following year.

The first time the commission will announce the AGA is June 30, 2017, so the first rent increase under Measure V will not be able to take effect until September 1, 2017. Since the AGA will not have been established until June 30, 2017 for a September 1, 2017 effective date, *no rent increases may be issued for properties built before February 1, 1995 until the 2017-18 AGA is effective.*

Only one rent increase is allowed per year, and a landlord must provide a 30-day written notice of an increase. A tenant may petition the Rental Housing Commission, and the rent increase will NOT be permitted if the landlord:

- Has failed to comply with any provisions of Measure V or any rules or regulations created by the commission, subsequent to its creation;
- Has failed to keep the property in compliance with California's Civil Code and Health and Safety Code;
- Has failed to make repairs ordered by a hearing officer of the commission, the commission itself, or the city

A landlord may not increase rent based upon cost increases incurred prior to the existing tenancy, servicing of debt (except for certain necessary capital improvements in Mountain View), or capital improvements that are not necessary to keep the property in compliance with the state's Civil Code and Health and Safety Code.

#### **RESTRICTIONS ON INITIAL RENT FOR NEW TENANCIES**

While state law generally prohibits the city from setting rents on new tenancies (i.e., vacant units), the commission will issue rules and regulations to restrict rent on vacant units, where the Costa-Hawkins Rental Housing Act permits. Under the following circumstances, the rent charged to a new tenant may be regulated or established by the commission:

- The previous tenant had their tenancy terminated through no-fault of their own
- The vacancy followed a rent increase not permitted by the law
- The landlord failed to renew government contract
- A serious code violation exists in the unit or on the property
- The tenancy was terminated pursuant to the requirements of the Ellis Act

#### **BANKING OF UNIMPLEMENTED AGA**

Measure V allows for banking of unimplemented rent increases. If a rental property provider chooses not to increase rent one year, the landlord may bank the AGA and use it the following year, but there may be no more than a 10% increase in a single year. The Rental Housing Commission will likely establish rules that govern how a landlord may bank unused rent increases and what notices may have to be issued to the tenant and city.

#### **JUST CAUSE FOR EVICTION**

Measure V contains sweeping "just cause" for eviction provisions which require a landlord to have a permissible reason to terminate a tenancy and evidence to support the reasons for terminating the tenancy. Under Measure V, ALL rental units in buildings of three or more units are subject to the eviction restrictions unless the unit received a Certificate of Occupancy after April 5, 2017, the effective date of Measure V.



In brief, the permissible reasons for eviction are listed below. Please consult with your attorney to determine whether your circumstances qualify. The descriptions below are simplifications of the actual requirements of the ordinance. Generally, the tenant must be given an opportunity to cure the violation prior to eviction.

- a. Non-payment of rent
- b. Substantial violation of a material term of the lease: generally, a violation of a prohibition against subletting does not qualify if a tenant is replacing an outgoing roommate. Family members are also entitled to move into a unit as long as the number of occupants does not exceed the standards of the Uniform Housing Code.
- c. Nuisance
- d. Criminal activity
- e. Failure to provide access as required by law
- f. Necessary and substantial repairs requiring temporary vacancy of 30 days or longer: tenant has right to reoccupy/comparable unit/relocation assistance.
- g. Owner (or relative) move-in: Very specific conditions must be met including having at least a 50% ownership share in the property. Tenants who have lived in the unit for at least five years and who are disabled, seniors, or terminally ill may not be evicted unless the incoming owner or relative is disabled, a senior or terminally ill. Failure to comply with all the specified conditions can result in the owner having to allow the tenant to move back in and payment of all moving costs.
- h. Removal of the unit permanently from the rental market: 120-day notice is required (one year notice for senior or disabled tenants).
- i. Demolition of the unit and permanent removal from rental housing use.

Relocation payments, as defined, must be paid to the tenant if their tenancy is terminated for f through i as outlined above.

A landlord may not evict a tenant to move into the landlord's own unit if the tenant has lived in the unit for at least five years and is either disabled or at least 62 years of age.

A landlord may not evict a tenant if the owner's brother, sister, grandchild, in-laws, or the spouse of any close family member needs to move into the unit. To take advantage of the right for the owner to evict a tenant to move into their own property, the landlord must have at least 50% recorded ownership in the property.

A rental housing provider may not terminate a tenancy if a tenant has added family members to the rental unit, regardless of whether or not the occupancy standards are exceeded or the new family member is added to the lease.

#### **PROVISION OF NOTICES OF TERMINATION TO THE CITY**

The landlord must specify, in writing, the basis for terminating the tenancy and must file, with the commission, a copy of any notice terminating tenancy within three days after serving the notice on the tenant.

#### **RELOCATION PAYMENTS**

Under certain circumstances, when a tenancy is terminated, relocation payments must be paid to the tenant. The relocation payment must be paid if the reason for termination is not a violation by the tenant (i.e., it is reasons f through i noted above and if the tenant's household meets certain income requirements 120% of median).

The amount of relocation assistance is established by the Mountain View City Council and was most recently set in 2014 (under a preexisting law) to require the payment of three months' market rate rent for a comparable size



unit, full refund of a security deposit, and other payments in the event the household being asked to move has occupants who are senior citizens, disabled, or minor children.

Measure V specifically states that the commission has the power to require "an additional amount of relocation assistance applicable to particularly vulnerable tenant households."

Landlords are advised to check with the city and their legal counsel before entering into any agreements to pay relocation assistance to ensure they are paying the proper amount and in the manner governed by the city's relocation ordinance.

**PRE-EXISTING NOTICES**

The ordinance states that the landlord/owner cannot regain possession unless a "just cause" exists. Accordingly, any pre-existing notices of termination without cause that were served prior to, but take effect after the ordinance, may not be enforceable. If you have already served such notices, provided notice of non-renewal of leases, or are in the midst of eviction proceedings based on any such terminations without a "just cause," CAA recommends that you consult with your attorney before taking further action.

**EXEMPTIONS**

Fully exempt from Measure V are hotel rooms rented for less than 14 days, hospitals, dormitories, government units, owner-occupied secondary dwelling units, and duplexes. In Mountain View, single family homes and condominiums are also fully exempt. The chart below illustrates which properties of three or more units are subject to Measure V and certain provisions:

<b><u>Certificate of Occupancy Date</u></b>	<b><u>Applicable Provisions</u></b>
Before February 1, 1995	Rent Control Regulations  Just Cause Eviction Provisions  Relocation Assistance
Between February 1, 1995- April 5, 2017	Just Cause Eviction Provisions  Relocation Assistance
April 6, 2017 or later	Measure V Provisions Do Not Apply

**RENTAL HOUSING COMMITTEE & RESOLVING LANDLORD-TENANT DISPUTES**

Measure V create a Rental Housing Committee, composed of five committee members. There are to be no more than two members who are involved in rental housing or real estate in any way. The City Council is responsible for appointing members to the Rental Housing Committee.

The Rental Housing Committee has broad powers and duties including establishing the annual allowable rent increase, holding hearings on landlord-tenant disputes, establishing regulations to administer and interpret Measure V, and determine the "reasonableness" of rent increases that exceed the annual allowable amount. Specifically, the Rental Housing Committee has the power to:

- Set rents and rental rates in accordance with state law
- Establish its own rules and regulations regarding rental units
- Determine and publicize the Annual General Adjustment (AGA) - the amount rental providers may increase rent in a specific year
- Appoint hearing officers to conduct hearings for rent adjustments



- Adjudicate petitions
- Administer oaths and subpoena witnesses and relevant documents
- Establish its own budget -- including without limitation the hiring of staff and charging of fees to landlords
- Administer the withdrawal process for the removal of rental units from the market
- Hold public hearings
- Conduct studies, surveys, investigations, and hearings and obtain information
- Establish a schedule of penalties that may be imposed for noncompliance with Measure V
- Pursue civil remedies in courts of appropriate jurisdiction
- Intervene as an interested party in any litigation brought before a court with respect to rental units
- Conduct any other duties necessary to administer and enforce Measure V

FINANCING OF THE COMMITTEE -The committee has the power to finance any expenses necessary, to hire any staff necessary, and to charge landlords any fee necessary. The committee is also empowered to receive funding whenever it deems appropriate from any available source, including the city and taxpayer money.

Rental Housing Fee - All landlords will pay a rental housing fee on an annual basis. The committee has the power to adjust the rental housing fee whenever it deems appropriate.

While the Rental Housing Committee and the programs and departments to implement and enforce Measure V are being set up, the City Council is responsible for funding the Rental Housing Committee and the administration of the rent control programs established under Measure V.

Measure V says that the committee will be an "integral part of the government of the City," but the city will have no authority over the committee or ability to prevent it from making unwise financial decisions with taxpayer money. The committee is completely independent from the City Council, the city manager, and the city attorney, but may request the services of the city attorney, "who shall provide them pursuant to the lawful duties of the office."

A tenant may petition the committee for a decrease in rent, and a landlord may petition the committee for an increase in rent. A decrease in maintenance or a deterioration of a rental unit without a corresponding reduction in rent is considered a rent increase. A tenant can file a petition to adjust the rent downward based on a "loss in rental value," as a result of a decrease in maintenance.

Once a tenant files a petition with the committee, that tenant may request that the hearing officer order an inspection of the rental building prior to the hearing.

A tenant may sue a landlord for not following any provision of Measure V, including those rules and regulations that will be written by the commission itself. In a civil suit, a landlord found to violate any provision of Measure V or the commission's regulations will be liable for all damages, including attorneys' fees and costs. If the landlord is found to have violated any provisions or regulations willfully, he will be responsible for all parties' attorneys' fees.

A violation of any provision of the initiative -- even a minor technical violation -- will constitute a complete defense in any eviction proceeding, even where the requirements of the just cause-for-eviction provisions are met.

#### **EFFECT OF MEASURE V ON OTHER ORDINANCES**

Prior to the passage of Measure V, the City enacted three ordinances which regulated the rental housing industry: the Rental Housing Dispute Resolution Program, the Right to Lease Ordinance and the Tenant Relocation Assistance Ordinance. Measure V included a provision stating that it "supersedes any ordinance passed by the City



Council covering the area of rents or evictions.” The effect of Measure V on each of the prior ordinances is discussed below.

### **Rental Housing Dispute Resolution Program**

The Rental Housing Dispute Resolution Program (“RHDRP”) applies to rental properties with three or more dwelling units in a single structure. The RHDRP provides a mandatory dispute resolution process for rental housing disputes related to rent increases exceeding 7.2% within a one year period, service reductions, 30/60 day notices of termination, maintenance/repairs, security deposits, and premature lease terminations by tenants. The City has interpreted Measure V to have the effect of superseding the RHDRP only for those rental units which are subject to Measure V’s rent stabilization provisions (i.e. properties of three or more units with a Certificate of Occupancy issued before February 1, 1995), but not for those units which are exempt or partially exempt from Measure V. The City Council has not taken action to amend the RHDRP to clarify whether Measure V superseded the RHDRP either in whole or in part. Information about the RHDRP continues to be available on the City’s website.

Certain provisions of the RHDRP conflict with provisions of Measure V. For example, the RHDRP limits rent increases to two within a 12-month period, while Measure V limits rent increases on covered units to one within a 12-month period. For any topic on which Measure V has applicable provisions, owners of Measure V covered units should comply with Measure V’s requirements. For guidance on whether the RHDRP continues to apply either in whole or in part to units covered by Measure V’s rent stabilization provisions or units which are exempt or partially exempt from Measure V, CAA recommends consulting with your attorney.

### **Right to Lease Ordinance**

The Right to Lease Ordinance (“RTLO”) applies to rental properties with three or more dwelling units in a single structure. It requires landlords to offer tenants a written lease with a minimum of two option terms: six months and one year. The City has interpreted Measure V to supersede the RTLO only for those rental units subject to Measure V’s rent stabilization provisions, but not for those units which are exempt or partially exempt from Measure V. The City Council has not taken action to amend the RTLO to clarify whether Measure V superseded the RTLO either in whole or in part. Information about the RTLO continues to be available on the City’s website. For guidance on whether the RTLO continues to apply to your units, CAA recommends consulting with your attorney.

### **Tenant Relocation Assistance Ordinance**

The Tenant Relocation Assistance Ordinance (“TRAO”) requires landlords to provide relocation assistance if eligible tenants (as defined by the ordinance) in four or more rental units were displaced because of renovations, redevelopment, and similar activities. The City Council has not yet taken an official position on whether Measure V superseded the TRA0. Information about the TRA0 continues to be available on the City’s website.

Certain provisions of the TRA0 conflict with provisions of Measure V. For example, the TRA0 applies only where four or more rental units were displaced because of renovations, redevelopment, and similar activities, whereas Measure V’s Relocation Assistance provisions require that relocation assistance be paid to any eligible tenant of a covered unit who is evicted through no fault of their own (such as for an owner move-in). Thus, Measure V may require that relocation assistance be paid to a tenant of single unit, where the TRA0 does not. For any topic on which Measure V has applicable provisions, owners of Measure V covered units should comply with Measure V’s requirements. For guidance on whether the TRA0 continues to apply to apply either in whole or in part to units covered by Measure V’s Relocation Assistance provisions or units which are exempt from Measure V, CAA recommends consulting with your attorney.



### **THE CHANGING LANDSCAPE**

Unfortunately, there is still a substantial amount of confusion surrounding the implementation of Measure V. CAA will continue to work diligently to update our Measure compliance materials as we receive new developments related to the implementation of Measure V. Until the specifics of how Measure V will apply become clearer, CAA encourages owners and managers with rental units subject to Measure V to seek the guidance of an attorney for Measure V compliance issues.

The City has created a Mountain View Rental Housing Helpline available via phone at (650) 282-2514 and via email at [CSFRA@housing.org](mailto:CSFRA@housing.org). The City is also offering walk-in office hours at City Hall each Thursday between 12:00 p.m. and 2:00 p.m. (Public Works Front Conference Room at 500 Castro Street). Landlord workshops will be held by the City on Tuesday, May 16, 2017 from 10 a.m. to 12:00 p.m. (noon) and Monday, May 22, 2017 from 6:00 p.m. to 8:00 p.m.







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July 17, 2017

**Via Electronic and U.S. Mail**

Jannie L. Quinn, Esq.  
City Attorney  
City of Mountain View  
Rental Housing Committee  
500 Castro Street  
Mountain View, California 94041

Re: Effective date of Mountain View's Community Stabilization and fair Rent Act

Dear Ms. Quinn:

As you are aware, this office represents California Apartment Association ("CAA") on an ongoing basis and was counsel of record for CAA in the matter of California Apartment Association v. City of Mountain View, Santa Clara County Superior Court Case No. 16CV304253 (the "Action"). This letter is submitted in response to the July 13, 2017, correspondence directed to you by Juliet M. Brodie in regard to the above-referenced matter. In her correspondence, Ms. Brodie, one of the attorneys who represented Defendant-Intervenors in the Action, incorrectly posits that December 23, 2016, is the effective date of the "Mountain View Community Stabilization and Fair Rent Act" ("Measure V" or the "Act"). On this basis, Ms. Brodie demands that the City of Mountain View's Rental Housing Committee ("RHC") "publicize through reasonable means that the [Act's] lawful effective date was December 23, 2016." Ms. Brodie threatens that, unless the RHC does so, Defendant-Intervenors will "seek a court order . . . via an action for writ of mandamus pursuant to California Code of Civil Procedure Section 1085." For the reasons set forth below, Ms. Brodie's request has no basis in law or fact.

Initially, the effective date of the Act is not December 23, 2016, but rather, April 5, 2017, the date the Court denied CAA's Motion for Preliminary Injunction in the Action. That April 5, 2017, is the effective date of the Act is consistent with the express language of the December 22, 2016, Court Order Staying Effective Date and Enjoining Enforcement of Measure V (the "Order"), which provides as follows:



Jannie L. Quinn, Esq.  
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The **effective date** of Measure V is hereby stayed and Defendant CITY OF MOUNTAIN VIEW is enjoined from making any attempts to enforce Measure V until February 3, 2017, or, if a Motion for Preliminary Injunction is filed by Plaintiffs on or before February 3, 2017, **when such Motion is decided by the Court, whichever is later.**

Emphasis added. Notwithstanding the foregoing express language, Ms. Brodie ostensibly argues that the Court did not have the power to alter the “effective date” of the Act. Rather, she contends that the Court’s power was limited to temporarily enjoining Measure V’s “implementation. Yet, Ms. Brodie cites no legal authority for the claim that the Court did not have the right to stay the effective date of the Act pending resolution of a motion for preliminary injunction. Absent such authority, because Ms. Brodie’s position directly contradicts the language of the Order itself, which language expressly refers, not to Measure V’s “implementation date,” but rather, the Act’s “effective date,” there is simply no factual grounds for Ms. Brodie’s contention in this regard.

Even if the foregoing were not true, Ms. Brodie’s efforts to distinguish between the Act’s “effective date” and its date of “implementation” makes no difference for purposes of determining rental amounts due pursuant to the terms of the Act, nor is it “essential,” as Ms. Brodie claims, “to calculating any adjustments to lawful rents pursuant to any petition that might be filed under section 1710.” With respect to the former contention, the crux of Ms. Brodie’s claim is that tenants are entitled to be reimbursed if they “were paying more than [the base rents established as of October 2015] for the months of January, February March and April 2017.” Yet, Ms. Brodie’s fails to cite any legal mandate, including any portion of Measure V, requiring landlords to refund monies that were lawfully collected during this stated time frame. The same analysis applies to Ms. Brodie’s latter argument regarding the calculation of rent adjustments pursuant to Section 1710 of the Act. To the extent the rental amounts charged by landlords between January 2017 and March 2017 were in accordance with the terms of the Order, said amounts were “lawful” and a hearing examiner may properly utilize said “lawful rents” when adjudicating petitions for rent adjustments.

In view of the foregoing, there is no basis to substantiate Ms. Brodie’s demand that the RHC deem December 23, 2016, not April 5, 2017, the effective date of the Act. To that end, Ms. Brodie’s request that the RHC “publicize” a December 23, 2016, effective date would directly contradict the language of the Order. As there are no grounds for affording Ms. Brodie the relief sought in her July 13, 2017, the demand set forth therein must therefore be denied in its entirety.



Jannie L. Quinn, Esq.  
July 17, 2017  
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Should you have any questions or comments regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

PAHL & McCAY  
A Professional Law Corporation

A handwritten signature in blue ink, appearing to read 'Stephen D. Pahl'. The signature is stylized and somewhat cursive.

Stephen D. Pahl

SDP/has  
cc: Clients  
\*2341/034 - 00562820.DOCX.1