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May 26, 2017

VIA EMAIL TO jh@rjp.com/U.S. MAIL TO FOLLOW
James Harrison
Remcho Johansen & Purcell
1901 Harrison St., Suite1550
Oakland, CA 94612-3597

RE: **Effective Date of CSFRA**

Dear James:

Thanks for the opportunity to share our thoughts about the effective date of the Community Stabilization and Fair Rent Act ("CSFRA" or "the Act"). A review of the authorities demonstrates that the effective date within the CSFRA itself – ten days after certification of the election, specifically December 23, 2016 – should remain undisturbed. It is of course the duty of the City to implement the Act and it is our view that the City needs to clarify as of what date it is doing so. The City's current communications on the effective date are ambiguous. The City's Rent Stabilization landing page (copy enclosed) includes the statement, "**Effective April 5, 2017**, rent levels and rent increases . . . must comply with the CSFRA (emphasis in original)." Compliance with the CSFRA includes compliance with its section 1720 regarding the effective date. We respectfully request that the City modify the language on the landing page to make plain that December 23, 2016 is the effective date that the City will recognize unless and until a court orders otherwise.

Background & Issue

As you know, the CSFRA was passed by the voters of Mountain View on November 8, 2016. By its own terms, the Act provides that, if approved by a majority of the voters, it "shall go into effect ten (10) days after the vote is declared by the City Council." CSFRA, Section 1720. The Mountain View City Council declared the vote on December 13, 2016, making the Act effective on December 23, 2016. *See* City Resolution No 181113, Series 2016.

Two days before the Act was to go into effect, on December 21, 2016, the California Apartment Association ("CAA") filed suit against the City of Mountain View ("City"). The suit asserted a facial challenge against the Act, alleging that it violated the state and federal constitutions, and other provisions of state law, and sought declaratory and permanent injunctive relief. The next day, December 22, the City and CAA presented to the Santa Clara

County Superior Court a Stipulation for Temporary Restraining Order ("TRO").[1] Judge McGowen signed the TRO, which stated "[t]he effective date of [the CSFRA] is hereby stayed and [City] is enjoined from making any attempts to enforce" the Act. The TRO was to terminate on February 3, 2017, unless CAA filed its motion for preliminary injunction on or before that date, in which case the TRO was in place until a ruling on the preliminary injunction.

CAA filed its motion for preliminary injunction on February 2, 2017. On April 5, 2017, the court denied the motion based on its finding that Plaintiff's asserted harms were speculative, whereas tenants faced excessive rents and arbitrary evictions, and that the Plaintiff was unlikely to prevail on the merits. Order Denying Motion for Preliminary Injunction at 2.

Landlord advocates have asserted that, despite the plain language of the CSFRA making it effective on December 23, 2016, the TRO functions to permanently delay the Act's effective date until April 6, 2017, the date after the denial of the preliminary injunction. Such an interpretation amounts to a substantive amendment of the CSFRA, and is not supported by law. The parties did not have the authority to reform the terms of the Act, only to delay the enforcement of its terms. A TRO by definition is temporary and has no effect once lifted. The TRO herein cannot be interpreted to have reformed the language of the CSFRA, and the express effective date of the CSFRA should thus stand.

The landlords' interpretation of effect of the TRO is not supported by the nature of injunctive relief itself, which is limited to *enjoining conduct*. "An injunction is a writ or order requiring a person to refrain from a particular act." CCP § 525. Changing the effective date of the Act from December 23, 2016 to April 6, 2017 constitutes far more than enjoining the conduct of enforcement; it is a substantive reform. As such, it is beyond the reach of a TRO. It is certainly beyond the reach of the parties to agree. The TRO required the City of Mountain View to refrain from implementing the CSFRA during a period when it was expressly effective, but that prohibition expired upon the Court's denial of the Preliminary Injunction.

Delaying implementation of the Act should not be equated with changing its terms. It is well settled that a TRO expires when a preliminary injunction is granted or denied. "A TRO is purely transitory in nature and terminates automatically when a preliminary injunction is issued or denied." *Landmark Holding Group Inc. v. Superior Court* 193 Cal. App. 3d 525, 529 (1987) (citing *Houser v. Superior Court*, 121 Cal. App. 31, 33 (1932)); *see also* Duration of Restraining Order, 6 Witkin, Cal. Proc. 5th Prov Rem § 367 (2008).

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[1] Because the tenant-intervenors had not yet entered the case, the interests of the proponents and beneficiaries of the CSFRA were not heard with respect to the TRO. Counsel for the then-putative tenant-intervenors attended the ex parte calendar where the TRO was signed to introduce themselves to other counsel and to state their clients' intent to seek leave to intervene.

There is nothing in the TRO itself to indicate that the parties or the Court intended it to reform the Act. A ruling on a TRO does not indicate any ruling on the merits of the underlying claim. "The issuance of a TRO is not a determination of the merits of the controversy…All that is determined is whether the TRO is necessary to maintain the status quo pending the noticed hearing on the application for preliminary injunction." *Landmark Holding Group Inc. v. Superior Court* 193 Cal. App. 3d 525, 529 (1987) (citing *Gray v. Bybee*, 60 Cal.App.2d 564 (1943), *Biasca v. Superior Court* 194 Cal. 366, 367 (1924)). That a TRO has no bearing on the merits of the underlying claim would seem even more true where the parties have stipulated, and its issuance thus does not reflect a court's assessment at all.

California law does not permit an injunction that would "prevent execution of a public statute by officers of the law for the public benefit." CCP § 526(b)(4). The exception to this limitation is that *unconstitutional* statutes may be enjoined where their enforcement may cause irreparable injury. *Novar Corp. v. Bureau of Collection & Investigative Services* 160 CA3d 1, 5 (1984). The CSFRA is plainly a public statute for the public benefit that cannot be subject to injunction, except to the extent it is demonstrably unconstitutional and causes irreparable injury. Neither showing was made in this case. Indeed, multiple theories of unconstitutionality were advanced by the CAA in its preliminary injunction motion, and none was held to have a likelihood of success on the merits. Second, there is a presumption in favor of the validity and constitutionality of legislative enactments, and accordingly, trial courts generally exercise great caution when asked to enjoin such ordinances. *See City of Santa Monica v. Superior Court for Los Angeles Cty.*, 231 Cal. App. 2d 223, 226 (1964) (since all presumptions favor the validity and constitutionality of legislative enactments, only extraordinary circumstances justify granting relief prior to a trial on the merits). The swift denial of the motion for preliminary injunction indicates that the Court was not impressed by the merits of CAA's case.[2]

A delay in its effective date until April 6, 2017 amounts to a reform of the substance of the CSFRA. Courts have a limited ability to reform statutes, but only where such alteration is necessary to effectuate the drafters' intent where the statute would otherwise be invalid. *Calif. Redevelopment Authority v. Matosantos* 53 Cal. 4th 231, 274 (2011) (citing *Kopp v. Fair Pol. Practices Com.*, 11 Cal.4th 607, 660–661 (1995)). Delay in the implementation of the CSFRA is completely unnecessary to its drafter's intent.

In light of the fact that the TRO was the product of a stipulation, that injunctive relief can only restrain conduct, and that judicial reform of a statute is only warranted if the statute is

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[2] The Contra Costa County Superior Court, when confronted with CAA's contested application for a TRO against a measure very similar to the CSFRA, based upon similar grounds, denied CAA's motion for a TRO.

otherwise invalid, there is no basis to over-ride the voters' intent that the CSFRA go into effect on December 23, 2016. The City should acknowledge the plain language of the Act, and turn its attention to erecting the procedures necessary to permit any landlord who claims its terms prohibit a fair and reasonable return to bring a petition for prompt resolution.

We welcome the opportunity to discuss this matter with you. Thank you.

Very truly yours,

Counsel for Tenant-Intervenors
STANFORD COMMUNITY LAW CLINIC
PUBLIC INTEREST LAW PROJECT
LAW FOUNDATION OF SILICON VALLEY
FENWICK & WEST

By:
Juliet M. Brodie

Enc.

RENT STABILIZATION

Effective Immediately: Community Stabilization and Fair Rent Act (Measure V)

(Español)

(普通话)

Rental Housing Committee Meetings, Plaza Conference Rm, City Hall

Agendas will be posted at least 72 hours in advance.

Thursday June 8, 2017 at 7 pm

Monday June 19, 2017 at 7 pm

On November 8, 2016, the residents of the City of Mountain View voted to adopt Measure V, also known as the Community Stabilization and Fair Rent Act ("CSFRA"), to stabilize rents and provide just cause eviction protections for certain Rental Units in Mountain View.

Effective April 5, 2017, rent levels and rent increases for covered rental units, built before February 1, 1995 must comply with the CSFRA. Single family homes, condominiums, and duplexes are not covered by the CSFRA. If you like to check if your multi-family apartment complex is built before 1995, please click here.

Below are key provisions of the CSFRA. The full text of the CSFRA can be downloaded here: **Community Stabilization and Fair Rent Act**

Key Provisions:

1. **Rent Rollback:**

   a. For tenancies commenced **on or before Oct. 19, 2015,** the allowable rent

      is the rent in effect on Oct.19, 2015,

   b. For tenancies commended **after Oct. 19, 2015,** the allowable rent

      is the rent the tenant paid at the start of the tenancy.

Tenants and Landlords may use **this template** (Espanol) (普通话) to communicate Base Rent under the Community Stabilization and Fair Rent Act. Please contact the Mountain View Rental Housing Helpline (650) 282-2514 for further information.

2. **Allowable General Annual Rent Increases**

In September of each year, including 2017, landlords may increase rents in an amount equal to the percentage increase in the Consumer Price Index (CPI) over the prior year (as determined by the Rental Housing Committee). On May 22, 2017 the Rental Housing Committee announced that the **annual general adjustment of rent for 2017 is 3.4%.** This rent increase for covered units is allowed to take effect starting September 1, 2017. Landlords must provide tenants with at least 30 days'

advance written notice of such rent increase. A rent increase is only allowed if landlords are in compliance with all provisions of the CSFRA.

3. Initial Rent Levels and Rent Increases for New Tenants

Landlords may set the initial rents for new tenancies if the prior tenant voluntarily vacated the Rental Unit or was evicted for a just cause. After a tenant moves in, rent increases are limited to the annual general adjustment.

4. Eviction protections applicable to Covered and Non-Covered Rental Units

Just cause is required for evictions from Rental Units with an initial certificate of occupancy prior to April 5, 2017. Just cause reasons include a tenant's failure to meet the obligations of a rental agreement, non-payment of rent, and demolition of the unit or owner move-in, subject to limitations in the Law. Any notice to terminate a tenancy for just cause must state with specificity the basis of the termination. Certain just cause evictions require tenant relocation assistance and compliance with other provisions. Please refer to the CSFRA for the full provisions.

Next Steps

The Rental Housing Committee was appointed at the April 18, 2017 City Council meeting. The Committee will establish further procedures for implementing the CSFRA in its meetings, including adoption of CSFRA rules & regulations, setting the process for submitting individual petitions for rent increases (landlords) and decreases (renters), and appointing Hearing Officers. Specific policy or legal questions related to the CSFRA, or issues about items not specifically identified in the CSFRA, will be considered by the Committee as part of the implementation process.

For tenant and landlord questions, please contact (***Habla español):***

Call: **Mountain View Rental Housing Helpline at (650) 282-2514**

Email: **CSFRA@housing.org**

Visit: **Walk in office hours at City Hall**

Public Works Front Conference Room (500 Castro Street)

each Thursday between 12-2 pm.

Download a PDF of the Community Stabilization and Fair Rent Act

Resources:

Law Foundation Silicon Valley (Volunteer Eviction Assistance Collaborative) (408) 280-2424

Superior Court Self-Help Center: (408) 882-2926

California Dept. of Consumer Affairs Landlord-Tenant handbook: http://www.dca.ca.gov/publications/landlordbook/index.shtml

Santa Clara County Bar Association Lawyer Referral Service – (408) 971-6822 www.sccba.com

Court Self-Help Website: http://www.scscourt.org/self_help/civil/ud/ud_resources.shtml

You can also receive automatic updates on the process by signing up at **www.mountainview.gov/myMV** and checking **"Rent Stabilization Updates."**

CITY OF MOUNTAIN VIEW
500 Castro St. Mountain View, CA 94041
(650) 903-6300

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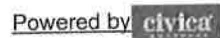
Powered by 

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July 13, 2017

SENT VIA EMAIL TO CITY ATTORNEY
JANNIE QUINN – jannie.quinn@mountainview.gov
City of Mountain View
Rental Housing Committee
500 Castro Street
Mountain View, CA 94041

RE: **RHC Duty to Announce and Enforce Effective Date of CSFRA**

Dear Members of the Rental Housing Committee:

We are the attorneys who represented Defendant-Intervenors in the lawsuit that the California Apartment Association ("CAA") filed in December 2016 challenging the Community Stabilization and Fair Rent Act ("CSFRA" or the "Act"). As you know, the Court denied CAA's motion for preliminary injunction on April 5, 2017, dissolving the temporary restraining order ("TRO") to which CAA and the City of Mountain View ("City") had earlier agreed. The CSFRA went into effect immediately thereafter, and CAA – along with Landlord-Intervenors that had joined its motion for preliminary injunction – voluntarily dismissed their challenge to the CSFRA in early May. We write today to alert you formally of an outstanding issue concerning the CSFRA's implementation, and to ask that you discharge your duty under the CSFRA to ensure the consistent application of its provisions. Specifically, we ask that the Rental Housing Committee ("RHC") and the City publicize through reasonable means that the CSFRA's lawful effective date was December 23, 2016.

By its own terms, the CSFRA provides that, if approved by the voters, it "shall go into effect ten (10) days after the vote is declared by the City Council." Section 1720 (all cites are to the CSFRA, unless otherwise indicated). The Mountain View City Council declared the vote on December 13, 2016, making the CSFRA effective on December 23, 2016. *See* City Resolution No 181113, Series 2016.

On December 21, 2016, two days before the CSFRA's effective date, CAA filed suit against the City, raising a number of constitutional and statutory challenges to the CSFRA. The next day, December 22, the City and CAA presented to the Santa Clara County Superior Court a Stipulation for Temporary Restraining Order ("TRO"). Because it was unopposed,[1] the judge signed the TRO. For purposes of this letter, the pertinent language of the TRO was that "[t]he effective date of [the CSFRA] is hereby stayed and [City] is enjoined from making any attempts to enforce" the Act. The TRO was to terminate on February 3, 2017, unless

[1] The CAA and the City of Mountain View were the only parties to the case at the time it was filed. Our clients entered the lawsuit as Defendant-Intervenors on March 9, 2017.

CAA filed its motion for preliminary injunction on or before that date, in which case the TRO was in place until a ruling on the preliminary injunction. CAA filed its motion for preliminary injunction on February 2, 2017. On April 5, 2017, the Court denied that motion, holding that CAA and Landlord-Intervenors were unlikely to succeed on the merits of their claims, and that Plaintiffs' harms were speculative, whereas Mountain View tenants faced excessive rents and arbitrary evictions.

The Court's denial of the preliminary injunction motion dissolved the TRO, and lifted the stay that it had placed over the Act. (As you know, Plaintiffs promptly dropped their claims soon after the preliminary injunction was denied.) Since the Court's order, however, some including CAA have asserted that April 5, 2017 is the CSFRA's effective date.[2] This contention, presumably based on the argument that the TRO changed the effective date of the CSFRA, has no support in the text of the CSFRA or in California law. The TRO may have temporarily stayed CSFRA until resolution of Plaintiffs' motion for preliminary injunction, but it did not modify or amend any language or provision of the Act, including that concerning the effective date. In a section titled "Majority Approval, Effective Date, Execution," the CSFRA plainly states that the Act "shall go into effect ten (10) days after the vote is declared by the City Council," or December 23, 2016. Section 1720. There is no basis for any reasonable person construing the CSFRA, which makes no mention of CAA's lawsuit or the stipulated TRO, to arrive at an effective date of April 5, 2017. While *implementation* of the CSFRA was delayed by the TRO, its *effective date* was not changed.

Beyond the plain text of the CSFRA, there are many additional legal arguments supporting our position that the Act's original effective date is undisturbed by the TRO. These arguments arise from the limited nature of a TRO under California law, the lawful effect of the dissolution of a TRO when a subsequent injunction is denied, and the prohibition on a court reforming the terms of a ballot measure unless such reform is necessary to effectuate the voters' intent. We detailed these arguments, with supporting authority, in an earlier letter dated May 26, 2017 to the City's outside counsel in the CAA lawsuit. We do not repeat those arguments here, in anticipation that your counsel will advise you as they deem appropriate.

Both landlords and tenants need to know the effective date of the CSFRA for the purpose of determining rents due under the Act, and the failure of the City to publicize the correct statutory effective date – in light of CAA's campaign to spread misinformation about the effective date – will only result in continuing confusion over what the CSFRA requires. The effective date is an essential component of any calculation of a tenant's rent obligation

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[2] For instance, CAA purports to include materials to its members about "Complying with Mountain View's Rent Control Law" on its website, which contradicts the terms of the CSFRA and erroneously states that April 5, 2017 is the effective date: *available at* https://caanet.org/kb/complying-mountain-views-rent-control-law/. We attach a printout of the publicly available version of this document as **Exhibit A** to this letter.

under the Act. As you know, the CSFRA contains a rollback provision (section 1702(a)(1)): the "base rent" for tenants still occupying the unit they occupied on October 19, 2015 is the rent amount they were paying on that date. The effective date is vital to establishing when the rollback became operative. By the CSFRA's terms, rents in covered units were rolled back to their October 2015 levels as of December 23, 2016. Accordingly, tenants who were paying more than those base rents for the months of January, February, March and April 2017[3] are entitled to a reimbursement of those over-paid amounts.

The effective date is also essential to calculating any adjustments to lawful rents pursuant to any petition that might be filed under section 1710. For a hearing examiner to adjudicate a petition for either an upward or a downward adjustment in rent, he or she must be able to calculate accurately the rents owing. For tenancies that had been established by October 19, 2015, that calculation unavoidably must take into account what lawful rent was owing during January – March of 2017.

Charged with the duty to implement and effectuate the CSFRA, the RHC has the duty to inform the residents of Mountain View affected by the Act of their legal rights and responsibilities. The Act affirmatively requires the RHC to "publicize through reasonable and appropriate means the provisions of this Article, including without limitation the rights and responsibilities of Landlords and Tenants." Sec. 1709(d)(12). Communicating to affected parties the date upon which base rents were in effect is "reasonable and appropriate." Indeed, as explained above, it is essential to parties' ability to conform their behavior to the law. In addition to that general obligation, section 1711 of the CSFRA governing petition procedures requires that the RHC "by regulation establish procedures for making prompt compliance determinations." Sec. 1711(l). Such procedures should include instruction to Hearing Officers of the essential components of the calculations they must perform to adjudicate petitions. Moreover, in codifying the Act into the City Charter, CSFRA provides that the City "shall not alter the substantive provisions of this Article nor take any action that contradicts express terms and purpose of this Article." Sec. 1719.

Until we brought the question to the City's attention in our May 26, 2017 letter to the its outside counsel, the City expressly stated on its website that the effective date was April 5th.[4] While that statement has since been removed from the City's website, it has not been replaced with a statement that the effective date is December 23, 2016. Moreover, while as of our latest viewing, the City's rent stabilization landing page is silent as to the Act's effective date, that page does include a link to a PowerPoint presentation, marked "CSFRA Workshop

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[3] Indeed, for purposes of reimbursements, rents should be calculated on a per diem basis, making tenants whole for rent overpayments going back to December 23, 2016. In addition to any reimbursement for January, February and March monthly rent payments, tenants in covered units are entitled to reimbursement for 8 days' worth of December 2016 rent (December 24th – 31st inclusive).

[4] At the time of that letter, the City's Rent Stabilization landing page read: "**Effective April 5, 2017**, rent levels and rent increases . . . must comply with the CSFRA" (emphasis in the original).

Presentation." Slide three of that presentation contains a timeline of CSFRA events, and states, "April 5, 2017 – Preliminary Injunction Denied: CSFRA Effective." Again, we believe this statement is incorrect insofar as it states that April 5, 2017 was the effective date of the CSFRA.

In short, we write to demand that the RHC publicize through all reasonable means the effective date required by the plain language of the CSFRA: December 23, 2016. The RHC has a duty to inform the people it serves of their rights and obligations under the law, and of the date on which they are subject to them. We stand ready to seek a court order that you perform this lawful duty, via an action for writ of mandamus pursuant to Calif. Code of Civ. Proc. 1085. However, it is our strong preference that you simply undertake this duty to avoid the expense and burden of litigation.

Thank you for your prompt attention to this important matter. We would appreciate a reply by August 8, 2017, presumably via counsel.

Very truly yours,

STANFORD COMMUNITY LAW CLINIC
PUBLIC INTEREST LAW PROJECT
LAW FOUNDATION OF SILICON VALLEY
FENWICK & WEST
Counsel for Tenant-Intervenors

By: Juliet M. Brodie

Knowledge Base: Industry Insight

Complying with Mountain View's Rent Control Law

The California Apartment Association has prepared the following compliance information on the rent control charter amendment approved by Mountain View voters in the Nov. 8 election.

Please see the document previewed below for a sample. Full documents are available to members by signing in below.

Sign In To Download Learn More About CAA

Document Preview

CALIFORNIA APARTMENT ASSOCIATION
CAA Industry Insights

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.

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

Location: Tri-County

Topics: Rent Control/Ellis Act

Related Resources

CAA members have access to more resources related to this topic.

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or Login

Industry Insight: Rent Control: Bad Economic and Failed Social Policy

Industry Insight: Rent Control: Costa-Hawkins Rental Housing Act

Form: Application to Rent – Form 3.0-MV (Mountain View)

Form: Mountain View Addendum to Lease – Form 58.0-MV

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Keyword(s)

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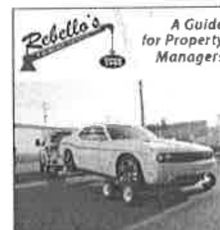

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Bill targeting cities' failure to build housing moves to Assembly floor
July 12, 2017

Fremont spurns rent control, elects to work on existing mediation program
July 12, 2017

Bill to streamline housing-approval process passes Assembly Natural Resources Committee
July 11, 2017

" I recently needed to take a few hours of classes to complete my Recertification as a CAA California Certified Residential Manager. I found

Exhibit A

Topic

Document Type

Location

Search

it very convenient to do this through *on demand classes at my office. The classes are well done and gave great education to further my property management skills. I even registered my maintenance team to listen to some of the classes. It benefitted us all. Thank you CAA!"*

– Beverly, Art Kapoor Realty/Birchwood Apts

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