



MEMORANDUM

Finance and Administrative Services and
Community Development Departments
and the City Attorney's Office

DATE: October 9, 2017

TO: Rental Housing Committee

FROM: Patty J. Kong, Finance and Administrative Services Director
Helen Ansted, Principal Financial Analyst
Jannie L. Quinn, City Attorney
Wayne Chen, Assistant Community Development Director (Acting)
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SUBJECT: Rental Housing Committee Fiscal Year 2017-18 Proposed Budget

RECOMMENDATION

That the Rental Housing Committee (RHC or Committee) review, discuss, and provide confirmation or any additional feedback to the Fiscal Year 2017-18 Proposed Budget for the RHC, including the amounts advanced by the City to assist with the implementation and administration of the Community Stabilization and Fair Rent Act (CSFRA). The Fiscal Year 2017-18 Budget is scheduled for adoption at a meeting of the RHC on October 23, 2017. The annual Rental Housing Fee will be calculated based on the budget established by the RHC.

INTRODUCTION AND BACKGROUND

On November 8, 2016, Measure V, otherwise known as the community Stabilization and Fair Rent Act ("CSFRA") was passed by the voters. The stated purposes of the CSFRA are "to promote neighborhood and community stability, healthy housing, and affordability for renters in the City of Mountain View by controlling excessive rent increases and arbitrary evictions to the greatest extent allowable under California law, while ensuring Landlords a fair and reasonable return on their investment and guaranteeing fair protections for renters, homeowners, and businesses" (Section 1700).

The CSFRA creates an entirely new program in the City of Mountain View, and requires dedicated resources for its development and implementation.

Section 1709(d) of the CSFRA empowers the RHC to “Establish a budget for the reasonable and necessary implementation of the provisions of the CSFRA, including without limitation the hiring of necessary staff, and charge fees in an amount sufficient to support that budget.”

Section 1709(j) of the CSFRA requires the Committee to “finance its reasonable and necessary expenses, including without limitation engaging any staff as necessary to ensure implementation of this Article, by charging Landlords an annual Rental Housing Fee as set forth herein, in amounts deemed reasonable by the Committee in accordance with applicable law. The Committee is also empowered to request and receive funding when and if necessary from any available source including the City for its reasonable and necessary expenses.”

During the initial implementation of the CSFRA, and as required by Section 1709(j)(2), the City advanced all necessary funds in Fiscal Year 2016-17 and Fiscal Year 2017-18 and used City resources to ensure the effective implementation of the CSFRA until the RHC could collect Rental Housing fees sufficient to support the implementation of the CSFRA. The City utilized internal staff resources and entered into multiple contracts for professional services, hired staff, and budgeted for outreach, RHC meetings, and operational expenses. Such costs are included in the proposed budget below (see Attachment 1). The City seeks reimbursement of the advanced funds once the Committee establishes and collects Rental Housing fees as provided in Section 1709(j)(2). The RHC will consider the City’s request as part of its budget adoption process.

On August 28, 2017, a budget presentation was provided with a high level introduction to the budget of the City of Mountain View in order to inform the RHC regarding the preparation of its own budget. Staff also presented some background information on the budget components, along with the budget process and timeline.

On September 11, 2017, the RHC approved a proposed staffing plan including: 4 FTE that will function as the core, day-to-day CSFRA program staff that includes one Program Manager, two Administrative Analyst I/II positions, and one Office Assistant II; continued utilization of existing City infrastructure, including staffing, equipment, and infrastructure; and contracting with various third-party professional service providers to deliver multiple services required for CSFRA implementation.

On September 11, 2017, the RHC also decided to set the same level of a Rental Housing Fee for both the fully as well as the partially covered units under the CSFRA.

ANALYSIS

The key expenditures in the implementation of the CSFRA include, but are not limited to:

1. Staffing for the development, implementation, and administration of the CSFRA;
2. General operating costs, including RHC meeting materials as well as costs associated with education, outreach, and communications;
3. Third-party professional services;
4. Start-up and annual costs for an Information Technology system; and
5. City resources/administrative support.

If adopted, the budget for Fiscal Year 2017-18 will provide the funds necessary to implement the CSFRA and will be used to calculate the annual Rental Housing Fee. The proposed budget includes cost projections for both one-time start-up and recurring annual program costs as well as a request for reimbursement of funds advanced by the City.

As the program is still in its implementation phase, the proposed budget is staff's best estimate of the costs for the program for this fiscal year. The costs that are start-up or implementation costs will not be recurring, but the ongoing program costs will recur each fiscal year (July-June). As the program gains more experience, the budget and corresponding fee may be modified to reflect any updates. The RHC will adopt a budget annually, and the proposed budget for Fiscal Year 2018-19 will be presented in the spring of 2018. The components for the Fiscal Year 2017-18 Proposed Budget are as follows:

Staffing – \$686,600

Administration

The core day-to-day staffing plan, as approved at the September 11, 2017 RHC meeting, includes 4.0 FTEs: 1.0 FTE Program Manager, 2.0 FTE Administrative Analysts, and 1.0 FTE Office Assistant (OA) II. Based on current and anticipated workload and analysis of staffing models of other rent-stabilized cities, four full-time staff is the minimum initial staffing level. Staffing levels shall be assessed on a periodic basis to ensure that sufficient resources are available to adequately administer the program.

Legal

In addition to the administrative staff, the City Attorney's Office has provided legal services to the RHC since its inception. From the November 2016 election through the September 11, 2017 RHC meeting, the City Attorney's Office has spent an average of 1 work day or 8 hours per week on CSFRA implementation and RHC matters. As discussed later in this report, outside legal services were also retained to provide subject matter expertise and assist in the drafting of the regulations.

Staff is recommending, and has included in the proposed budget, to hire outside counsel with expertise in rent stabilization to provide dedicated resources as an alternative to utilizing in-house City Attorney resources. The City Attorney's Office attends the meetings of the RHC, assists in the preparation of the agenda, drafts and reviews agenda reports, oversees litigation matters, and responds to inquiries of landlords and tenants regarding the CSFRA. The City Attorney recommends the RHC consider the utilization of outside legal services dedicated to the RHC for two reasons. First, both the Hearing Officers and the RHC will be involved in the petition process and need training and guidance from a subject matter expert with experience in the petition process. Second, the City Attorney's Office continues to experience significant workload demands and the RHC has the ability under the CSFRA to hire the staff necessary to implement the CSFRA.

The proposed budget includes an allocation for the time the City Attorney's Office has spent in the support of the RHC to date and a reduced level of support for the remainder of the fiscal year as outside counsel transitions to become legal counsel to the RHC.

General Operating Expenses – \$161,500

These expenses include cost estimates for program expenditures related to office operations, communications, outreach efforts, and cost of materials for the RHC. Examples of such cost items include development, printing, mailing, and postage of outreach materials such as postcards, flyers, and resource guides; RHC agenda packets and materials; office equipment and office supplies; noticing for meetings; costs associated with education and outreach meetings; as well as translation services, including Spanish and Mandarin, for outreach materials and simultaneous translation services. Currently, the CSFRA program is administered from facilities within City Hall. Going forward, staff administering the CSFRA and supporting the RHC may be housed in a different location than City Hall. If so, the budget would need to account for this expense.

The proposed budget includes \$52,000 for postage and mailing (four mailings at \$13,000 each); \$10,000 for copy/print costs; \$10,000 for supplies and miscellaneous; \$3,000 for copier lease; \$20,000 for office furniture and equipment (one-time cost); \$8,000 for translations (100 hours at \$80 per hour); and \$58,500 for office space off-site.

Third-Party Professional Services – \$774,800

Implementation of the CSFRA requires contracting with multiple third-party consultants, providing key professional contract services as detailed in the staffing plan, as adopted by the RHC at its meeting on September 11, 2017. The Fiscal Year 2017-18 Proposed Budget includes the following contract cost projections for these third-party professional services:

Outside Legal Services (\$200,000). To date, the City has incurred \$62,377.60 to hire the law firm of Goldfarb and Lipman to provide expert legal services to the RHC from May through September. These services included: drafting and reviewing rules and regulations to implement the CSFRA, multiple presentations to the RHC regarding the fair rate of return, maintenance of net operating income, and Vega adjustment; reviewing materials related to the CSFRA, including forms and petitions; providing legal advice; compliance and enforcement; Hearing Officer training; and researching and analyzing Best Practices in other California rent-stabilized cities and utilizing the findings to inform the development and implementation of an effective CSFRA.

In Fiscal Year 2016-17, the City also utilized the one-time expertise services of legal consultant Ken Baar for an initial analysis of the legal requirements under the CSFRA and to assess the need of interim regulations.

Going forward, Goldfarb and Lipman has provided a proposal for the RHC to consider and it is attached as Attachment 2 to this agenda report. Monthly legal services are estimated at \$12,500 to \$17,500/month and are included in the proposed budget. This amount equates to approximately 40 to 55 hours per month and would cover up to two RHC meetings per month (attendance at meetings, agenda review, and review of staff reports), legal advice on implementation and administration of the CSFRA, drafting of remaining regulations, and two to three petition hearings per month. The fees are based on the level of the experience of the attorney providing the service and will vary. They are only incurred as services actually rendered. It is recommended the budget for legal services be revisited in six months so it can be adjusted for the next fiscal year to take into consideration the actual experience of the RHC during this fiscal year. The RHC may also want to consider allocating some portion of the budget for in-depth research and legal advice that may be required as part of the implementation process but fall outside of the services as described above.

The RHC has the option of retaining the services of Goldfarb and Lipman or another firm with expertise in rent regulation to ensure subject matter experts are available to the RHC throughout the petition process and as legal issues arise during the implementation and administration of the CSFRA.

Litigation (\$30,000). On July 24, 2017, the RHC directed the City Attorney to file a declaratory relief action to establish the effective date of the CSFRA. Subsequent to the filing of the declaratory relief action, a writ of mandate was filed. Both of these actions have now been dismissed. However, the RHC incurred \$30,000 for outside legal services related to both of these matters and this amount is incorporated into the budget as these costs were incurred by the RHC.

Tenant Relocation Services (\$20,000). To provide counseling and process services as well as neutral third-party income eligibility determination for tenant relocation assistance under the CSFRA and TRA0. Proposed budget includes 40 cases at \$500 per case.

Mountain View Rental Housing Helpline (\$124,800). To provide first point of contact services for all stakeholders regarding CSFRA inquiries through dedicated phone line/ e-mail/online access as well as walk-in office hours with services in English and Spanish. These services also provide counseling and education regarding rights and responsibilities under the CSFRA, and conciliatory services between tenants and landlords. The proposed budget includes 40 hours per week at \$60 per hour.

Prehearing Settlement Conference Services (\$60,000). To provide prehearing facilitation services, potentially reducing demands for formal hearings. The proposed budget includes 150 cases at \$400 per case.

Hearing Officer Services (\$300,000). To provide petition hearing services in accordance with adopted rules and regulations. The proposed budget includes 300 cases at an average of \$1,000 per case.

Training Services (\$20,000). Training services provide professional training and conferences for staff, Hearing Officers, and RHC members concerning rent stabilization and the petition process.

Facilitation Services (\$20,000). Facilitation services are utilized for ongoing educational workshops as well as for input gathering stakeholder meetings for landlords, tenants, and other stakeholders. The proposed budget includes 100 hours at \$200 per hour.

Information Technology – \$250,000

Due to the scope and breath of the CSFRA, implementation of this program for over 16,000 covered units in an effective and efficient manner will require a reliable, well-functioning Information Technology (IT) system for the program which is able to receive, store, and retrieve a potentially significant volume of data. Ideally the system should be able to run key reports, look up pertinent information, and facilitate compliance with the CSFRA. On September 11, 2017, the RHC directed staff to present three different options for such an IT system – a lean system, a moderate system, and a robust system. As mentioned in an earlier report to the RHC, the total of \$250,000 gives the flexibility to have start-up costs available to develop the system ultimately selected by the RHC, with the caveat that if there is unspent money, this can be rebudgeted for the next fiscal year. The detail and discussion of the IT budget is also on the agenda for the October 9, 2017 meeting.

City Resources/Administrative Support – \$286,400

Many of the items recommended for the CSFRA budget are direct costs associated with the implementation and operations of the program. However, indirect costs are also incurred for the support of the program. Indirect costs would include, but are not limited to, the following:

- Finance and Administrative Services:
 - Budget – the development of an annual budget and fee.
 - Accounts Receivable – for the annual billing and collection of the rental housing fee.
 - Accounts payable – the staff time and equipment necessary to make payments for the obligations of the CSFRA. Examples would be the payment of consultants, legal services, mediator services, tenant relocation services, etc.
 - Payroll/HR – the current two positions and recommended four staff personnel would be paid through the City's payroll system on a biweekly basis. This would also include the processing and payment of benefits.
 - Document Processing – the processing of documents, including agendas, agenda reports, and minutes for the RHC.
 - Purchasing/Contracts – for the purchase of certain goods and services, as well as the processing of contracts for services.

- Legal Services/City Attorney's Office – generally legal services are considered part of indirect costs; however, considering the significant use of legal resources during the initial implementation of the CSFRA, staff proposes the time of the City Attorney's Office be considered a direct cost.
- Human Resources – provides for the administration of benefits and recruitment of personnel.
- Information Technology – provides for cost and maintenance of the telephone system, computers, printers, website, etc. This is in addition to the costs identified in establishing and ongoing maintenance of a system for the program.
- Administration and Management – provides for administration and management of the staff and the program from the Community Development Department, Finance and Administrative Services Department, Information Technology Department, City Attorney's Office, City Clerk's Office, and City Manager's Office.
- Other costs identified include general liability and identifying costs associated with employee compensated absences.

Other costs typically included in administrative overhead would be facilities for the allocation of office space and maintenance, telephone services, copier services, etc. Currently, staff administering the CSFRA and staffing the RHC are functioning in facilities provided by the City. At some point, if the program is housed off-site, this would be accounted for separately.

It is currently unknown whether the implementation of the CSFRA, and more specifically, the petition process will impact the existing Multi-Family Housing Inspection Program, as the majority of the rental units covered by the CSFRA are included in this program. The Multi-Family Housing Inspection Program is funded through an annual program fee. Staff will begin to monitor the impacts of the implementation of the CSFRA on the Multi-Family Housing Program as the petition process comes on line and will report back to the RHC and the City Council regarding any impacts on the program.

To truly identify and calculate the cost of these services, the City proposes to include the CSFRA in its next cost allocation plan update. However, until that time, the City is proposing a 15 percent allocation of the CSFRA budget to cover all the indirect costs identified. This is a standard allocation percentage the City charges for the administration of contracts and some other programs that are generally less intensive

than the CSFRA and it is possible that once a cost allocation plan can be performed, the costs could be higher.

Reimbursement Request from the City
Fiscal Year 2016-17 and Fiscal Year 2017-18 City Advanced Funds – \$1,051,677

As explained in the Memo Reimbursement of Advanced Funding of July 10, 2017 (Attachment 3), the City has funded start-up expenses for the launch and implementation of the CSFRA in Fiscal Years 2016-17 and 2017-18. The City has also made resources available for administrative support and the indirect costs as outlined above. The City has also provided legal services for the California Apartment Association (CAA) lawsuit that was filed on December 21, 2016.

Part of the actual costs in Fiscal Year 2016-17 consists of litigation expenses. In December 2016, the CAA filed a lawsuit challenging the constitutionality of the CSFRA. The lawsuit was dismissed in May 2017. During this time, the City of Mountain View incurred \$190,300 in legal expenses to defend the CSFRA and includes this expense in its reimbursement request to the RHC.

Although the City has funded \$861,400 for the implementation costs, and expended \$190,277 for litigation costs for Fiscal Year 2016-17 and the first half of Fiscal Year 2017-18, the actual costs expended in Fiscal Year 2016-17 was \$431,595. Not all the advanced funds have been spent, and the RHC will be adopting a budget and a fee for Fiscal Year 2017-18 that should cover those and the cost of the funds expended for last fiscal year. Since the fee will cover the budget to be adopted by the RHC, the balance of the unspent funds should be returned to the City.

The actual costs spent on implementation of the CSFRA in Fiscal Year 2016-17 amounted to \$431,595 (Attachment 1 – Column FY 2016-17 CMV Actual). This includes 15 percent for the indirect costs discussed above. As mentioned earlier, and according to Section 1709(j)(2), the City is seeking reimbursement of such advanced funds from the RHC after Rental Housing fees have been collected and are therefore incorporated in Fiscal Year 2017-18 Budget.

Petition Fee

On September 11, 2017 the RHC directed City staff to review with legal counsel the ability for the RHC to charge a reimbursable nominal petition fee for filing individual rent adjustment requests under the CSFRA, to be paid for by the petitioner that would be separate and distinct from the annual per-unit Rental Housing Fee.

In that meeting, the RHC agreed that a full cost recovery petition fee could vary significantly depending upon the nature of the petition and could be costly. The RHC also discussed that charging a nominal fee could be a tool to discourage frivolous filing of petitions. At the same time, the RHC expressed interest in the concept of reimbursing the petition fee to petitioners who are successful in receiving an upward or downward rent adjustment and asked for the opinion of legal counsel regarding the validity of such reimbursement.

Staff has had the opportunity to consider the petition fee further and offers the following information to the RHC and asks for further direction. First, the full estimated cost of the petition process is already included in the proposed budget and, therefore, allocated on a per-unit basis to the landlords. If a separate petition fee were to be imposed, then the amount attributed to the petition process should be deducted from the annual budget so that the budget only recovers the costs of the program not covered by the petition fee. The budget will be refined over the coming budget cycles based on the implementation experience.

Second, a reimbursable petition fee may make the budget calculation even more problematic as staff would need to estimate how many petition fees would likely be reimbursed. For those estimated reimbursed fees, the landlords would end up bearing this portion of the cost (even when in theory the landlord could have been the petitioner and prevailed) as this amount would be included in the budget and allocated on a per-unit basis.

Third, charging a petition fee, and possibly reimbursing this fee, adds an administrative burden to staff that cannot be recovered by these nominal petition fees. Administration of such petition fee, therefore, would add to the overall costs of the administration of the CSFRA program.

Finally, while the City requires the payment of a fee to appeal an administrative decision of the City and this fee is similar to the petition process, none of those fees are reimbursable if the party prevails on the appeal. From a legal standpoint, allowing reimbursement of the fee could change the nature of the fee. It should be noted this fee is already recoverable by landlords when petitioning for a rent increase. The petition fee can be itemized as a cost. If a landlord prevails in the petition process and is allowed to increase the rent, the rent increase would effectively include the petition cost, thus reimbursing the landlord. A similar regulation could be adopted for petitions brought by tenants for rent reductions and allow for the inclusion of the petition fee as a cost to be included in a rent reduction determination. Such a provision could be included with the regulations the RHC will adopt to implement the budget.

For these reasons, staff recommends to not include a reimbursable nominal petition fee in the RHC budget for Fiscal Year 2017-18. Alternatively, the RHC may wish to consider a regulation to allow for the consideration of the petition fee as a cost to be included in a rent reduction, akin to the regulation for rent increases. If the RHC remains interested in such petition fee, staff recommends deferring the consideration of a petition fee until the Fiscal Year 2018-19 budget which would provide an opportunity for staff to do further analysis and the RHC to be able to have further information regarding the petition process.

Annual Rental Housing Fee

On September 11, 2017, the RHC deliberated on the Rental Housing Fee methodology and decided to set the same fee for both the fully as well as the partially covered units under the CSFRA, which fee would recover the costs of the program. Using the Santa Clara County tax assessor's records, there is an estimated total of 16,788 fully and partially covered rental units in the City of Mountain View. To ensure full funding of the CSFRA program, the Rental Housing Fee would be calculated by dividing the total amount of the Fiscal Year 2017-18 Budget as approved by the RHC by the total amount of rental units covered by the CSFRA (16,788). Based on the proposed budget, including the actual costs for Fiscal Year 2016-17, the fee would approximately amount to \$160 per unit per year.

REQUESTED ACTION

Staff has prepared the proposed budget based on the RHC's previous direction and staff's best estimate for full implementation of the CSFRA program. Staff requests confirmation or any additional feedback to the proposed budget. Staff will be presenting the RHC budget for adoption at its next meeting on October 23, 2017.

FISCAL IMPACT

There is no fiscal impact to the discussion of the budget. However, when the RHC adopts a budget, and the applicable Rental Housing Fee, the fee will need to be sufficient to fund the costs of the program.

PUBLIC NOTICING – Agenda posting.

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- Attachments:
1. Rental Housing Committee Fiscal Year 2017-18 Proposed Budget
 2. Memo Goldfarb Lipman Proposal for Legal Services
 3. Memo Reimbursement of Advanced Funding of July 10, 2017