

Rental Housing Committee
Proposed Appeal Decision

Appeal of Case No. 17180015

The Rental Housing Committee of the City of Mountain View (the "**RHC**") finds and concludes the following:

I. Summary of Proceedings

Yuan Cao ("**Appellant-Tenant**") submitted a timely appeal of the Decision of petition case number 17180015 (the "**Petition**") on November 16, 2018, which was accepted on November 26, 2018 and scheduled for hearing before the RHC on December 10, 2018.

Darci Iseger and Douglas Vaughn, as trustees for the Forster Family Trust (collectively "**Respondent-Landlord**"), submitted the Petition for upward adjustment of rent on April 12, 2018 applicable to all units in a seven unit building located at 324 Camille Court (the "**Property**").

Residents of six of the seven units responded to the Petition. Residents of one unit settled prior to the Hearing. Residents of three other units filed tenant hardship petitions, which were consolidated for hearing with the Petition.¹

A hearing concerning the Petition and the consolidated hardship petitions was held on September 13, 2018 before Hearing Officer Martin Eichner (the "**Hearing Officer**"). Appellant-Tenant participated in the hearing. No party to the hearing was represented by legal counsel. The September 13, 2018 hearing was recorded and is available as a part of the administrative record.

A post-hearing order was issued addressing evidence submitted close to the hearing date or at the hearing. The order required any additional submissions be provided to the Hearing Officer by October 1, 2018. On October 3, 2018 the hearing record was closed and notice of closure was provided to the parties to the consolidated petitions.

The Hearing Officer decision regarding the Petition and consolidated tenant hardship petitions is dated November 2, 2018 and was delivered thereafter (the "**Decision**").

II. Procedural Posture

CSFRA section 1711(j) states in part that "[a]ny person aggrieved by the decision of the Hearing Officer may appeal to the full Committee for review." Regulation Chapter 5 section H(5)(a) provides that the RHC "shall affirm, reverse, or modify the Decision of the Hearing Officer, or remand the matters raised in the Appeal to a Hearing Officer for further findings of fact and a revised Decision" as applicable to each appealed element of the decision.

III. Appealed Elements of Hearing Officer Decision

Regulation Chapter 5 section H(1)(a) states that "[t]he appealing party must state each claim that he or she is appealing, and the legal basis for such claim, on the Appeal request form."

¹ Appellant-Tenant did not file a hardship petition.

Section III of this Proposed Appeal Decision identifies the elements of the Decision that are subject to appeal by the Appellant-Tenant. The Proposed Appeal Decision regarding each appealed element is provided in Section IV of this Proposed Appeal Decision.

The text of the argument in the Appeal is provided in its entirety below.

"In the petition, Landlord applied a "CPI Percentage Calculation" of 15% CPI increase from 2015 to 2017. If that makes sense, all landlords in Mountain View are automatically allowed a minimum 15% rent increase if they decide to start a petition, regardless whether the property has defective condition or is substandard.

"CSFRA is supposed to stabilize rent and stabilize the community. Rental Housing Committee should loyally represent the voters of Mountain View rather than selectively represent some special interest group to help them maximize profit.

"How would an unstable 15% CPI stabilize rent? On the contrary, it undermined CSFRA, and betrayed Mountain View voters. RHC needs to revisit this unreasonable policy to avoid further damage to the accountability."

RHC staff Patricia Black contacted Appellant-Tenant via telephone to verify what element(s) of the Decision were appealed, and the legal basis for the claims made in the Appeal. Appellant-Tenant challenged the consumer price index applicable to the Petition.

Regulation Chapter 6, Section C(4) defines the "Consumer Price Index" applicable for maintenance of net operating income calculations. Any appeal to the RHC challenging the validity of regulations adopted by the RHC pursuant to its authority under the CSFRA are denied as improper.

IV. Proposed Decision Regarding Appealed Elements

Appellant-Tenant appealed one element of the Decision: the "Consumer Price Index" applicable for maintenance of net operating income calculations ("CPI").

Applicable CPI Value

The applicable CPI date and value is defined in the Regulations. Chapter 6, Section C(4)(a) states that the CPI value for the Base Year is 371.075 unless revised by the Bureau of Labor Statistics. No evidence in the record indicates the CPI value has been revised for 2015.

Chapter 6, Section C(4)(b) states: "The Consumer Price Index for the Petition Year shall be the Consumer Price Index that was most recently published as of the date a Petition for Upward Adjustment of Rent is submitted."

Line 2.b of Worksheet 5 of the Petition (Plaintiff's Exhibit 1 to the Decision, p. 97) requests a fifteen percent adjustment to Base Year Net Operating Income, referencing the following values for the CPI for purposes of maintaining net operating income: 371.075 for the Base Year, and 428.426 for Petition Year. Rounded to the nearest hundredth, the percentage change in CPI is fifteen.

$$428.426 / 371.075 = 1.15$$

The Decision cites the relevant regulations and notes, "The Petition relies on a Petition Year of 2017, as per instructions at a workshop presented by the City of Mountain View ("City") that [Respondent-Landlord] attended, even though the City changed [*sic*] the CPI tables in February 2018, which would have supported higher increases."² (Decision, p.5.) Thereafter the Decision utilizes the fifteen percent CPI change for the calculation to maintain net operating income without further discussion (Decision, p. 16). Respondent-Landlord appears not to have contested use of its chosen CPI change calculation, before the record was closed, or by asserting an appeal.

The United States Department of Labor, Bureau of Labor Statistics reported the CPI value of 428.426 for December 2017.³ No evidence in the record indicates that the CPI was misapplied or miscalculated.

Appellant-Tenant argues that use of the CPI undermines the CSFRA and betrays Mountain View voters. However, this argument is not supported by the text of Regulation Chapter 6, Section C(4)(b). Moreover, the regulations do not provide the authority for a hearing officer to deviate from the regulations or choose a different CPI value. Finally, an appeal of a decision regarding a petition for upward adjustment of rent is not the proper means of challenging the Regulations.

Accordingly, the CPI values identified in the Decision are **affirmed**.

V. **Conclusion**

As detailed above, the RHC denies Appellant-Tenant's appeal of the Decision. The Decision of the Hearing Officer identifying applicable CPI values for purposes of maintaining net operating income from the Property is **affirmed**.

² As noted below, the United States Bureau of Labor Statistics reports the change in value of CPI, which reporting is relied upon by the City for purposes of implementing the CSFRA.

³ As indicated in the Decision, the CPI value increased from December 2017 through March 2018, which value could have been used by Respondent- Landlord.