



**MEMORANDUM**

Rent Stabilization Program,  
Community Development Department

**DATE:** May 17, 2021  
**TO:** Rental Housing Committee  
**FROM:** Patricia Black, Analyst II  
Karen M. Tiedemann, Special Counsel to the Rental Housing Committee  
Anky van Deursen, Rent Stabilization Program Manager  
**SUBJECT: CPI Indices and the CSFRA**

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**RECOMMENDATION**

Adopt a Resolution Identifying Replacement Index for Maintenance of Net Operating Income Calculations in the Petition for Upward Adjustment of Rent (Fair Return) Context, to be read in title only, further reading waived (Attachment 1 to this Memorandum).

**BACKGROUND**

In November 2016, the voters approved the Community Stabilization and Fair Rent Act (“CSFRA”), which amended the City Charter. The CSFRA regulates the rents of rental properties, with certain exemptions such as single-family homes and duplexes. The CSFRA is a tenant protection law that has three primary goals:

1. Stabilize rents.
2. Provide eviction protections.
3. Ensure a fair and reasonable rate of return on investment.

Section 1700 of the CSFRA stipulates that housing providers are entitled to “a fair and reasonable return on their investment.” The CSFRA provides three methods to ensure a fair return is achieved:

1. Annual General Adjustment of Rent of 100% CPI-U (Bay Area Region).
2. Vacancy Decontrol.
3. Individual Petitions for Upward Adjustment of Rent (using a Fair Return Standard).

Sections 1710 and 1711 of the CSFRA charge the Rental Housing Committee (RHC) with promulgating regulations to clarify the petition process and ensure rents are set to allow for a landlord's fair return. Petitions are heard and decided by hearing officers and may be appealed to the RHC.

### **CSFRA Petitions for Upward Adjustment of Rent**

If a landlord does not believe the permitted annual general rent adjustment provides a fair rate of return, they may petition for an upward adjustment of rent. The CSFRA sets forth the factors a hearing officer may consider when deciding whether to grant the petition.

#### **Fair Return Standard: Maintenance of Net Operating Income (MNOI) Petition**

Under current CSFRA Regulations, property owners are able to request rent increases above the allowed annual general adjustment through the City-managed petition process. The process utilizes a "maintenance of net operating income (MNOI) fair return standard" to ensure property owners are able to achieve a fair and reasonable return on investment as required under the law. This process determines whether current rent levels are able to maintain the net operating income (MNOI) of the property over time. It compares the net income received from a property in the base year (2015), adjusted for inflation, with the net income received in the petition year.

The Maintenance of Net Operating Income (MNOI) calculation is used in Petitions of Upward Adjustment of Rent to determine whether the Annual General Adjustment of rent allowed under the CSFRA maintains a property's net operating income from year to year adjusted by an inflation rate percentage. The equation utilizes the Consumer Price Index (CPI) to adjust a petition's 2015 base year net operating income by an inflation rate percentage. The petition year's net operating income is then subtracted by the adjusted net operating income of the base year. If the subsequent number is negative, it indicates the property may be subject to an increase greater than the Annual General Adjustment in order to maintain net operating income and receive a fair rate of return.

### **RHC Considerations**

At its meetings on May 22, June 8, and June 19, 2017, the RHC had the opportunity to discuss the concept of a fair return standard, hear input from the community, and also receive input solicited from stakeholders. On June 19, 2017, the RHC directed staff to draft a fair return standard regulation that maintains the net operating income received from a property in the years prior to adoption of the CSFRA by increasing the net operating income in accordance with changes to the CPI. During the July 24, 2017 RHC meeting, staff presented options for the fair return methodologies:

1. **Index for the Fair Return Standard** –Staff presented two Consumer Price Indices (CPI) for the RHC’s consideration: CPI–All Urban Consumers (CPI–U) and the CPI–Housing, both for the San Francisco-Oakland-San Jose metropolitan area. Staff recommended the CPI–All Urban Consumers (CPI–U) based on best practices of other jurisdictions as well as for consistency with the CPI index utilized in the calculations of the Annual General Adjustment.
2. **Percentage of Index for the Fair Return Standard** –Staff presented the RHC with options regarding the percentage of the change to the preferred index to be used for the Fair Return Regulations. Staff requested the RHC to consider whether to allow for 100% of the CPI be used to adjust a landlord’s Net Operating Income from the base year to the petition year or a portion thereof. Staff recommended a 100% allocation for the CPI.

After deliberation, the RHC directed staff to revise the draft recommendations for the Fair Return Standard to utilize the CPI–Rent of Primary Residence for the San Francisco-Oakland-San Jose metropolitan area at 100% of CPI.

The U.S. Bureau of Labor Statistics redefined the geographical area for statistical analysis in January 2018, which caused the RHC to adopt an updated CPI Index for Petitions of Upward Adjustment of Rent. Staff presented index options to the RHC on March 26, 2018 and the RHC adopted the CPI–Rent of Primary Residence for the San Francisco-Oakland-Hayward metropolitan area.

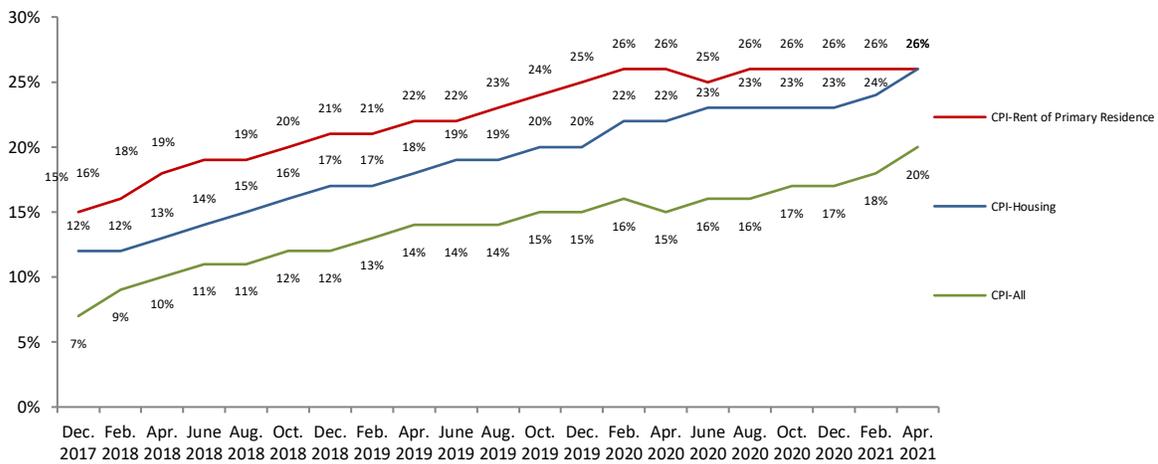
The table below provides the citation and relevant text of the CSFRA and Chapter 6 Regulations where the U.S. Bureau of Labor Statistics indices are used.

<p><b>Annual General Adjustment</b> CSFRA § 1707(a)(1)</p>	<p>The Annual General Adjustment shall be equal to 100% of the percentage increase in the Consumer Price Index (All Urban Consumers, San Francisco –Oakland – San Jose region, or any successor designation of that index that may later be adopted by the U.S. Bureau of Labor Statistics) as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the 12-month period ending as of March of the current year.</p>
<p><b>Fair Return Standard</b> Regulation § 6(C)(4)</p>	<p>Consumer Price Index is the Consumer Price Index for All Urban Consumers for “Rent of primary residence” in the San Francisco –Oakland – San Jose, California metropolitan area as published by the United States Department of Labor, Bureau of Labor Statistics, and currently listed as Series No. CUURA422SEHA, as it may be revised.</p>

**ANALYSIS**

It is within the RHC’s purview to review and revise regulations as necessary based on experiences during implementation of the petition process. On November 26, 2018, Chair Ortiz requested staff update the monthly status report to include a graphical representation of the CPI percentages for the fair return standard of both indices and provide quarterly presentations of the differences between the two indices when calculating a fair return in Upward Adjustment of Rent Petitions. In March 2019, the RHC requested staff include the CPI-Housing index for comparative purposes.

**CPI Percentages for the Fair Return Standard**



**Differences between Maintenance of Net Operating Income (MNOI) Calculations for Finalized Petitions of Upward Adjustment of Rent**

The Maintenance of Net Operating Income (MNOI) calculation is used in Petitions of Upward Adjustment of Rent to determine whether the Annual General Adjustment of rent allowed under the CSFRA maintains a property’s net operating income from year to year adjusted for inflation. The regulations call for the 2015 base year net operating income to be increased by the inflationary index. The indexed base year net operating income is then compared to the petition year next operating income and if the base year net operating income is greater the property is eligible for an upward adjustment of rents in order to maintain net operating income and receive a fair rate of return.

The following tables show the calculations for the MNOI for finalized Petitions for Upward Adjustment of Rent decisions as received by the City. Each petition represented below utilizes the net operating income for the base year and the petition year as approved by the hearing officer responsible for the adjudication of the petition. The MNOI is calculated for all three CPI indices, divided by 12 and then divided by the

number of units on the property to indicate the potential increase for each unit per month. If an MNOI calculation is positive, no increase is allowed.

**Table 1: MNOI Calculations for Petitions for Upward Adjustment of Rent:  
CPI – All Items All Urban Consumers**

Petition	Petition Year	Number of Units	CPI All Items	Decision NOI Base Year	Decision NOI Petition Year	MNOI-CPI All	Per Month Increase (CPI All)	Per Unit Increase (CPI All)
1977 Plymouth Street	Oct-17	10	7%	\$134,689	\$75,758	-\$68,359	\$5,697	\$570
141 Del Medio Avenue*	Oct-17	104	7%	\$1,154,256	\$1,291,321	\$56,267	\$0	\$0
365 Chiquita Avenue	Dec-17	13	7%	\$192,160	\$236,356	\$30,745	\$0	\$0
1600 Villa Street*	Dec-17	248	7%	\$6,686,801	\$7,193,198	\$38,322	\$0	\$0
184 Centre Street	Dec-17	11	7%	\$148,374	\$149,738	-\$9,022	\$752	\$68
1824 California Street	Nov-17	8	7%	\$138,870	\$100,120	-\$48,471	\$4,039	\$505
864 Park Drive**	Jan-18	5	7%	NA	NA	NA	NA	NA
236 Higdon Avenue	Dec-17	4	7%	\$47,724	\$38,938	-\$12,127	\$1,011	\$253
324 Camille Court	Dec-17	7	7%	\$91,651	\$84,639	-\$13,427	\$1,119	\$160
647 Victor Way	Apr-18	4	10%	\$81,545	\$84,679	-\$5,020	\$418	\$105
231 Jessie Lane	May-18	4	10%	\$59,510	\$69,346	\$3,885	\$0	\$0

**Table 2: MNOI Calculations for Petitions for Upward Adjustment of Rent:  
CPI – Housing**

Petition	Petition Year	Number of Units	CPI All Items	Decision NOI Base Year	Decision NOI Petition Year	MNOI-CPI Housing	Per Month Increase (CPI Housing)	Per Unit Increase (CPI Housing)
1977 Plymouth Street	Oct-17	10	12%	\$134,689	\$75,758	-\$77,787	\$6,258	\$626
141 Del Medio Avenue*	Oct-17	104	12%	\$1,154,256	\$1,291,321	-\$24,530	\$120	\$1
365 Chiquita Avenue	Dec-17	13	12%	\$192,160	\$236,356	\$0	\$0	\$0
1600 Villa Street*	Dec-17	248	12%	\$6,686,801	\$7,193,198	-\$496,623	\$24,668	\$99
184 Centre Street	Dec-17	11	12%	\$148,374	\$149,738	-\$20,892	\$1,370	\$125
1824 California Street	Nov-17	8	12%	\$138,870	\$100,120	-\$58,192	\$4,618	\$577
864 Park Drive**	Jan-18	5	12%	NA	NA	NA	NA	NA
236 Higdon Avenue	Dec-17	4	12%	\$47,724	\$38,938	-\$15,944	\$1,209	\$302
324 Camille Court	Dec-17	7	12%	\$91,651	\$84,639	-\$20,759	\$1,501	\$214
647 Victor Way	Apr-18	4	14%	\$81,545	\$84,679	-\$11,544	\$690	\$173
231 Jessie Lane	May-18	4	14%	\$59,510	\$69,346	-\$875	\$0	\$0

**Table 3: MNOI Calculations for Petitions for Upward Adjustment of Rent:  
CPI – Rent of Primary Residence**

Petition	Petition Year	Number of Units	CPI Rent	Decision NOI Base Year	Decision NOI Petition Year	MNOI CPI Rent	Per Month Increase (CPI Rent)	Per Unit Increase (CPI Rent)
1977 Plymouth Street	Oct-17	10	14%	\$134,689	\$75,758	-\$77,787	\$6,482	\$648
141 Del Medio Avenue*	Oct-17	104	14%	\$1,154,256	\$1,291,321	-\$24,530	\$2,044	\$20
365 Chiquita Avenue	Dec-17	13	15%	\$192,160	\$236,356	\$0	\$0	\$0
1600 Villa Street*	Dec-17	248	15%	\$6,686,801	\$7,193,198	-\$496,623	\$41,385	\$167
184 Centre Street	Dec-17	11	15%	\$148,374	\$149,738	-\$20,892	\$1,741	\$158
1824 California Street	Nov-17	8	14%	\$138,870	\$100,120	-\$58,192	\$4,849	\$606
864 Park Drive**	Jan-18	5	16%	NA	NA	NA	NA	NA
236 Higdon Avenue	Dec-17	4	15%	\$47,724	\$38,938	-\$15,944	\$1,329	\$332
324 Camille Court	Dec-17	7	15%	\$91,651	\$84,639	-\$20,759	\$1,730	\$247
647 Victor Way	Apr-18	4	18%	\$81,545	\$84,679	-\$11,544	\$962	\$240
231 Jessie Lane	May-18	4	18%	\$59,510	\$69,346	-\$875	\$73	\$18

**Table 4: Difference between CPI Rent of Primary Residence and CPI All MNOI Calculations for Petitions for Upward Adjustment of Rent**

Petition	Petition Year	Number of Units	Per Unit Increase (CPI All)	Per Unit Increase (CPI Rent)	Difference Per Unit Per Month
1977 Plymouth Street	Oct-17	10	\$570	\$648	\$79
141 Del Medio Avenue*	Oct-17	104	\$0	\$20	\$20
365 Chiquita Avenue	Dec-17	13	\$0	\$0	\$0
1600 Villa Street*	Dec-17	248	\$0	\$167	\$167
184 Centre Street	Dec-17	11	\$68	\$158	\$90
1824 California Street	Nov-17	8	\$505	\$606	\$101
864 Park Drive**	Jan-18	5	NA	NA	NA
236 Higdon Avenue	Dec-17	4	\$253	\$332	\$80
324 Camille Court	Dec-17	7	\$160	\$247	\$87
647 Victor Way	Apr-18	4	\$105	\$240	\$136
231 Jessie Lane	May-18	4	\$0	\$18	\$18

## RECOMMENDATION

Staff recommends that the RHC adopt the San Francisco – Oakland – Hayward CPI-U for use in both the Annual General Adjustment and Fair Return Standard contexts. Using one index for both purposes would better unify the Annual General Adjustment and Fair Return processes by avoiding situations where the CPI-U is either less or greater than the other index. If the other index reflects greater inflation than CPI-U, landlords would be encouraged to file petitions to maximize profits regardless of actual expenses; if the other index reflects less inflation than CPI-U, landlords would be discouraged from filing petitions regardless of actual expenses.

**FISCAL IMPACT**

The identification of alternate indices is not anticipated to affect the budget of the RHC.

**PUBLIC NOTICING** – Agenda posting.

PB-KMT-AvD/JS/8/CDD/RHC

895-05-17-21M

- Attachments:
1. Draft Amended Chapter 6: Upward Adjustment Regulations (with Changes)
  2. Draft Resolution Adopting Amendments to Regulations Chapter 6 Exhibit A-Draft Regulations Chapter 6: Upward Adjustment Regulations
  3. CPI Indices
  4. CSFRA Program's CPI – Rent of Primary Residence Percentage for a Fair Return Calculation Instruction Sheet
  5. Staff Report from July 10, 2017 – Draft Regulations for Petition and Hearing Process, Fair Return Standard