



MEMORANDUM

CSFRA, Community Development Department

DATE: June 8, 2017

TO: Rental Housing Committee (RHC)

FROM: Jannie L. Quinn, City Attorney

SUBJECT: **Annual General Adjustment (AGA) for Gap Between October 19, 2015 and February 2016**

As you are aware, the CSFRA provides for annual general adjustment for rent. At its meeting on May 22, 2017, staff raised the issue of a gap in time between October 19, 2015 rent rollback date and the Annual General Adjustment (AGA) recently adopted by the Rental Housing Committee (RHC) for 2017, which covers February 2016 to February 2017. Staff sought direction on whether the RHC wished to address this four-month period.

Following the last RHC meeting, I had the opportunity to revisit the legal arguments and comments in support of and against the RHC's adoption of an adjustment for this gap period. The CSFRA, for whatever reason, does not address this gap period. As you heard at the meeting, the proponents of the CSFRA take the position that the charter amendment does not authorize any adjustment in rent until the 2017 AGA and then only for the past 12 months. In the recent litigation regarding the CSFRA, the plaintiffs, on behalf of landlords, argued by rolling rents back to October 2015 but not providing an adjustment in rent could constitute a taking of property without just compensation. While there is merit to both positions, the gap is very limited in time, the CPI for November 2015 to February 2016 is only 0.6 percent, and the effect of the gap could vary from landlord to landlord, depending upon the rent charged by the landlord in October 2015, market conditions, and other factors. In addition, a landlord has the ability to file a petition for an upward rent adjustment to recoup any adjustment for this gap in the event the landlord believes he or she has not received the fair return due under the CSFRA.

For these reasons, I recommend the RHC defer consideration of an AGA for the gap period between October 19, 2015 and February 2016 at this time. Staff and the RHC can monitor the petitions being filed and the impact of those particular claims on the resources of the RHC. If the hearing officers and/or the RHC are routinely granting adjustments for that four-month period, then the RHC could consider a regulation with

an across-the-board adjustment based on these facts pursuant to Section 1709 (d)(1) of the CSFRA. Staff can return to the RHC as directed to provide updates on this issue. Deferral of consideration of a general adjustment does not foreclose future consideration by the RHC.

FISCAL IMPACT

The recommended action does not have a fiscal impact to the RHC budget.

ALTERNATIVE

1. Decide whether to adopt an AGA for the gap between October 19, 2015 and February 2016.

JLQ/AK/5/CDD/RHC

010-06-08-17M-E