



**MEMORANDUM**

CSFRA, Community Development Department

**DATE:** November 6, 2017

**TO:** Members of the Rental Housing Committee

**FROM:** Karen Tiedemann, Goldfarb & Lipman, Special Counsel  
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**SUBJECT:** **Consideration of Annual General Adjustment (AGA) for Gap between October 19, 2015 and February 2016**

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**RECOMMENDATION**

Staff recommends the Rental Housing Committee (RHC) continue to defer consideration of a general adjustment for 2016 since no petition data are available to determine whether or not rents are set at fair and equitable levels to achieve the purpose of the Community Stabilization and Fair Rent Act (CSFRA).

**INTRODUCTION AND BACKGROUND**

1. Rent Rollback The CSFRA included a rent rollback: as of December 23, 2016 the maximum rent that landlords could charge existing tenants was the rent that was in effect on October 19, 2015.<sup>1</sup> Thereafter, landlords could only increase rents in accordance with the CSFRA. Once the rent is set, the CSFRA authorizes only two options to increase rents for existing tenants: the Annual General Adjustment and a Petition for Upward Adjustment of Rent.
2. Annual General Adjustment The CSFRA provides for an Annual General Adjustment ("AGA") of Rent for existing tenancies based on the percentage increase in the Consumer Price Index for All Urban Consumers, SF-Oakland-San Jose Region ("CPI"). The CSFRA requires that the AGA be equal to 100 percent of the percentage increase in CPI for the twelve-month period ending as of March of

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<sup>1</sup> This rent rollback applied only to tenancies in existence on October 19, 2015. Tenancies that began after October 19, 2015 were rolled back to the initial rental amount.

the current year. Under the CSFRA, the first AGA must be announced by June 30, 2017 and become effective no earlier than September 1, 2017.

The RHC announced an AGA of 3.4 percent for 2017 at its May 22, 2017 meeting based on the change in CPI between February 2016 and February 2017.<sup>2</sup> Accordingly, landlords could have increased rents by 3.4 percent effective September 1, 2017 assuming there was not a lease in place. A summary timeline of the AGA and rent rollback is provided below for reference.

October 19, 2015	Rental rate from this date used for Rent Rollback
February 1, 2016	First date included in the 2017 AGA
December 23, 2016	Effective date of Rent Rollback for existing tenancies
February 28, 2017	Last date included in the 2017 AGA
September 1, 2017	First potential date 2017 AGA may be imposed

## ISSUE

Any change in the CPI between the date to which some rents were rolled back (October 19, 2015) and the change in CPI captured by the 2017 AGA (February 2016 through February 2017) is not accounted for via the 2017 AGA.

## ANALYSIS

There are 105 days between October 19, 2015 and February 2016 (the Gap Period). The CSFRA does not specifically address whether or how an AGA would apply to the Gap Period. Importantly, although there are three possible scenarios for landlords and tenants, this Gap Period AGA would only apply to two:

### 1. Rent Rollback Scenarios

Scenario	Description	Applicability of Gap Period AGA
1	Tenancy began before or after 10/19/15; no rent increase	N/A
2	Tenancy began before 10/19/15; rent increased after 10/19/15; rent rolled back to 10/19/15 rate effective on 12/23/16	Applicable
3	Tenancy began after 10/19/15; rent increased prior to 12/23/16; rent rolled back to initial rent on 12/23/16	Partially Applicable

<sup>2</sup> The U.S. Bureau of Labor Statistics, which publishes the CPI, discontinued monthly publication of the CPI in favor of bi-monthly publication. The RHC chose to use February as an appropriate substitute for the March CPI figure mandated by the CSFRA.

In the first scenario, rents were not increased after the date to which rental rates were rolled back under the CSFRA. In scenario one neither the landlord nor tenant were impacted by the rent rollback requirement. Accordingly, a Gap Period AGA would likely not be warranted in the first scenario.

In the second scenario, rents were increased after the date to which rental rates were rolled back, and so the landlord was required to reduce the rental rate on December 23, 2016. Notably, such landlords were not required to return any rents received between October 19, 2015 and December 23, 2016, so the landlords received the full benefit of any rent increase until December 23, 2016.

For example, if a tenant rented a unit for \$1,000 per month beginning on January 1, 2015, and the rent was raised to \$1,100 per month effective January 1, 2016, then the landlord was required to reduce the rent to \$1,000 per month effective December 23, 2016 and thereafter. Assuming the landlord received \$1,100 per month for January through December 2016, the landlord would have received a total of \$13,200 and a total of \$1,200 of the rent increase. Pursuant to the CSFRA, the landlord would have been required to return or credit approximately \$30 to the tenant for the effective overpayment for December 23 through 31. The landlord retained the additional \$1,170 received between January 1 and December 23, 2016 (as compared to the prior year). This same landlord would then be eligible to increase the rent effective September 1, 2017 by the AGA increase which takes into account the increase in CPI for the period between February 1, 2016 and February 1, 2017, a period of time during which the landlord collected the previously imposed rent increase.

In the third scenario, rents were also increased after the date to which rental rates were rolled back, and so the landlord was required to reduce the rental rate on December 23, 2016. Although technically applicable, the third scenario would include landlords who raised rents on November 1, 2015 as well as those raising rents on December 1, 2016. Landlords that raised rents in November 2015 likely encountered a greater financial impact from the rent rollback than those who raised rents in December 2016. The variety of circumstances included in scenario three require a case-by-case review to determine the applicable gap period. For instance, landlords that raised rents in November 2015 likely desire a CPI adjustment for the gap between November 2015 and February 2016. Landlords who raised rents after February 2016 may recognize that the 2017 AGA acknowledged the change in CPI from February 2016 through February 2017 and so an additional CPI adjustment is unnecessary. Again, landlords in both examples were not obligated to return or credit the tenants for the increased rent they received between October 19, 2015 and December 23, 2016.

## 2. Policy Options

While the gap between the rollback and the effective dates of the 2017 AGA are not specifically addressed in the CSFRA, it appears the best way to address the gap is via individual Petitions for Upward Adjustment of Rent. First, the AGA is clearly defined as 100 percent of the change in CPI for the twelve month period ending as of March of the current year. Authorizing an extra AGA to address the Gap Period in addition to either the 2017 or 2018 AGA is not contemplated in the CSFRA. Second, the petition process will accurately accommodate the differing situations that result from the rollback, as described above and account for the fact that landlords received the benefit of rent increases that were imposed after October 19, 2015 until the effective date of the rollback. Accordingly, any increases in rent that are not connected to an AGA must be provided via a Petition for Upward Adjustment of Rent.

On May 18, 2017 and on June 8, 2017 the RHC deliberated about whether to set an AGA for the gap period. The RHC decided to defer consideration of an AGA for the gap period in order to monitor any 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 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, which states that the RHC has the power and the duty to “set rents at fair and equitable levels to achieve the purpose of” the CSFRA.

On October 23, 2017, the RHC requested this topic be brought back for deliberation, to determine if any of the previous RHC considerations have changed in the past months.

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 that rolling rents back to the amounts charged in October 2015 (effective December 23, 2016) without providing an adjustment for the gap period, could constitute a taking of property without just compensation. Notably, the change in CPI between October 2015 and February 2016 is 0.6 percent.

The effect of the Gap Period will vary from landlord to landlord, depending upon the scenario in which they fit, as well as vacancies. Regardless, a landlord has the ability to file a Petition for an Upward Adjustment of Rent to ensure the landlord may earn a fair return on his or her property, including amounts for the Gap Period.

As of the date of this staff report, no petitions have been filed, so none have been considered by the hearing officers and/or the RHC, and consequently no adjustments for that period have yet been granted.

**FISCAL IMPACT**

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

**PUBLIC NOTICING** – Agenda posting.

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