



CITY OF MOUNTAIN VIEW

MEMORANDUM

CSFRA, Community Development Department

DATE: April 23, 2018

TO: Members of the Rental Housing Committee

FROM: Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Justin D. Bigelow, Special Counsel to the Rental Housing Committee
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SUBJECT: 2016 Annual General Adjustment and Adoption of Banking of
Unimplemented Annual General Adjustments Regulations (Chapter 7)

RECOMMENDATION

Consider the Banking Procedures for Unimplemented Annual General Adjustments regulations, provide guidance to staff regarding any additional regulations for banking procedures, and consider the draft 2016 annual general adjustment resolution.

BACKGROUND

At its March 26, 2018 meeting the Rental Housing Committee (RHC) adopted a motion instructing staff to draft appropriate documentation for a bankable AGA for the 318 days between October 19, 2015 and September 1, 2016, with alternatives for tenancies that began on different dates and for tenancies that were subject of a rent increase between October 19, 2015 and December 23, 2016.

In accordance with this direction, staff has drafted two documents for consideration by the RHC: a draft 2016 annual general adjustment (AGA) resolution; and draft banking regulations. The draft resolution includes policy options while the draft regulations anticipate guidance from the RHC regarding additional topic areas, each as discussed in Analysis section of this staff report.

ANALYSIS**2016 Banked AGA Resolution**

As currently drafted, the 2016 AGA resolution provides for a two and sixth-tenths percent (2.6%) banked AGA for landlords. The 2016 AGA would only apply to units that were continuously owned by the same landlord and occupied by the same tenant household since October 19, 2015. These two conditions are required under CSFRA section 1707(d) as detailed in the table below. The RHC in its discussion of the 2016 AGA expressed an interest in potentially limiting the application of the 2016 AGA depending upon whether the tenant household was subject to a rent increase between October 19, 2015 and December 23, 2016 (at which time the rent increase was reversed in accordance with the CSFRA). This variation is included in bold, bracketed text in the draft resolution.

Annotated Summary of Eligibility for Draft 2016 AGA		
<u>Proposed Requirement</u>	<u>Practical Impact</u>	<u>Rationale</u>
(a) Only landlords that have continuously owned a Covered Rental Unit since October 19, 2015 may be eligible	Landlords who purchased units after October 19, 2015 cannot use the 2016 AGA	CSFRA § 1707(d) prohibits banked AGAs from carrying over to successor Landlords in the event of a change in ownership.
(b) Only Covered Rental Units that have been continuously occupied by the same tenant since October 19, 2015 may be subject to the 2016 AGA.	Landlords who set the initial rent for a Covered Rental Unit after October 19, 2015 cannot use the 2016 AGA.	CSFRA § 1708(c) prohibits banked AGAs that were banked during a prior tenancy from being imposed on a new tenancy.
Only tenants that <u>were</u> subject to a rent increase between October 19, 2015 and December 23, 2016 may be subject to the 2016 AGA.	Landlords whose rent increases were reversed by the rollback could use the 2016 AGA.	Not expressly contemplated by the CSFRA.
(c) Only tenants that <u>were not</u> subject to a rent increase between October 19, 2015 and December 23, 2016 may be subject to the 2016 AGA.	Landlords who did not increase rents between October 2015 and December 2016 may have endured the greatest cumulative inflation-based impacts and so could use the 2016 AGA.	Not expressly contemplated by the CSFRA.

Annotated Summary of Eligibility for Draft 2016 AGA

<u>Proposed Requirement</u>	<u>Practical Impact</u>	<u>Rationale</u>
(c) No additional requirement.	Regardless of landlord action between October 2015 and December 2016, landlords could use the 2016 AGA.	Not expressly contemplated by the CSFRA.

Staff and Project Sentinel have compiled data from the City-sponsored mediation program (MP) and from the Rental Housing Dispute Resolution Program (RHDRP) to inform RHC deliberations of the policy variants described in subsection (c) relating to potential rent increases that were or were not imposed on tenancies between October 19, 2015 and December 23, 2016. The MP is a well-established voluntary mediation program enacted by the City more than 40 years ago, which offers dispute resolution services for a variety of community issues, as well as landlord-tenant education and mediations. The RHDRP was a mandatory, fast-track dispute resolution program for certain landlord-tenant disputes, including rent increases equal to more than a 7.2 percent increase in a 12 month period.

Between October 19, 2015 and December 23, 2016, 283 MP and RHDRP cases were opened and twenty percent of those cases (55) related to rent increases.* The proposed rent increase (percentage) is known for 35 of the 55 rent increases cases; they range from 4.3% to 83% of the previous rent charged, with a mean increase of 20% and median increase of 12%.**

Between November 1, 2015 and December 23, 2016, the two programs received 686 calls, seventeen percent of the calls (119) related to rent increases. The table below identifies the total number of calls received as well as those related to rent increases between June 1, 2013 and December 31, 2016 by fiscal year (FY) and shows that rent increase-related calls increased as a percentage of all calls overtime.

* MP and RHDRP information have been combined because disputes related to rent increases before the implementation of the RHDRP (on June 1, 2016) were addressed through the MP process. Details of the resolution of opened cases are confidential; more detailed information is available in the quarterly MP and RHDRP reports.

** For the 20 cases in which the proposed rent increase is not documented, five were RHDRP cases and therefore related to rent increases in excess of 7.2 percent.

<u>Fiscal Year</u>	<u>Total Calls</u>	<u>Rent Increase Calls</u>	
		Number	% of Total
2012 - 2013	648	75	11.6%
2013 - 2014	515	57	11.1%
2014 - 2015	564	62	11.0%
2015 - 2016*	522	83	15.9%
Q1 & Q2 2016-2017*	332	60	18.1%
Total	2,581	337	13.1%

Banking Procedures for Annual General Adjustments

As currently drafted, the Banking Procedures for Annual General Adjustments regulations only address the notice from landlords to tenants seeking to implement a formerly-banked AGA. Regulation subsection 7(B)(1)(a) would require the landlord notify the tenant of the dollar and percentage values of the requested rent increase. Regulation subsection 7(B)(1)(b) proposes mandatory language that must be included with the notice of increase. As noted above, various sections of the CSFRA impact any implementation of a banked AGA, including but not limited to:

- the limit on rent increases to one increase per twelve (12) months (CSFRA § 1707(b));
- the requirement of at least thirty (30) days notice of the requested increase (CSFRA § 1707(c) & Civil Code § 827); and
- the ability of tenants to contest unlawful demands for rent via the petition process (CSFRA §§ 1710(d) & 1714(a)).

Regulation subsection 7(B)(1)(c) would require that a copy of the notice provided to the tenant also be submitted to the City, as one means of overseeing the implementation and effect of the banking process.

CSFRA section 1707(d) also authorizes the RHC to "modify, restrict, or prohibit the ability of Landlords to impose accumulated increases upon a finding that the banking of Annual General Adjustments causes undue hardship on Tenants, provided that Landlords retain their right to a fair return." The draft regulations do not currently propose undue tenant hardship regulations, but seek RHC guidance regarding appropriate policy direction. An undue tenant hardship process could include:

- a Tenant petition process;
- standards for what constitutes tenant hardship, such as:
 - tenant household income eligibility for hardship, and/or
 - tenant household circumstances that qualify for hardship; and
- potential means of addressing *bona fide* tenant hardships, such as:
 - waiting periods to implement banked AGAs,
 - phase-in periods to implement banked AGAs, and/or
 - prohibiting use of banked AGAs.

FISCAL IMPACT

Adoption of draft 2016 AGA resolution could lead to litigation and/or cause additional petitions to be filed. Adoption of the draft banking regulations is not anticipated to affect the budget of the RHC.

PUBLIC NOTICING – Agenda posting

ATTACHMENTS

1. Draft 2016 AGA Resolution
2. Draft Chapter 7 Regulations: Banking Procedures for Unimplemented Annual General Adjustments