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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Michele Byrd

SUBJECT: Supplemental Report on Amendments to
Capital Improvement Regulations

DATE: February 26, 2014

City Administrator

Date

Approval

3/2/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council adopt:

1. **A Resolution Approving An Amendment To The Rent Adjustment Program Regulations Revising Regulation 10.2.3(2)(3) (Appendix A) To Allow Amortization Periods Up To 20 Years, To Impose A 10 Percent Cap On Any Capital Improvement Pass Through In A 12-Month Period, And To Require That Owners File a Petition For A Capital Improvement Rent Increase; and**
2. **An Ordinance Amending The Rent Adjustment Ordinance (O.M.C. 8.22.090b) To Require Property Owners Seeking Rent Increases Based On Capital Improvements That Benefit All The Units In a Building To File An Owner Petition.**

REASON FOR SUPPLEMENTAL REPORT

A report recommending amendments to Capital Improvement Regulations was presented to the Community and Economic Development Committee (CED) on February 25, 2014. The Committee requested that staff provide additional information regarding capital improvements.

ANALYSIS

Tracking Information

The Rent Adjustment Ordinance is complaint driven; therefore, staff cannot track the types of capital improvements being done or whether costs are being fully recovered by landlords, except

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for those when tenant or landlord petitions are filed. Similarly, the Rent Adjustment Program (RAP) has no records to track tenant displacement. If adopted, the proposed amendments to capital improvement regulations would not change the essentially complaint driven structure of the Ordinance.

However, when issues regarding capital improvements or displacement are brought before the Residential Rent and Relocation Board (the Board) through the appeal process, the problems can be addressed by the Board. For example, the Board can present proposed amendments to the Regulations to City Council that limit or eliminate the amount of costs that landlords can pass through to tenants.

Seismic Retrofits

Capital Improvement rent increases are currently being utilized for seismic retrofits. Hearing Officers have determined that seismic retrofits are a capital improvement that primarily benefits the tenant. However, as capital improvements, the amortization period is only the five years currently permitted by the Ordinance.

Capital Improvements v. Deferred Maintenance

The Hearing Officer can decide on a case-by-case basis, **depending on the facts presented by the parties**, whether a repair is considered routine or deferred maintenance rather than a capital improvement.

Examples of facts the Hearing Officer would consider include, but are not limited to, how long the tenant has lived in the unit, the cost of the improvement, and whether the improvement involved a habitability issue.

Adversarial Relationship between Landlords and Tenants

Many landlords and tenants resolve their differences without petitioning the Rent Adjustment Program (RAP). In addition, the RAP offers mediation of rent disputes after petitions are filed and many disputes are resolved through this process.

When the parties do resolve their differences through the RAP, an adversarial relationship sometimes improves because one or both parties gain a better understanding of their rights and obligations under the Ordinance. However, there is no way to accurately measure how the proposed amendments to the Regulations will affect the relationship between Oakland landlord and tenants.

Staffing Levels and Landlord Petition

The Staff recommendation that landlords file a petition for building wide capital improvements may not require additional staff. Based upon experience of the RAP, one petition filed for building wide improvements is a more expeditious process for staff, landlords, and tenants. However, requiring landlords to file petitions for more than one unit may require an increase in staff. At this time, it is difficult to assess the exact impact on staff. With more petitions being filed overall, more staff may be needed to process landlord and tenant petitions. With more petitions filed, there would be more appeals to tax the Rent Board and potentially more writs filed in court to further appeal the decision. This might mean more Rent Board meetings and require additional services from the City Attorney's Office.

Currently, the only petitions landlords must file are petitions for a determination of exemption from the Rent Ordinance or petitions for extension of time to do repairs for removing tenants from illegal units under the Just Cause for Eviction Ordinance. However, landlords are not required to file petitions for any justification for a rent increase higher than the CPI allowable rent increase.

Table 1 shows landlord petitions filed for capital improvement cases decided January 1, 2009 through December 31, 2013.

TABLE 1

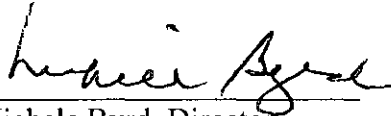
<i>Case Number</i>	<i>Year Filed</i>
L09-0004	2009
L10-0006	2010
L10-0007	2010
L11-0007	2011
L12-0025	2012
L13-0016	2013
L13-0017	2013
L13-0018	2013
L13-0022	2013
L13-0039	2013
L13-0047	2013

Because filing a landlord petition is not required, very few landlord petitions are filed. There were notably more landlord petitions filed for capital improvement rent increases in 2013. It is also noteworthy that two of the cases in 2013 involved capital improvements for seismic retrofits (L13-0016 & L13-0017).

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For questions regarding this report, please contact Connie Taylor, Program Manager at (510) 238-6246.

Respectfully submitted,



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Rent Adjustment Program

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