

14 MAR -6 PM 4:38

OAKLAND CITY COUNCIL

City Attorney

RESOLUTION NO.

C.M.S.

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.

WHEREAS, under the current Rent Adjustment Ordinance and Regulations, the cost of capital improvements are amortized over 60 months (five years) and must primarily benefit the tenants; landlords are not required to file a petition for capital improvement increases, and there is no cap on the amount of capital improvement rent increase that is passed through to tenants, and

WHEREAS, an analysis of capital improvement cases over a three-year period showed that 56% of capital improvement rent increases were under 10 percent; however, 44% were greater than 10%; and

WHEREAS, in 2011 and 2012, the Housing and Residential Rent and Relocation Board held nine regular and eight capital improvement committee meetings, and Rent Adjustment Staff held a public meeting in 2013 to consider possible amendments to capital improvement Regulations that would allow for a fair and balanced application of the Regulations; and

WHEREAS, the Housing and Residential Rent and Relocation Board recommended allowing 100 percent of capital improvement costs to be passed through, allow amortization periods up to 20 years, impose a ten percent cap on any capital improvement pass through in a 12-month period, and require landlords to file petitions for capital improvement rent increases that benefit all the units in a building; and

WHEREAS, the benefits of capital improvements do not solely accrue to tenants, with benefits such as increased equity or insurance payments for destroyed improvements going to landlords, thereby creating a logical basis for tenants and landlords to share the costs of capital improvements; and

WHEREAS, the City of Oakland is interested in putting forth policies that help to maintain the ability of people in all income categories to live in our city,

WHEREAS, there is a significant demand for rental housing in Oakland leading to rising rents, caused in part by the spillover of increasingly expensive housing costs in San Francisco, and the increased housing pressures for residents across a range of lower and middle income levels warrants improved rent stabilization policies; and

WHEREAS, the cities of Los Angeles and Berkeley have stronger rent stabilization protections related to capital improvement pass-throughs;

WHEREAS, the City Council finds that amending the capital improvement Regulations will offer tenants relief from rent increases in excess of ten percent; and

WHEREAS, the City Council finds that the amendments to capital improvement Regulations offer relief to landlords by adopting flexible amortization periods, which encourage more expansive capital improvements projects that benefit tenants, such as seismic retrofits and energy efficient projects, and

WHEREAS, the City Council finds that the amendments to capital improvement Regulations will further the Rent Adjustment Ordinance's purpose of preventing excessive rent increase; and

WHEREAS: This action is exempt from the California Environmental Quality Act ("CEQA") under the following, each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines Section 15378 (regulatory actions), Section 15061 (b) (3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning); now, therefore be it

RESOLVED: That the City Council hereby adopts the amendments to the Rent Adjustment Regulation 10.2.3 (2) (3) (Appendix A) as provided in Exhibit A to allow amortization periods up to 20 years or longer in some circumstances, to impose a 10 percent cap on any capital improvement pass through in any 12-month period inclusive of banked increases, to authorize sanctions for non-compliance with the capital improvement regulations, to limit the overall capital improvement pass through amount to 50%, and to require landlords to file petitions for capital improvement rent increases that benefit all ~~all more than one~~ the units in a building; and be it further

FURTHER RESOLVED: That a further proposed amendment to the Rent Adjustment Regulations amend Appendix A, Regulation 10.2.5 brought back to the City Council for consideration not later than April 1, 2015, after the City Administrator reports back to the City Council on the administrative and funding resources necessary to implement this proposed amendment;

FURTHER RESOLVED: This action is exempt from the California Environmental Quality Act ("CEQA") under the following, each as a separate and independent basis, including but not limited to, the following: CEQA Guideline Section 15378 (regulatory actions), Section 15061 (b) (3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning).

FURTHER RESOLVED: If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council hereby declares that it would have passed this Resolution and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

FURTHER RESOLVED: Except as provided in Exhibit A, Section 2, This Resolution shall take effect when the Ordinance considered by the City Council concurrent with this Resolution amending O.M.C. Chapter 8.22 and concerning capital improvements takes effect. If the Council does not adopt the corresponding Ordinance, this Resolution will become effective seven (7) days after adoption. The amendments provided for in this Resolution shall only apply to capital improvements that have permits taken out on or after the effective date of this Resolution, or, if no permits are required, then on the date of the start of the actual work on the capital improvement.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Councilmember Dan Kalb

EXHIBIT A

[Rent Board/staff proposed changes to current Regulations are in underline or ~~striketrough~~; Councilmember Dan Kalb's additional proposed changes are in **bold double underline** or ~~bold double striketrough~~]

Section 1. Amendments to Rent Adjustment Regulations

Amendments to Capital Improvement Regulations Proposed by the Capital Improvement Committee of the Housing, Residential Rent, and Relocation Board

Rent Adjustment Regulations - Appendix A

10.2.3 Capital Improvement costs are calculated according to the following rules:

1. For mixed-use structures, only the percent of residential square footage will be applied in the calculations. The same principle shall apply to landlord-occupied dwellings (i.e., exclusion of landlord's unit).

2. Items defined as capital improvements will be given a useful life period of five (5), ~~ten (10), or twenty (20) years or sixty (60) months~~ based on a reasonable estimate of the useful life of the capital improvement and shall be amortized over that time period, **or a longer time period if necessary in order to accord with the ten (10) percent limit identified in Section 10.2.3(3).** Rent Program staff may develop a list of the amortization periods for common capital improvements. The amortization period will be the useful life of item listed unless a party proves that due to an unusual aspect of the specific capital improvement for which an increase is sought, the amortization period should be different for that capital improvement than the amortization period pursuant to the Staff's list. For capital improvements not contained in the Staff list, the Hearing Officer must determine the amortization period based on the evidence supplied by the parties, by using other sources that can be administratively noticed, such as Internal Revenue Service amortization schedules, or lists of amortization periods from other rent control jurisdictions, or by analogy to other similar capital improvements. The dollar amount of the rent increase justified by Capital Improvements shall be reduced from the allowable rent in the ~~sixty-first month~~ first month following the end of the amortization period.

3. A monthly rent increase of $1/60^{\text{th}}$ of the average per unit capital improvement cost is allowable; that is, the landlord may divide the total cost of the capital improvement by 60 and then divide this monthly increase equally among the units which benefitted from the improvement (i.e., a roof benefits all units.) for a capital improvement is the average per unit cost of the capital improvement for each of the units the capital improvement benefits. The monthly amount is calculated by dividing one-half the total cost of the capital improvement by twelve (12) times the years of the amortization period and then divide this monthly increase equally among the units which benefitted from the improvement (i.e., a roof benefits all units). Provided, however, that no more than ten (10) percent of a tenant's rent can be passed through to a tenant as a capital improvement rent increase in any one twelve (12) month period. Any amounts in excess of the ten (10) percent annual limitation may be passed through in a subsequent twelve (12) month period(s), subject to a ten (10) percent limitation

for those periods. Should a landlord include an additional basis for a rent increase (such as a banked CPI Rent increase) during the period that a capital improvement increase is also being passed through, the limit on the capital improvement rent increase shall be adjusted downward by the amount of the banked CPI increase for that twelve (12) month period so that the total of all rent increases for this period does not exceed ten (10) percent.

4. If a unit ~~is~~ occupied by an agent of the landlord, this unit must be included when determining the average cost per unit. (For example, if a building has ten (10) units, and one is occupied by a nonpaying manager, any capital improvement would have to be divided by ten (10), not nine (9), in determining the average rent increase). This policy applies to all calculations in the financial statement which involve average per unit figures.

5. Undocumented labor costs provided by the landlord cannot exceed 25% of the cost of Materials.

6. Equipment otherwise eligible as a capital improvement will not be considered if a "use fee" is charged (i.e., coin-operated washers and dryers)

7. If the capital improvements are finished with a loan to make capital improvements which term exceeds five (5) years ~~(sixty (60) months)~~ the amortization period for the improvement, the following formula for the allowable increase is: monthly loan-payment divided by number of benefited units

8. Where a landlord is reimbursed for capital improvements (i.e., insurance, court-awarded damages, subsidies, etc.), this reimbursement must be deducted from such capital improvements before costs are amortized and allocated among the units.

9. Of the total amount of capital improvement expenses that are subject to being considered for pass through pursuant to these Regulations, no more than fifty (50) percent of that total may be passed through to tenants. The fifty (50) percent amount that may be passed through shall be determined after any other applicable reductions to the total pass through amount have been calculated.

10.2.6 A landlord passing through or attempting to pass through a rent increase for a capital improvement to a Tenant without being authorized to do so following a required Owner's Petition, or continuing to charge or collect a Capital Improvement Rent Increase after the expiration of the amortization period, is in violation of the Ordinance. Such a violation will result in the landlord's loss of the next authorized CPI Rent Increase and is subject to administrative citation as described in Section 8.22.170. In addition, any overcharged Rent paid by the Tenant for the unauthorized Rent Increase must be refunded with interest before any Rent Increase authorized by the Capital Improvement following a proper petition can be noticed, or, in the case of Rent collected after the end of the amortization period, before another Rent Increase can be noticed. The interest applied to such overcharged Rent shall be based on an appropriate index determined by staff and adjusted from time to time as staff deems appropriate.

Section 2. Proposed Future Amendment to Rent Adjustment Regulations and Report to Council

Part A. The following will amendment to Rent Adjustment Regulations, Appendix A will be scheduled to return to the City Council to be considered for adoption no later than April 1, 2015.

10.2.5 Owner's Petition Required for Building Wide Capital Improvements Covering More Than One Unit in a Building

A landlord seeking a rent increase for a capital improvement that benefits more than one all the units in a building must file an Owner's Petition. Capital improvements to more than one unit includes planned improvements to more than one unit. The landlord can pass-through the rent increase to each Tenant no earlier than the Tenant's first anniversary date after the final action on the landlord's petition. A landlord who does not file an Owner's landlord Petition for a building wide capital improvements rent increase when required to do so may not increase the rent based on the capital improvement. For capital improvements on more than one unit, the landlord need not name all the Tenants in the building subject to the capital improvements as parties, but any rent increase permitted cannot be passed along to such Tenants or to the unit not included. For all capital improvements, the rent increase cannot be passed-through to any tenant who first rented the unit after completion of capital improvement. A landlord who seeks a capital improvement increase that does not benefit all the units in the building is not required to seek approval of the rent increase through an Owner Petition and may notice the rent increase to the Tenant and if the Tenant wishes to contest it, the Tenant must file a Tenant's Petition.

Part B. Within six (6) months of approval of the underlying resolution, the City Administrator is to return to the City Council with a report on the staffing and other resources projected to be needed to implement the regulation amendment proposed in this section of the Resolution and any additional revenues needed to fund those resources