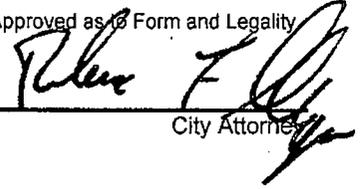


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REVISED

OAKLAND CITY COUNCIL

Approved as to Form and Legality


City Attorney

RESOLUTION No. 84936 C.M.S.

RESOLUTION AMENDING THE RENT ADJUSTMENT REGULATIONS TO PROVIDE FOR EXTENDED CAPITAL IMPROVEMENT AMORTIZATION PERIODS FOR RENT INCREASES GREATER THAN TEN PERCENT, PASSING THROUGH SEVENTY PERCENT OF CAPITAL IMPROVEMENT COSTS, INTEREST ON CAPITAL IMPROVEMENT OVERCHARGES, ADMINISTRATIVE PENALTIES FOR SUCH OVERCHARGES, AND REMOVING THE REQUIREMENT THAT ONLY ONE YEAR OF CAPITAL IMPROVEMENT INCREASES CAN BE PASSED THROUGH AT ONE TIME

WHEREAS, under the current Rent Adjustment Ordinance and Regulations, the costs for capital improvements are amortized over 60 months (five years) and must primarily benefit the tenants; rental property owners ("owners") 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 made recommendations to reform capital improvements; and

WHEREAS, negotiations were held with Councilmembers and representatives of owner and tenant organizations to address capital improvements and limitations on rent increases; and

WHEREAS, the City Council finds that extending capital improvement amortization periods when rent increases are in excess of ten percent and passing through seventy percent of capital improvement costs is fair and will offer tenants relief from higher rent increases while still permitting owners reasonable recovery on their capital improvement expenses; and

WHEREAS, the City Council finds that owners benefit from capital improvements by extending the life of their real property, improving the ability to recover higher rents, avoiding property deterioration, and having the possibility of income tax benefits; and

WHEREAS, tenants benefit from capital improvements by having a more livable home, and being safer, and more comfortable in their home; and

WHEREAS, because owners and tenants both benefit from capital improvements and owners get market rate rent increases upon tenant vacancies, the City Council believes it is appropriate for them to share the cost of capital improvements and that a share of thirty percent paid by owners and seventy percent passed through to tenants is fair and appropriate; 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 increases while still enabling owners to reasonably recover the cost of capital improvements; and

WHEREAS, owners are required to remove capital improvement rent increases from tenants' rent after the end of the amortization period, and to incentivize owners to do so and to compensate tenants for the loss of use of funds when owners do not reduce rent following the end of a capital improvement amortization period, interest should be awarded to tenants on such overcharges, equivalent to the interest on court judgments, and to authorize administrative citations or penalties for an owner's failure to reduce the capital improvement pass-through upon expiration of the amortization period; and

WHEREAS, under current capital improvement regulations, owners are limited to charging one year of capital improvement cost in one rent increase, and the City Council finds that with the adoption of ten percent annual and thirty percent within five year rent increase limitations, the one year capital improvement pass-through limit is no longer necessary, but the requirement for capital improvements to be passed through within 24 months remains; 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 (Appendix A) as provided in Exhibit B to provide for extended amortization periods for increases greater than ten percent, passing through seventy percent of capital improvement costs; interest on capital improvement overcharges, and administrative penalties for such overcharges; and be it

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); and be it

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; and be it

FURTHER RESOLVED: This Resolution shall only take effect if the City Council enacts proposed amendments to O.M.C. Chapter 8.22 regarding annual rent increase limitations and capital improvement noticing requirements, and will take effect only when that ordinance is implemented pursuant to its terms; and be it

FURTHER RESOLVED: The Regulation amendments provided for in this Resolution shall not apply to capital improvements on which permits have been taken out, unless no permits are required for any of the work, and substantial work is performed and substantial monies paid or liabilities incurred (other than permit fees), before the implementation date of this Resolution, and the Owner reasonably diligently pursues completion of the work.

IN COUNCIL, OAKLAND, CALIFORNIA, APR 22 2014

PASSED BY THE FOLLOWING VOTE:

AYES - ~~7~~ GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN - 7

NOES - 0

ABSENT - 0

ABSTENTION - 1

ATTEST:


LaTonda Simmons

City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit B

AMENDMENTS TO RENT ADJUSTMENT REGULATIONS [Added text is underlined, deleted text is struck through]

Reg. 8.22.110 HEARING PROCEDURE.

F. Decisions Of The Hearing Officer

1. The Hearing Officer shall make written findings of fact and issue a written decision on petitions filed.

2. If an increase in Rent is granted, the Hearing Officer shall state the amount of increase that is justified, and the effective date of the increase.

3. If a decrease in Rent is granted, the Hearing Officer shall state when the decrease commenced, the nature of the service decrease, the value of the decrease in services, and the amount to which the rent may be increased when the service is restored. When the service is restored, any Rent increase based on the restoration of service may only be taken following a valid change of terms of tenancy notice pursuant to California Civil Code Section 827. A Rent increase for restoration of decreased Housing Services is not considered a Rent increase for purposes of the limitation on one Rent increase in twelve (12) months pursuant to OMC 8.22.070 A. (One Rent Increase Each Twelve Months).

4. The Hearing Officer may order Rent adjustment for overpayments or underpayments over a period of months, however, such adjustments shall not span more than a twelve (12) month period, unless longer period is warranted for extraordinary circumstances. The following is a schedule of adjustments for underpayment and overpayments that Hearing Officers must follow unless the parties otherwise agree or good cause is shown:

a. If the underpayment or overpayment is 25% of the Rent or less, the Rent will be adjusted over 3 months;

b. If the underpayment or overpayment is 50% of the Rent or less, the Rent will be adjusted over 6 months;

c. If the underpayment or overpayment is 75% of the Rent or less, the Rent will be adjusted over 9 months;

d. If the underpayment or overpayment is 100% of the Rent or more, the Rent will be adjusted over 12 months.

5. For Rent overpayments based on an Owner's failure to reduce Rent after the expiration of the amortization period for a Capital Improvement, the Decision shall also include a calculation of any interest that may be due pursuant to Reg. 10.2.5 (Appendix A).

Reg. 8.22.170 GENERAL REMEDIES.

A. Administrative Citation

2. Violations Subject to Administrative Citation. Violations of the specific provisions of OMC Chapter 8.22 set forth in this Regulation are subject to administrative citation. The provisions of OMC Chapter 8.22 subject to administrative citation are:

j. Failure to remove a Capital Improvement Rent increase on the first month following the end of the amortization period.

Appendix A

10.2 Capital Improvement Costs: Capital Improvement Costs are those improvements which materially add to the value of the property and appreciable prolong its useful life or adapt it to new building codes. Those improvements primarily must benefit the tenant rather than the landlord.

10.2.1 Credit for capital improvements will only be given for those improvements which have been completed and paid for within the twenty-four (24) month period prior to the date of the proposed rent increase. ~~However, no more than twelve (12) months of capital improvement costs may be passed on to a tenant in any twelve (12) month period.~~

~~For example: In year one a landlord makes a capital improvement by replacing a roof. In year two the landlord makes another capital improvement by painting the exterior of the building. The landlord would not be able to pass on the roof and exterior painting capital improvement costs during the same year, but would have to pass them on in separate years, subject to the twenty-four (24) month time limitations.~~

10.2.3 Rent Increases for 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) years or sixty (60) months and the total costs shall be amortized over that time period, unless the Rent increase using this amortization would exceed ten percent (10%) of the existing Rent for a particular Unit. Whenever a Capital Improvement Rent increase alone or with any other Rent increases noticed at the same time for a particular Unit exceeds ten percent (10%) or thirty (30%) in five years, if the Owner elects to recover the portion of the Capital Improvement that causes the Rent Increase to exceed ten percent (10%) or thirty (30%), the excess can only be recovered by extending the Capital Improvement's amortization period in yearly increments sufficient to cover the excess, and complying with any requirements to notice the Tenant of the extended amortization period with the initial Capital Improvement increase. When a Rent increase that includes a Capital Improvement increase does not exceed ten percent (10%) or thirty (30%), the amortization period remains five (5) years. The dollar amount of the rent increase justified by Capital Improvements shall be reduced-removed from the allowable rent in the sixty-first month or at the end of an extended amortization period.

3. A monthly rent increase for a Capital Improvement is determined as follows:

a. A maximum of seventy percent (70%) of the total cost for the Capital Improvement (including financing) may be passed through to the Tenant;

b. of 1/60th of the average per unit capital improvement cost is allowable;
The amount of the Capital Improvement calculated in a. above is then divided equally among the Units that benefit from the Capital Improvement; 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 benefited from the improvement (i.e., a roof benefits all units.)

c. The monthly Rent increase is the amount of the Capital Improvement that may be passed through as determined above, divided by the number of months the Capital Improvement is amortized over for the particular Unit.

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 financed with a loan to make capital improvements which term exceeds five (5) years (sixty (60) months), the following formula for the allowable increase is: monthly loan-payment divided by number of 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.

10.2.5. Interest on Failure to Reduce Capital Improvement Increase After End of Amortization Period.

1. If an Owner fails to reduce a Capital Improvement Rent increase in the month following the end of the amortization period for such improvement and the Tenant pays any portion of such Rent increase after the end of the amortization period, the Tenant may recover interest on the amount overpaid.

2. The applicable rate of interest for overpaid Capital Improvements shall be the rate specified by law for judgments pursuant to California Constitution, Article XV and any legislation adopted thereto and shall be calculated at simple interest.