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OAKLAND

# CITY OF OAKLAND

## AGENDA REPORT

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TO: Office of the City Administrator  
ATTN: Deanna J. Santana  
FROM: Community and Economic Development Agency  
DATE: October 25, 2011

RE: A Resolution Approving An Amendment To The Rent Adjustment Program Regulations Revising Regulation 10.2.2 (3) (Appendix A) Regarding Justifying Rent Increases For Capital Improvements To Correct Hazardous Or Uninhabitable Conditions

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### SUMMARY

The current rent ordinance allows owners to pass through the cost of major repairs as a Capital Improvements rent increase. There is a limited exception to Capital Improvement increases set forth in Appendix A of the Regulations. The exception is for repairs that would be considered "Priority 1 and Priority 2" by a City of Oakland Housing Code Enforcement Inspector. These repairs are identified as hazardous or inhabitable conditions.<sup>1</sup> On July 14, 2011, the Rent Board voted 5-1 to adopt changes to the regulations, which clarify tenant responsibility for reporting Priority 1 and Priority 2 conditions and landlord responsibility for repair of said conditions. In addition, it clarifies the scope and authority of the Hearing Officer in making decisions about Priority 1 and Priority 2 conditions which have not been cited by a Code Enforcement Inspector.

### FISCAL IMPACT

The proposed amendments to the Capital Improvement regulations have no direct fiscal impact.

### BACKGROUND

Under the Rent Ordinance, Capital Improvements materially add to the value of the property and appreciably prolongs useful life or adapts it to new building codes. The costs of improvements are amortized over 60 months and must primarily benefit tenants.

Examples of eligible Capital Improvements include:

- Exterior painting
- Permanently affixed equipment
- Repairs completed to comply with Code requirements

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<sup>1</sup> Rent Adjustment Regulations, Appendix, Section 10.2.2 (3) 2.7 & 2.8

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Repairs considered Priority 1 and Priority 2 conditions may not be considered Capital Improvements. Priority 1 and Priority 2 conditions are defined in Appendix A of the Regulations as follows (the list of Priority 1 and 2 conditions is included as *Attachment A* to this agenda report):

2.7 Priority 1 Condition: The City of Oakland Housing Code Enforcement Inspectors determine housing condition(s)/ repair(s) as a "Priority 1" condition when housing condition(s)/repair(s) are identified as a major hazardous or inhabitable condition(s). A "Priority 1" condition must be abated immediately by correction, removal or Disconnection. A Notice to Abate will always be issued.

2.8 Priority 2 Condition: The City of Oakland Housing Code Enforcement Inspectors determine housing conditions(s)/repair(s) as a Priority condition when housing condition(s) /repairs(s) are identified as major hazardous or inhabitable condition(s) that may be deferred by an agreement with the Housing Code enforcement Section.

#### KEY ISSUES AND IMPACTS

- Tenant responsibility for reporting Priority 1 and Priority 2 conditions.
- Landlord responsibility for repairing code violations before or after a citation is issued within specified time frames.
- The authority that Hearing Officers would have to determine if repairs meet the definition of Priority 1 or Priority 2 conditions without citation of City Building Services Inspector.

#### Rent Board Discussion of Capital Improvements

At the regular meeting of the Housing Residential Rent and Relocation Board (HRRRB) held on February 24, 2011, the Board decided to hold a public forum on Capital Improvements. The purpose of the forum was to consider possible amendments to the Capital Improvements regulations to clarify the responsibilities of landlords, tenants, and Hearing Officers when addressing Priority 1 and Priority 2 conditions.

A discussion of Capital Improvements took place at the Regular meeting of the HRRRB held on April 14, 2011. Prior to the meeting, an announcement was posted on the Rent Adjustment Website inviting written comments to be considered by the Board. In addition, written notification was mailed to six landlord and five tenant organizations. Written comments were submitted by two landlord organizations and four tenant organizations.

After the discussion, the Board voted to form a committee to further discuss possible amendments to Capital Improvement Regulations.

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### Board Action

On June 9, 2011, the Capital Improvement Committee held a meeting and voted unanimously to adopt the draft proposed changes to regulations regarding Priority 1 and Priority 2 conditions submitted by Staff

On July 14, 2011, the Committee presented their recommendations to adopt Staff proposed regulations. The Board voted 5-1 to adopt the Committee's recommendations.

### Effect of Regulation Changes

The Board adopted the changes to allow a fair and balanced application of the Capital Improvement Regulations. The exact language of the proposed new regulations is included as *Attachment A* to this report; staff summarizes those changes as follows:

### Repairs for Code Violations

Repairs for code violations may not be considered capital improvements if the repairs were performed in order to correct a Priority 1 or Priority 2 condition, provided that the tenant proves the following:

1. The condition was not caused by the tenant and was cited by City Building Inspectors as a Priority 1 or Priority 2 condition;
2. The tenant produces factual evidence to demonstrate that had the unit been inspected by a City Building Inspector, the Inspector would have determined that the condition was a Priority 1 or Priority 2 condition;
3. The tenant notified the landlord of the condition in writing or proved that there were exceptional circumstances that prohibited the tenant from submitting needed repairs in writing; and
4. The landlord failed to complete repairs within a reasonable time.

### Reasonable Time Frames for Repairs

Reasonable time frames are determined as follows:

1. The condition is repaired within the time frame specified by a Building Services Inspector;
2. Repairs are completed 90 days after notice of condition is received, unless efforts to

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Complete repairs are unsuccessful due to circumstances beyond the landlord's control;

3. Repairs of conditions considered health and safety violations are completed within 15 Business days, unless the tenant can prove a shorter time is reasonable based on the Hazardous nature of the condition; and
4. Attempts to get the required permits or approval are evidence of good faith and Landlords are not penalized for delays by the approving government agencies.

#### Authority of Hearing Officers

When Priority 1 or Priority 2 conditions are not cited by a City Building Services Inspector, the Hearing Officer may do the following:

1. Consider factual evidence that demonstrates that had the property been inspected by a City Building Inspector, the inspector would have determined the condition to be a Priority 1 or Priority 2 condition; and
2. Require expert testimony to decide if a condition is a Priority 1 or Priority 2 condition.

#### **SUSTAINABLE OPPORTUNITIES**

Pursuant to City Council Resolution No. 74678 C.M.S., adopted December 1, 1998, staff encourages property owners to operate sustainable projects. Stabilizing Oakland's existing residential tenancies will continue to stabilize neighborhoods. The changes in the Capital Improvement Regulations are consistent with the goal of allowing property owners to operate sustainable projects, while stabilizing Oakland's residential tenancies.

##### ***Economic:***

- Preserve the affordable housing inventory for families, seniors, and disabled people in the City of Oakland;
- Protect tenants from exorbitant rent increases while encouraging owners to invest in the housing stock of the City.

##### ***Environmental:***

- Mitigate adverse environmental impacts resulting from existing rental housing;
- Encourage cohesion and vested interest of owners and tenants in established neighborhoods.

***Social Equity:***

- Improve the landscape and climate of Oakland's neighborhoods by encouraging long term tenancies in rental housings.
- Assist low and moderate income families to save money to become homeowners.

**DISABILITY AND SENIOR CITIZEN ACCESS**

The City's Rent Adjustment staff complies with legal requirements to provide access to all Rent Adjustment Program services for people with disabilities and to ensure that the units rented to people with disabilities comply with applicable codes. The Just Cause for Eviction Ordinance and the Ellis Act Ordinance provide special protections against evictions and relocation benefits for seniors and people with disabilities.

**RECOMMENDATION(S) AND RATIONALE**

Staff recommends that the City Council adopt the Resolution. The changes in the Capital Improvement Regulations provide clarity to tenants, landlords, and Hearing Officers.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff requests that the City Council adopt the attached Resolution approving the amendment to the Rent Adjustment Regulations.

Respectfully submitted,



Walter S. Cohen, Director  
Community and Economic Development Agency

Reviewed by:  
Michele Byrd, Deputy Director  
Housing and Community Development

Prepared by:  
Connie Taylor, Program Manager  
Housing and Community Development Division

**APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:**

  
Office of the City Administrator

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## Attachment A

### Existing Regulation to be deleted

[Repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements. If the repairs are considered as "Priority 1 or 2" condition(s) as defined in this resolution, then the repairs may not be eligible for consideration as capital improvements.]

### New Regulations

#### CAPITAL IMPROVEMENTS FOR CODE VIOLATIONS REGULATIONS

10.2.2 Eligible capital improvements include, but are not limited to, the following items:

...

3. Except as set forth in this subsection, repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements. Repairs for code violations may not be considered capital improvements if the Tenant proves the following:
  - a. That a repair was performed to correct a Priority 1 or 2 Condition that was not created by the Tenant, which may be demonstrated by any of the following:
    - i. the condition was cited by a City Building Services Inspector as a Priority 1 or 2 Condition;
    - ii. the Tenant produces factual evidence to show that had the property or unit been inspected by a City Buildings Services Inspector, the Inspector would have determined the condition to be a Priority 1 or 2 Condition, but the Hearing Officer may determine that in order to decide if a condition is a Priority 1 or 2 Condition expert testimony is required, in which case the Hearing Officer may require such testimony.
  - b. That the Tenant
    - i. informed the Owner of the condition in writing;
    - ii. otherwise proves that the landlord knew of the conditions, or
    - iii. proves that there were exceptional circumstances that prohibited the tenant from submitting needed repairs in writing; and

- c. That the Owner failed to repair the condition within a reasonable time after the Tenant informed Owner of the condition or the Owner otherwise knew of the condition. A reasonable time is determined as follows:
  - i. If the condition was cited by a City Building Services Inspector and the Inspector required the repairs to be performed within a particular time frame, or any extension thereof, the time frame set out by the Inspector is deemed a reasonable time; or
  - ii. Ninety (90) days after the Owner received notice of the condition or otherwise learned of the condition is presumed a reasonable time unless either of the following apply:
    - (1) the violation remained unabated ninety (90) days after the date of notice to the Owner and the Owner demonstrates timely, good faith efforts to correct the violation within the ninety (90) days but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause; or
    - (2) the Tenant demonstrates that the violation was an immediate threat to the health and safety of occupants of the property, fifteen (15) business days is presumed a reasonable time unless:
      - (a) the Tenant proves a shorter time is reasonable based on the hazardous nature of the condition, and the ease of correction, or
      - (b) the Owner demonstrates timely, good faith efforts to correct the violation within the fifteen (15) business days after notice but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause.
  - iii. If an Owner is required to get a building or other City permit to perform the work, or is required to get approval from a government agency before commencing work on the premises, the Owner's attempt to get the required permit or approval within the timelines set out in (I) and (II) above shall be deemed evidence of good faith and the Owner shall not be penalized for delays attributable to the action of the approving government agency.

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# Oakland City Council

RESOLUTION No. \_\_\_\_\_ C.M.S.

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**RESOLUTION APPROVING AN AMENDMENT TO THE RENT ADJUSTMENT PROGRAM REGULATIONS REVISING REGULATION 10.2.2 (3) (APPENDIX A) REGARDING JUSTIFYING RENT INCREASES FOR CAPITAL IMPROVEMENTS TO CORRECT HAZARDOUS OR UNINHABITABLE CONDITIONS**

**WHEREAS**, the Rent Adjustment Program Regulations ("Regulations") provide that a landlord may not pass along capital improvements undertaken in order to repair a hazardous condition, referred to in the Regulations as "Priority 1 or Priority 2 Conditions" (Regulation 10.2.2, subsection 3 (Appendix A)); and

**WHEREAS**, the Housing, Residential Rent and Relocation Board ("Rent Board") has considered appeals of hearing officer decisions that involve interpretations of Regulation 10.2.2, subsection 3; and

**WHEREAS**, the landlord and tenant parties to the appeals and members of the Rent Board have disagreed over the interpretation of Regulation 10.2.2, subsection 3 and the procedures for allowing or disallowing repairs to Priority 1 Priority 2 Conditions; and

**WHEREAS**, more specifically the disagreements of interpretation have included: whether a citation of the condition from the city is required in order to disallow the repair as a capital improvement, whether prior notice to the landlord of the condition is required, and whether the landlord should have a reasonable opportunity to make the repair prior to being denied the cost of the repair as a capital improvement; and

**WHEREAS**, the City Council and Rent Board believes it is in the best interests of Rent Adjustment Program and landlords and tenants to revise Regulation 10.2.2, subsection 3 such that the landlord must know of the Priority 1 or Priority 2 Condition prior, which notice is not required to be made through a citation, and that the landlord should have a reasonable time following notice to repair the conditions; and

**WHEREAS**, the Rent Board at its meeting of July 28, 2011 approved the amendment to the Regulations set out in Attachment A; and

**WHEREAS**, the Rent Board hereby requests that the Oakland City Council approve amendment to the Regulations amending and restating Regulation 10.2.2, subsection 3 to read as set out in Attachment A attached hereto and made a part hereof; now therefore be it



RESOLVED: That the City Council hereby approves the amendment to the Rent Adjustment Program Regulations set out in Attachment A, and be it

FURTHER RESOLVED: That said amendment shall be effective seven (7) days after the date of City Council approval.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,  
SCHAAF, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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