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# AGENDA REPORT

**TO:** DEANNA J. SANTANA  
CITY ADMINISTRATOR

**FROM:** Michele Byrd

**SUBJECT:** Amendments to Capital Improvement  
Regulations

**DATE:** January 30, 2014

City Administrator  
Approval 

Date

2/10/14

**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**

## EXECUTIVE SUMMARY

Under the current Oakland Rent Ordinance, capital improvements add to the value of the property and appreciably prolong its useful life, and/or adapt it to new building codes. Owners are permitted to pass through 100 percent of the cost of capital improvements. The costs of improvements are amortized over 60 months (five years) and must primarily benefit tenants<sup>1</sup>. Rents return to the base rent after the amortization period. Landlords are not required to file a petition for capital improvement increases, and there is no cap on the amount of a capital improvement rent increase that is passed through to tenants.

Per the previous recommendation of the Residential Rent and Relocation Board (the Board), this action would establish a longer amortization period of up to 20 years, would cap at 10 percent

<sup>1</sup> Rent Board Regulations, 10.2 (Appendix A).

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the amount of capital improvement costs allowed to be passed through to tenants in a twelve month period, and would require owners to file a petition for building wide capital improvement rent increases.

### **OUTCOME**

Adoption of the resolution and ordinance which accompany this staff report would enact the regulations around allowable rent increases for owner capital improvements, as recommended by the Rent Board on June 14, 2012.

### **BACKGROUND**

Capital improvements regulations may be viewed as a tool which can be used to encourage all or certain types of maintenance or improvements. They can be tailored to the particular needs and conditions of a community. Policy considerations involved in drafting capital improvement standards may include: encouraging housing maintenance; protecting tenants from displacement caused by rent increases which they cannot afford; distinguishing true improvements from ordinary replacements that are required in the course of rental property ownership; and determining what types of improvements should be rewarded with rent increases.

At the regular meeting of the Residential Rent and Relocation Board (the Board) 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 capital improvement Regulations that would allow for a fair and balanced application of the Regulations

A discussion of Capital Improvements took place at the regular the Board meeting held on April 14, 2011. The purpose of the discussion was to consider possible amendments to Capital Improvement Regulations to clarify the responsibilities of landlords, tenants, and Hearing Officers when addressing Priority 1 and Priority 2 conditions. 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 listening to presentations by landlords and tenants, the Board voted to form a Capital Improvements Committee that would focus on the following:

- Priority 1 and Priority 2 repairs
- Amortization Periods
- Costs split between landlord and tenant

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- Cap on Capital Improvements
- Defining “benefit to tenant.”

On June 9, 2011, the 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 the Board, which voted 5-1 to adopt the Committee’s recommendations. Subsequently, the City Council adopted Resolution No. 83624 C.M.S. to enact these changes.

On March 8, 2012, the Board’s Capital Improvement Committee voted 3-0 to recommend: 1) allowing 100 percent of Capital Improvement costs to be passed through; 2) allowing amortization periods up to 20 years; and 3) imposing a 10 percent cap on any capital improvement pass through in a 12-month period. In conjunction, the Committee voted 2-1 to recommend requiring landlords file a Landlord Petition for capital improvements any building wide capital improvement increases that affect all tenants. On June 14, 2012, the Committee took their recommendations to the Board, which voted 6-1 to adopt the Committee’s recommendations.

## ANALYSIS

### *Capital Improvement Cases*

Of the 307 cases decided in 2009, 2010, and 2011, 56 involved petitions filed either by tenants claiming an unjustified rent increase on the basis of Capital Improvements or by owners requesting a rent increase on the basis of Capital Improvements (*See Attachment A*). Of these petitions, 176 units were affected and rent increases were granted in 76 percent of the cases. Of the capital improvement pass-throughs awarded where information of the prior rent was available, the results were as follows:

- 44% of rent increases were greater than 10%
- 56% of rent increased were less than 10%

This data shows that while over 50% of rent increases were less than 10%, the five year amortization period still allowed 44% of the rent increases to be higher than 10%.

### *Treatment of Capital Improvements in Other Jurisdictions*

There are nine other major jurisdictions in California which have apartment rent stabilization ordinances: Berkeley, Beverly Hills, East Palo Alto, Hayward, Los Angeles, San Francisco, San Jose, Santa Monica, and West Hollywood (*See Attachment B*).

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Santa Monica, West Hollywood, and Palo Alto no longer allow capital improvements separate from a claim of denial of an owner's fair return on investment.

Beverly Hills only allows capital improvements for tenants whose initial rent is less than \$600 per month. For interior improvements, the landlord must have the tenant's approval. The amortization period is 60 months; however, the rent increase cannot exceed 4% of the base rent. The pass-through is subtracted after 60 months.

San Francisco and Los Angeles have caps on the amount of rent increase that can be passed through to tenants. (San Francisco allows no more than 10% or \$30, whichever is greater; Los Angeles allows no more than \$55.00 per month) San Francisco allows amortization periods from 7 to 20 years. Los Angeles allows a six year amortization period.

In Berkeley, capital improvements are offset by any vacancy increases and are rarely given. Capital improvements are allowed if they are necessary to bring the property in compliance or maintain compliance with housing codes affecting health and safety. The amortization period is over the life of the improvement.

Hayward and San Jose allow capital improvements. In Hayward, the amortization period depends upon the useful life of the improvement. In San Jose, capital improvements are amortized over 60 months. In both of these cities, the rent does not rollback, even after landlord has recouped all costs.

Oakland and Hayward are the only jurisdictions in which capital improvements are allowed that do not require landlords to file petitions.

## **POLICY ALTERNATIVES**

### ***Description of Alternative Policy***

The alternative recommendation would be to allow 100 percent of capital improvement costs to be passed through, allow amortization periods up to 20 years, a 10 percent cap on any capital improvement rent increase in a twelve-month period, with no requirement for owners to petition for capital improvement rent increases.

Based upon the analysis of the capital improvement cases, 56 percent of increases were less than 10 percent. The proposed changes in the amortization periods could have limited the other 44 percent of the rent increases to 10 percent or less without imposing a cap. However, imposing a cap would ensure that all capital improvements, including major projects such as retrofitting or energy related improvements, would not exceed a ten percent rent increase in a twelve-month period.

In Oakland, landlords have never been required to file petitions for capital improvement rent increases. If the alternative recommendation to not require landlords to file petitions for capital improvement increase is adopted, it would not change a tenant's right to file a petition contesting a capital improvement increase. However, requiring owners to file petitions would ensure a more expeditious process in which all tenants involved would have the opportunity to respond at the same time, thus eliminating multiple petition filings and multiple landlord responses.

### ***Summary of Options***

Making a determination regarding capital improvement Regulations involves choosing between the following options:

- Allow the Regulations to stand as written (*See Attachment C*).
- Adopt the alternative recommendation as follows:
  - a. Allow 100 percent of the capital improvement costs to be passed through;
  - b. Allow amortization periods up to 20 years;
  - c. Impose a 10 percent cap on any capital improvement pass through in a 12-month period.
- Amend the Regulations as recommended by the Board on June 14, 2012 as follows:
  - a. Allow 100 percent of the capital improvement costs to be passed through;
  - b. Allow amortization periods up to 20 years;
  - c. Impose a 10 percent cap on any capital improvement pass through in a 12-month period.
  - d. Allow building wide capital improvement rent increase only by owner petition.

Allowing amortization periods up to 20 years would require a change in the regulations. Requiring landlords to file a petition for capital improvement rent increases would require a change in the Ordinance.

## **PUBLIC OUTREACH/INTEREST**

### ***Public Meetings and Comments***

In 2011 and 2012, proposed changes to the Capital Improvement Regulations were discussed at 9 regular and 8 Committee Board meetings. All Board meetings are noticed and open to the public.

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In addition to the Board meetings, a community meeting was held regarding proposed changes to Capital Improvement and Debt Service Regulations on September 25, 2013. The purpose of the meeting was for Rent Adjustment Staff to listen to the concerns of the community regarding the proposed changes to Capital Improvement and Debt Service Regulations. Approximately 30 Oakland residents participated in the meeting. Some of the participants submitted written comments.

After the September 25<sup>th</sup> meeting, Rent Adjustment Staff also received written comments regarding proposed amendments to debt service and capital improvement Regulations in October, November and December. The following chart summarizes all of the written comments submitted by tenants and landlords regarding capital improvements amendments through December 31, 2013:

CURRENT REGULATIONS	RAP PROPOSED AMENDMENTS	TENANT POSITION	LANDLORD POSITION
<p><b>100% capital improvements pass through to tenants.</b>            Includes improvements which materially add to the value &amp; longevity of the property or adapt it to new Building Codes. Regular Maintenance and violations cited by building inspectors or proven by the tenant may not be considered capital improvements.</p>	<p>100% of capital improvements pass-through to tenants.</p>	<p>Decreasing capital improvements pass-through to 25% of eligible costs.</p>	<p>100% of capital improvements pass-through to tenants.</p>
<p><b>Tenants Must Petition</b> the RAP to contest capital improvement costs.</p>	<p>Landlord must petition for approval of <b>building-wide</b> capital improvements before they are passed through to tenants.</p>	<p>Landlords must petition before <b>any</b> capital improvements are passed through.</p>	<p>In a compliant-driven system, landlords should not be compelled to file a petition before giving a rent increase for any justification allowed under the Ordinance.</p>

CURRENT REGULATIONS	RAP PROPOSED AMENDMENTS	TENANT POSITION	LANDLORD POSITION
<b>No Limits On Amount of Capital Improvement</b>	Limit capital improvement pass-through costs to 10% of the tenant's current rent.	Limit total annual rent increases from all sources to no more than 10% of the tenant's current rent.	The 10% cap is unnecessary; the market rent is the cap.
<b>Amortization Period.</b> Capital Improvement costs are amortized over five years (60 months).	Capital Improvement costs to be amortized up to 20 years.	Expand RAP proposal, extend the amortization period as necessary to keep 10% cap.	Increasing the amortization schedule to longer than 5 years would discourage owners from making the investment in Oakland properties. Any changes to amortization periods must be clear and consistent.

***Broader Tenant and Landlord Concerns***

In addition to the response to the proposed amendments to Capital Improvement Regulations, landlord and tenants also expressed the following:

Tenants

- Rent Adjustment Program should be required to track capital improvement expiration dates and notify landlords and tenants of expiration dates
- A ten percent total annual rent cap should be established to include all allowable rent increases
- Renovations that do not primarily benefit the tenant should not be allowed to be passed thorough as capital improvements
- Deferred maintenance should not be passed on as capital improvements
- Rent increases are additive: banking, debt service, capital improvements, increased operating and maintenance costs, and fair return, can be imposed on a tenant at once

Landlords

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- Changes in capital improvement Regulations would create the need for more Rent Adjustment staff
- There are not enough capital improvement cases to warrant amending the Regulations
- Under the current Regulations, owners are not recouping their investment, the proposed amendments would further erode an owner's ability to recoup their investment
- Small owners would be unable to seismically retrofit their buildings
- Retro fitting should not be considered a capital improvement

City of Oakland Concerns Related to Capital Improvements:

***Energy Efficient Projects***

The Energy and Climate Action Plan was adopted by the City Council on December 4, 2012. One of the goals of the plan is to promote the benefits of investing in energy efficiency in existing residential properties. Flexible amortization periods, would give property owners greater incentive to invest in energy efficient projects. Weatherization projects for lighting, windows, insulation, and upgrades to boilers, would benefit tenants and reduce energy costs.

***Association of Bay Area Government: Soft-Story Housing Improvement***

The March 2013 Association of Bay Area Government (ABAG) soft-story Housing Improvement Plan determined that multi-unit wood-frame residential buildings with a first story that lacks adequate strength or stiffness to prevent leaning or collapse in an earthquake pose a safety risk to tenants and a financial risk to owners. The City of Oakland identified 24,273 residential units in 1,479 building with five or more units as "potential soft-story buildings." (*See Attachment D.*)

The Plan suggested that one of the incentives to encourage seismic retrofits was the ability of owners to pass through the costs to tenants as capital improvements (*See Attachment E*). Under the current Ordinance, a seismic retrofit project would be limited to an amortization period of five years, which could result in exorbitant rent increase, causing the displacement of tenants.

**COORDINATION**

Amendments to the Capital Improvement Regulations would be coordinated with the City Attorney's office. This report has been reviewed by the City Attorney's Office and by the Budget Office.

**COST SUMMARY/IMPLICATIONS**

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Pursuant to O.M.C. 8.22.180, the Rent Adjustment Program is funded by Program Service Fees. There is no fiscal impact to the City from the adoption of the proposed legislation.

### **SUSTAINABLE OPPORTUNITIES**

#### ***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:***

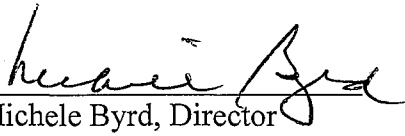
- Improve the landscape and climate of Oakland's neighborhoods by encouraging long term tenancies in rental housing;
- Assist low and moderate income families to save money to become homeowners.

### **CEQA**

This report is not a project under CEQA.

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

Respectfully submitted,

  
Michele Byrd, Director  
Department of Housing and Community Development

Prepared by:  
Connie Taylor, Program Manager  
Rent Adjustment Program

**Attachment A:** Capital Improvement Cases Decided between 1/1/2009-12/31/12

**Attachment B:** Comparison of Methodology used in Calculation of Capital Improvement Rent Increases

**Attachment C:** Current Capital Improvement Regulations

**Attachment D:** ABAG Appendix A

**Attachment E:** ABAG Incentives to Encourage Seismic Retrofits

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Capital Improvement Cases Decided between 1/1/2009-12/31/2012

Case No.	Address	# of units	Rent Before Petition	Amount Requested/ % Requested	Amount granted/ % Granted
L08-0023	1461 Alice Street	82	(various rents)	\$7.99	\$5.91
T08-0325	138 Monte Crista, Unit 201	12	\$836.55	\$296.48 35.44%	\$279.76 33.44%
	Unit 203		\$823.55	\$296.48 36.00%	\$279.76 33.97%
	Unit 207		\$724.55	\$296.48 40.92%	\$279.76 38.61%
	Unit 208		\$958.55	\$296.48 30.93%	\$279.76 29.19%
	Unit 209		\$790.55	\$296.48 37.50%	\$279.76 35.39%
	Unit 302		\$970.55	\$296.48 30.55%	\$279.76 28.82%
	Unit 306		\$1,262.55	\$296.48 23.48%	\$279.76 22.16%
	Unit 405		\$800.55	\$296.48 37.03%	\$279.76 34.95%
	Unit 408		\$836.55	\$296.48 35.44%	\$279.76 33.44%
	Unit 410		\$972.55	\$296.48 30.48%	\$279.76 28.77%
	Unit 308		\$760.55	\$296.48 38.98%	\$279.76 36.78%
	Unit 307		\$463.55	\$296.48 63.96%	\$279.76 60.35%
T08-0390**	4154 Piedmont Ave, #3	1	\$848.61	\$255.20 30.07%	\$0.00 0.00%
L09-0003	1514 Alice Street	26	(various rents)	\$25.54	\$20.47
L09-0004	463 61st St	4	(various rents)	\$122.46	\$72.21
T09-0004	5420 Claremont Ave, #B	1	\$1,426.00	\$490.70 34.41%	\$359.57 25.22%
T09-0006	421 Avon St #B	1	\$636.00	\$53.00 8.33%	\$20.17 3.17%
T09-0208	521 Prince Street, #2	1	\$1,400.00	\$119.00 8.50%	\$52.84 3.77%
T09-0210	521 Prince Street, #5	1	\$827.00	\$119.00 14.39%	\$52.84 6.39%
T09-0017	601 Oakland Ave	1	\$1,055.00	\$101.00 9.57%	\$18.16 1.72%
T09-0019	601 Oakland Ave	1	\$700.00	\$101.00 14.43%	\$18.16 2.59%
T09-0020	601 Oakland Ave	1	\$1,100.00	\$101.00 9.18%	\$18.16 1.65%
T09-0022	601 Oakland Ave	1	\$958.00	\$101.00 10.54%	\$18.16 1.90%
T09-0023	601 Oakland Ave	1	\$1,007.00	\$101.00 10.03%	\$18.16 1.80%
T09-0165	536 41st Street	1	\$908.81	\$57.11 6.28%	\$48.53 5.34%
T09-0166	536 41st Street	1	\$527.09	\$57.11 10.83%	\$48.53 9.21%
T09-0167	536 41st Street	1	\$770.87	\$57.11 7.41%	\$48.53 6.30%
T09-0202	408 38th Street	1	\$725.00	\$21.24 2.93%	\$21.24 2.93%

**Attachment A**

Capital Improvement Cases Decided between 1/1/2009-12/31/2012

Case No.	Address	# of units	Rent Before Petition	Amount Requested/ % Requested	Amount granted/ % Granted
L10-0006	321 63rd Street	3	\$791.00	\$182.63 23.09%	\$182.63 23.09%
			\$1,275.00	\$182.63 14.32%	\$182.63 14.32%
			\$1,825.00	\$182.63 10.01%	\$182.63 10.01%
L10-0007	323 63rd Street	4	\$739.00	\$150.13 20.32%	\$150.13 20.32%
			\$860.00	\$150.13 17.46%	\$150.13 17.46%
			\$723.00	\$150.13 20.76%	\$150.13 20.76%
			\$1,600.00	\$150.13 9.38%	\$150.13 9.38%
T10-0002	709 40th Street #4	1	\$834.00	\$104.00 12.47%	\$47.18 5.66%
T10-0003	9874 Bancroft Ave	1	\$725.00	\$61.84 8.53%	\$43.72 6.03%
T10-0044	6605 Shattuck Ave, #2	1	\$576.00	\$191.74 33.29%	\$27.24 4.73%
T10-0061	6638 MacArthur Blvd	1	\$578.00	\$14.83 2.57%	\$14.83 2.57%
T10-0065	6638 MacArthur Blvd	1	\$645.00	\$14.83 2.30%	\$14.83 2.30%
T10-0114	441 Merritt Ave, #305	1	\$1,495.00	\$54.73 3.66%	\$54.73 3.66%
T10-0116	441 Merritt Ave, #104	1	\$1,549.00	\$54.73 3.53%	\$54.73 3.53%
T10-0117	441 Merritt Ave, #204	1	\$1,548.00	\$54.73 3.54%	\$54.73 3.54%
T10-0118	441 Merritt Ave, #202	1	\$1,200.00	\$54.73 4.56%	\$54.73 4.56%
T10-0120	1941 E. 29th Street	1	\$543.00	\$88.85 16.36%	\$63.36 11.67%
L11-0007	463 61st Street	4	\$1,200.00	\$54.94 4.58%	\$43.98 3.67%
			\$1,200.00	\$54.94 4.58%	\$43.98 3.67%
			\$1,160.53	\$54.94 4.73%	\$43.98 3.79%
			\$1,300.00	\$54.94 4.23%	\$43.98 3.38%
T11-0045*	478 Capital Street, #3	1	\$980.00	\$184.49 18.83%	Petition dismissed
T11-0047	478 Capital Street, #5	1	\$542.00	\$184.49 34.04%	\$104.82 19.34%
T11-0219	4306 Park Blvd	1	\$963.07	\$95.00 9.86%	\$95.00 9.86%
L12-0025*	615 Hillsborough St	4	not clear from documents	\$200.00	\$0.00 0.00%
			\$1,225.00	\$200.00 16.33%	\$0.00 0.00%
			\$1,400.00	\$200.00 14.29%	\$0.00 0.00%
			\$1,350.00	\$200.00 14.81%	\$0.00 0.00%

Capital Improvement Cases Decided between 1/1/2009-12/31/2012

Case No.	Address	# of units	Rent Before Petition	Amount Requested/ % Requested	Amount granted/ % Granted
L12-0058	785 47th St	1	\$50.00	\$326.00 652.00%	\$326.00 652.00%
T12-0003	469 Van Buren Ave, #101	1	\$916.15	\$128.85 14.06%	\$128.85 14.06%
T12-0025*	4232 Dunsmuir Ave	1	\$2,181.00	\$174.48 8.00%	\$0.00 0.00%
T12-0040*	184 13th St, #409	1	\$809.00	\$40.00 4.94%	\$0.00 0.00%
T12-0056	627 Beacon St, #8	1	\$851.00	\$35.79 4.21%	\$35.79 4.21%
T12-0132	655 MacArthur Blvd., #2	1	\$950.00	\$243.62 25.64%	\$243.62 25.64%
T12-0136*	389 Vernon St, #102	1	\$832.86	\$36.89 4.43%	\$0.00 0.00%
T12-0151	3921 Harrison St. # 302	1	\$1,215.99	\$82.00 6.74%	\$67.26 5.53%
T12-0247	547 24th Street, #12	1	\$670.00	\$112.74 16.83%	\$83.67 12.49%
T12-0351**	341 42nd Street, #3	1	\$977.89	\$168.85 17.27%	\$0.00 0.00%

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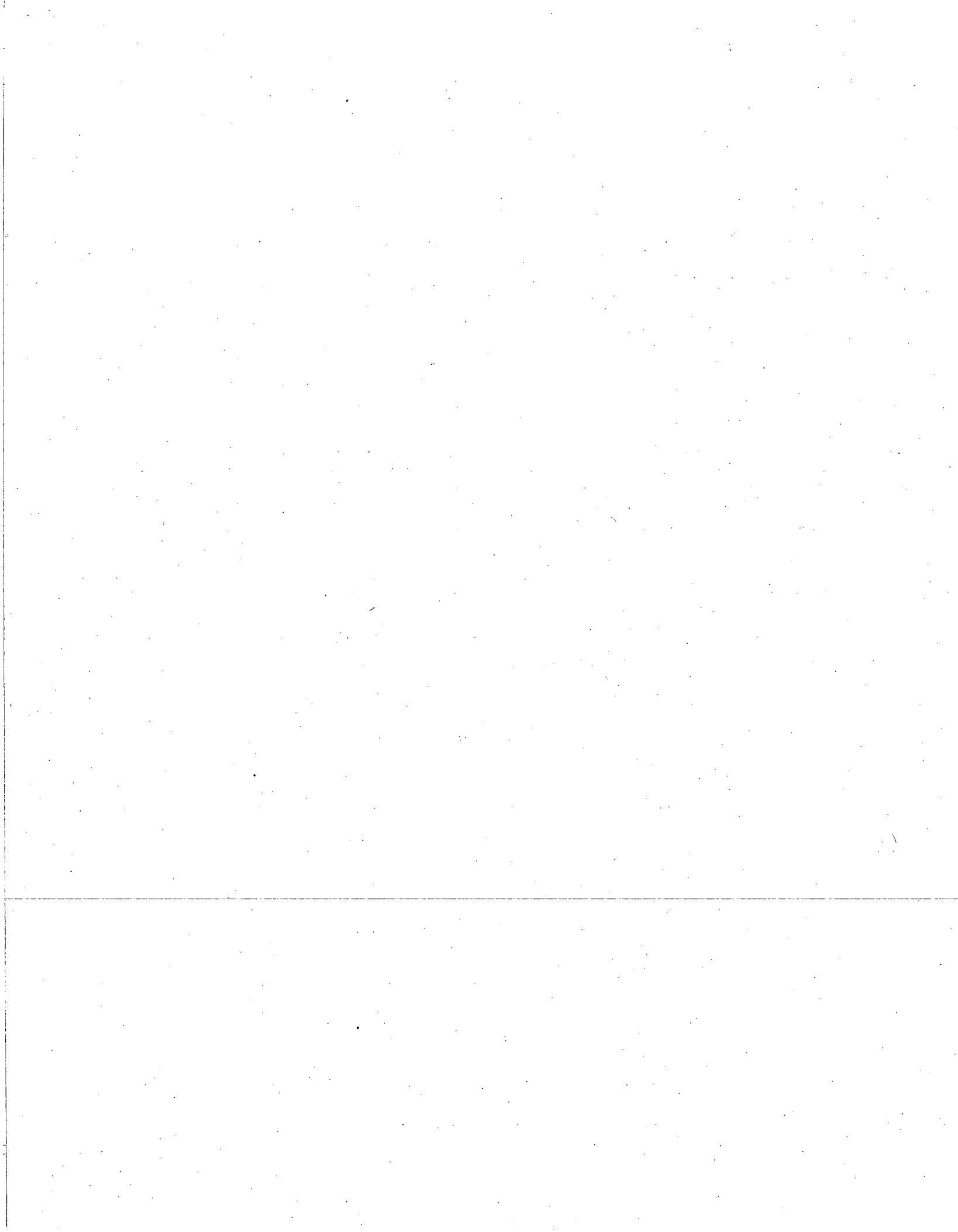
\*The cases noted above with one asterik were not decided on the merits of the capital improvement increase. Either someone was not current on the rent, parties didn't show at the hearing, no documents were provided to support the increase or no RAP notice was sent.

\*\*The cases noted above with two asteriks were not allowed based on the capital improvement being a Priority one/Priority Two condition

Of the capital improvement pass-throughs awarded, the owners were allowed 76.49% of their requested increase.

Of the capital improvement pass-throughs awarded where we had the information of prior rent, the owners asked for an average increase of 29.17% and received an average increase of 18.39%.

Of the capital improvement pass-throughs awarded where we had the information of prior rent, owners were granted a greater than 10% increase 43.86% of the time and 10% or less, 56.14% of the time.



COMPARISON OF METHODOLOGY USED IN CALCULATION CAPITAL IMPROVEMENT RENT INCREASES

City	Definition/Method	Amortization Periods	Financial Limitations	Other Limitations
City of Oakland	Rent increases allowed, without a petition, for those improvements which materially add to the value of the property, prolong its life or adapt to new building codes. Must predominantly benefit tenants.	5 years	No limitations, owner gets 100% of cost passed through. After 60 months rent is decreased.	If the work is done to repair a code violation that the owner knew about and failed to repair in a timely fashion (or the need to repair was caused by owner's failure to act) then the cost might not be passed on to tenants.
City of San Francisco	Allowed to certify rent increases to amortize cost of capital improvements. <b>I must file petition.</b> Rent returns to base rent after amortization period.	Varies based on what the improvement is and whether it is for buildings of more than six or less than six units. Periods range from 7- 20 years.	<b>For seismic work and for buildings of 6 or more units:</b> One hundred percent (100%) of the costs may be passed through to the tenants. No increase shall exceed, in a twelve-month period, ten percent (10%) of the tenant's base rent or \$30.00, whichever is greater. Additional increases can be accumulated and imposed in subsequent years. <b>For building with 5 units or less:</b> One hundred percent (100%) of costs may be passed through but no increase shall exceed five percent (5%) of tenant's base rent or \$30.00, whichever is greater.	1. Cannot recover if owner received payment from insurance company for the work 2. Must petition within 5 years of completing work
City of Los Angeles	Improvements to a rental unit or common areas provided improvement has a useful life of five (5) years or more. <b>I must file petition.</b>	6 years (since 1989)	Can only be granted 50% of total costs; Never allowed increase greater than \$55.00 per month. Rent returns to base rent after amortization period.	1. Painting of exterior only once every 10 years; 2. Painting of individual units does not count; 3. Must be permanently fixed
City of Berkeley	Increases allowed for Capital Improvement made if necessary to bring the property into compliance or maintain compliance with housing codes affecting health and safety, and where such capital expenditures are properly amortized over the life of the improvement. <b>I must file petition.</b>	Increases given only when the landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment.	Capital improvement costs are offset against any vacancy rent increases so that capital improvement adjustments are rarely given in Berkeley. Because increase only given as part of "fair return" analysis rent does not go down after costs are recovered.	

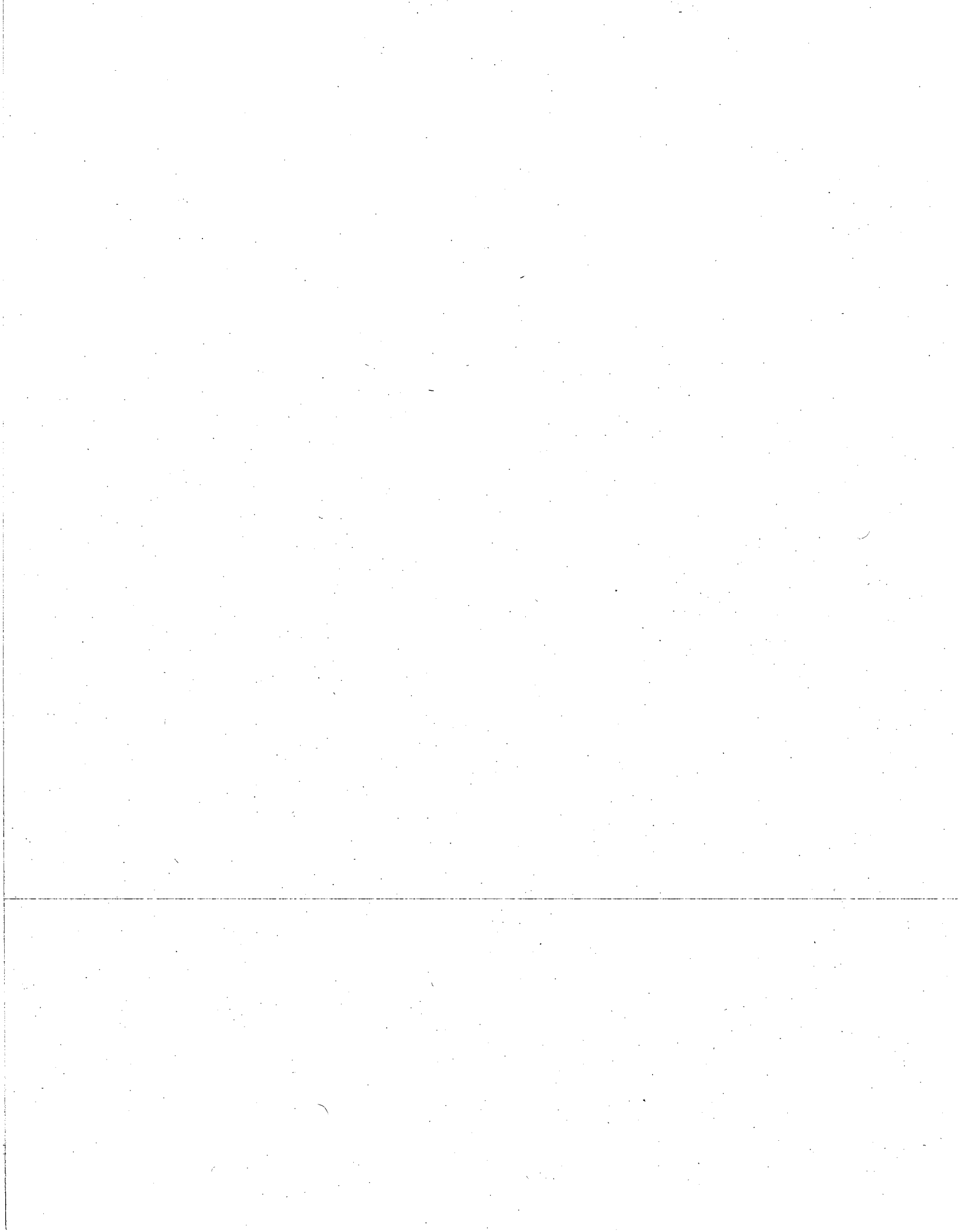
COMPARISON OF METHODOLOGY USED IN CALCULATION CAPITAL IMPROVEMENT RENT INCREASES

City	Definition/Method	Amortization Periods	Financial Limitations	Other Limitations
City of Santa Monica	No longer allows Capital Improvement pass-through separate from a claim of denial of owner's fair return on investment			
City of Hayward	Increases allowed for improvements that materially add to the value of the property and prolong its useful life. No petition required.	Amortization depends on the useful life of the particular improvement	100% of Capital Improvement costs can be passed through to tenants. Rent does not rollback even after L recoups all costs	
City of San Jose	Increases allowed for improvements that add to the value of the property, convert to new use and/or extend its useful life. <b>L must file petition.</b>	Not less than 60 months	100% of Capital Improvement costs can be passed through to tenants. Rent does not rollback even after L recoups all costs	
City of West Hollywood	No capital Improvement increases allowed except as part of a L rent increase petition where owner claims all operating expenses are increased.			
City of East Palo Alto	Does not allow Capital Improvement pass-through separate from a claim of denial of owner's fair return on investment. <b>L must file a petition.</b> The capital expenditures of over \$100 per unit must be "amortized" and not all taken as expense in same year.			



COMPARISON OF METHODOLOGY USED IN CALCULATION CAPITAL IMPROVEMENT RENT INCREASES

City	Definition/Method	Amortization Periods	Financial Limitations	Other Limitations
City of Beverly Hills	Only allows Cap. Improvement pass-through for those tenants whose initial lease was for less than \$600 per month. For those improvements in interior of apartment, must be with T's written consent	Amortized for 60 months	Rent increase cannot exceed 4% of base rent; capital improvement pass-through gets subtracted at 60 months.	Those owners whose initial leases are for more than \$600 per month can increase the rent by up to 10% annually, so they are not allowed additional increase for capital improvement costs.

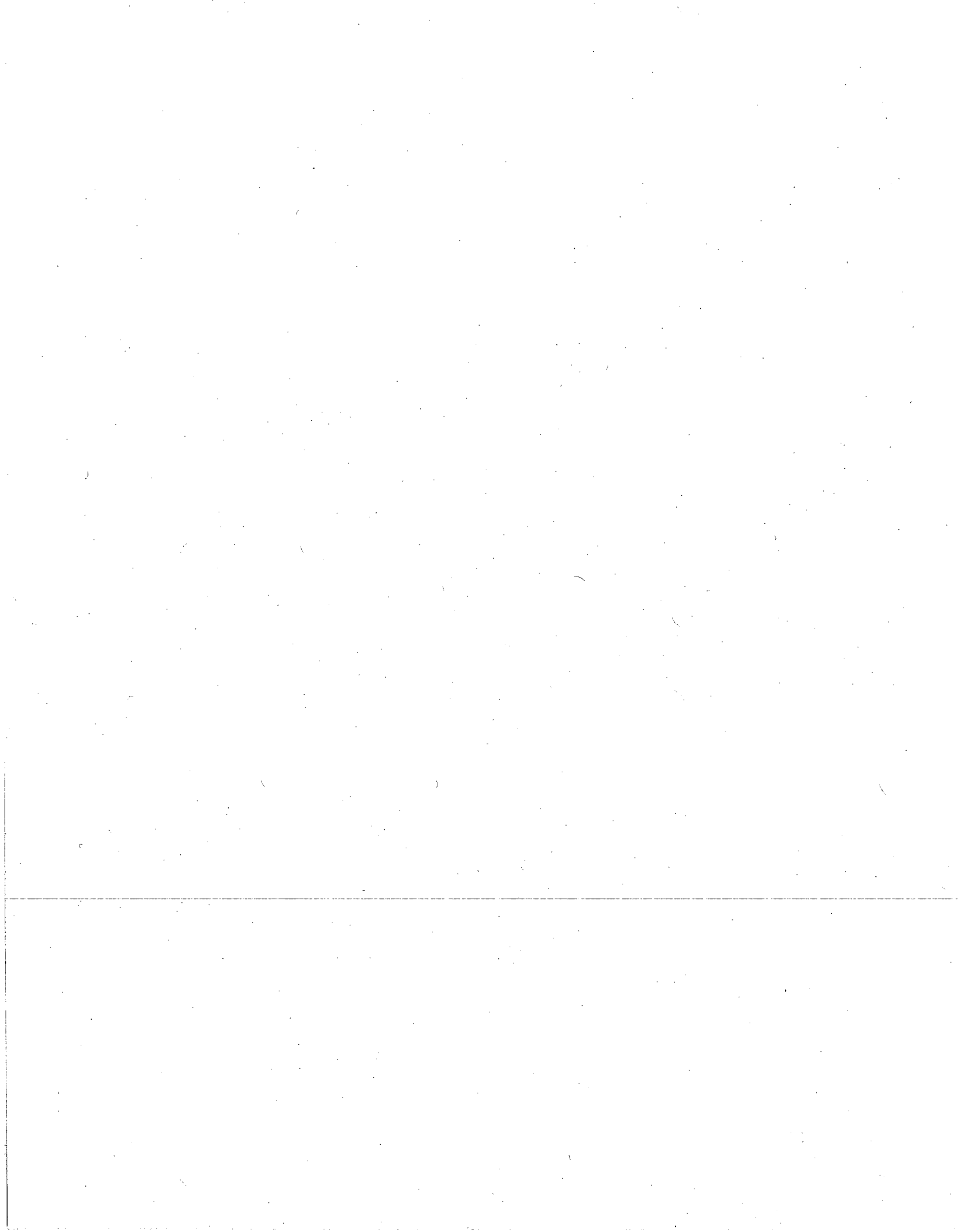


## CURRENT CAPITAL IMPROVEMENT REGULATIONS APPENDIX A 10.2.3 (2)(3)

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

2. Items defined as capital improvements will be given a useful life period of five (5) years or sixty (60) months and shall be amortized over that time period. The dollar amount of the rent increase justified by Capital Improvements shall be reduced from the allowable rent in the sixty-first month.

3. A monthly rent increase of  $1/60^{\text{th}}$  of the average per unit capital improvement 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 benefited from the Improvement (i.e., a roof benefits all units).



# Appendix D

## Glossary of Potential Soft-Story Retrofit Incentives

While the direct benefit for retrofitting soft-story buildings goes to the building owners and tenants, there is significant benefit to the City as a whole. Retrofitting preserves affordable housing, maintains the City's architectural character, minimizes the number of displaced residents, and protects the environment by avoiding debris and hazardous material from demolished homes going to the landfill. Retrofitting also creates good job for city residents.

The following list of incentives to encourage seismic retrofits was largely developed by Laura Samant and Tom Tobin for the San Francisco Community Action Plan for Seismic Safety (CAPSS).<sup>1</sup> The options presented in that memo, while focused on San Francisco, are also applicable to other cities with similar seismic vulnerabilities.

Building retrofit incentives can be divided into the following categories:

- Financial incentives: grants, rebates, credits, loans, loan interest reductions, deferred loans, donated and reduced-rate labor, insurance premium savings, fee waivers
- Policy incentives: expedited processing of permit applications and loan applications, reduced permit fees, waiver of property restrictions
- Technical assistance incentives: advices on retrofitting, standard details, help with garnering incentives, assistance with contracting questions
- Information incentives: information and materials

Example incentives from each category are discussed below.

<sup>1</sup> Samant, Laura and Tom Tobin. *Memo to the Advisory Committee, Community Action Plan for Seismic Safety, "Incentives to Encourage Seismic Retrofits: Options for San Francisco"*. San Francisco, CA. 5 Sept. 2008. [http://www.sf-capss.org/PDFs/Incentives\\_to\\_Encourage\\_Seismic\\_Retrofits.pdf](http://www.sf-capss.org/PDFs/Incentives_to_Encourage_Seismic_Retrofits.pdf)

## Financial Incentives

### Grants

Community Development Block Grant (CDBG) funds could be used to provide grants to cover the cost of a retrofit or building evaluation for moderate or low-income building owners. CDBG funds are given to cities by the U.S. Department of Housing and Urban Development. CDBG funds have been successfully used in the past by cities to assist with the retrofit of unreinforced masonry buildings.

### Tax Credits

The City might waive a portion of a business tax for a number of years to encourage owners to retrofit. A portion of the real estate transfer tax might be rebated to qualified retrofit work when a property is sold. Since 2007 Oakland has successfully used this incentive to rebate up to 1/3 of the property transfer tax for qualified seismic retrofit of single family homes.

### Loans

The City could assist building owners to pay for seismic retrofits by:

- Offering loans with rates lower than commercial rates,
- Providing loan guarantees,
- Reducing or buying down loan interest rates, or
- Make market-rate loans available to those who might not otherwise qualify for them.

Oakland could provide these loan services or assist building owners to get them from other sources. Loans could be repaid through assessment liens paid along with property taxes. Loan payments could be deferred for a period of time, or until the sale of the property for hardship cases. Small Business Association CDC/504 (Certified Development

Corporation) loans may be available for small businesses.

## *Property Tax*

Existing state tax law (Section 74.5 California Revenue and Taxation Code) provides that the cost of an earthquake retrofit should not increase the property assessment used to determine the amount of property taxes. However, it could be challenging for building owners to secure this benefit because they must submit specific information to the County Assessor's Office prior to conducting retrofit work. Due to lack of state support, many Assessors' Offices around the state do not have forms for this purpose and their staff is not trained to process this benefit. At this time, we do not know how Alameda County manages this issue. In a few jurisdictions, city officials have worked with the County Assessor's Office to facilitate this process for building owners. Oakland could make sure this benefit is truly available to building owners, and could advertise

## *Real Estate Transfer Tax Rebate*

Oakland currently has a real estate transfer tax of 1.5% of the purchase price of properties sold. Oakland could rebate a portion of its real estate transfer tax to building owners who spend those funds on qualified seismic upgrades. If reducing City revenue is not acceptable, the tax rate could be raised by the amount offered to compensate for seismic retrofitting.

In the past Oakland has offered new owners of older single-family homes or duplexes to be rebated .5% of the purchase price of the house or \$5,000—whichever is less. The funds for the program were exhausted and it is no longer being offered.

The City of Berkeley rebates up to one-third of its transfer tax amount (1.5 percent of purchase price) for qualified seismic retrofit on homes. Berkeley paid for this rebate by increasing the transfer tax rate. Through these and other efforts, more than 2,500<sup>2</sup> (12% percent) of single-family homes have been strengthened to various degrees since 2004. These upgrades include both structural and nonstructural mitigation measures.

In 2008, San Francisco voters approved Measure N which

increased the transfer tax for properties sold for \$5 million or more. One-third of the transfer tax could be rebated to property owners for conducting seismic upgrades or installing active solar systems.

## *Waiver or Reduction of Building Permit Fees*

Building permit fee reductions, while a loss of revenue to the City, signifies a major gesture of good will to the owners of these buildings. Permit fees represent a relatively small portion of the cost of seismic retrofit and should be paired with other retrofit incentives in order to be effective.

The Cities of San Francisco, Berkeley, and Alameda have offered flat or waived plan check fees as an incentive for owners to retrofit their buildings. Oakland currently offers a flat permit fee of \$250 for owners of qualified single-family residences to perform seismic retrofits.

## *Pass Through of Retrofit Costs to Tenants*

Building owners who seismically retrofit their buildings could be allowed to pass through the costs of these retrofits to renters in rent-controlled units.

San Francisco's unreinforced masonry building program allowed building owners to pass through 100-percent of seismic retrofit costs to rent-controlled tenants over a 15 year period, with a maximum increase of 10 percent of the base rent in any one year. This was coupled with a daily stipend for temporary relocation and other protections for tenants. Some, but not all, building owners took advantage of this benefit. Presumably, many buildings had turnover in their tenants, allowing them to rent units at market rate and negating the need to seek pass-through for retrofit expenses.

In 2002, San Francisco passed a law allowing 100 percent pass-through of any code mandated seismic or energy upgrades. When this work is voluntary, however, only 50 percent of costs can be passed through to tenants.

## *Tax Reduction for Historic Properties*

There are two existing incentive programs that could be used to reduce taxes for historic properties that conduct seismic upgrades: the State Mills Act and the creation of a federal historic district.

<sup>2</sup> Information per Building and Safety Division as of March 2012.

The Mills Act<sup>3</sup> gives local governments the authority to enter into contracts with owners who restore and maintain historic properties. In exchange, the property owners could get significant property tax savings.

Creating a National Register Historic District could provide a federal income tax credit for qualifying work on contributing historic properties within the district.

The City of St. Helena used both of these tools to assist owners of unreinforced masonry buildings to seismically retrofit. Creating a federal historic district was a successful incentive, giving owners a twenty percent federal tax credit. Many building owners found the Mills Act less appealing because of its cumbersome process.

### *Insurance Incentives*

The ability of property insurers to offer incentives is limited by market competition, federal tax law, state regulation and the nature of insurance working best with covering large numbers of predictable losses and dispersed over time and location. Risks that are infrequent, unpredictable and concentrated in time and space by a single event are hard to cover by actuarially based reserves.

Insurance agents could be enlisted in efforts to explain the risk of earthquake damage to residential and commercial policyholders. Property insurance policies exclude damage due to earthquake shaking, but they do cover fire losses. Because of the direct link between earthquake shaking and fire in Oakland, there might be an incentive to insurance companies to encourage retrofitting measures that also reduce the risk of fires following earthquake. Insurance companies that provide owners with liability coverage should have an interest in retrofitting.

### *FEMA grants*

Grants from FEMA are not an incentive per se, but because they could be used in a variety of ways to help fund incentive programs, we briefly mention them here.

FEMA offers a variety of grants to state and local agencies

to reduce the risk from hazards. Hazard Mitigation Grants<sup>4</sup> provides matching grants from a fund established from a percentage of post-disaster repair grants. The amount available depends on the magnitude of grants to the state following disasters declared by the President and the percentages established at the time. These grants could be used by communities not affected by the declared disaster (i.e., Oakland could apply for grant funds after an earthquake in Los Angeles)

FEMA has historically provided grants from the Pre Disaster Mitigation Program to state and local governments. In the current fiscal budget, FEMA has proposed combining this grant with Homeland Security grants. It is not yet clear what this may mean for seismic mitigation projects.

### *Federal, State or Private Sector Incentives*

There are a number of frequently mentioned potential financial incentives that would require action by federal or state level government or private sector institutions. It is not within the power of the City to offer these incentives. If these incentives are considered desirable, it may be worthwhile for several cities to work together to implement them.

These include:

- Preferable mortgage rates for earthquake resistant structures provided by lending institutions such as Frannie Mae or private banks.
- Income tax credits and/or owner deductions for the costs of seismic retrofits, or accelerated depreciation rates for retrofit improvements. The value of deductions varies with taxpayer's adjusted gross income while tax credits provide a specific tax reduction to all taxpayers.
- Removal of financial disincentives for retrofitting, by removing programs that subsidize post-disaster losses through casualty tax deductions of disaster losses, and disaster assistance that subsidizes losses of owners who chose not to retrofit. This policy could have unintended implications on recovery and be perceived as callous, and;
- Companies that provide building materials could offer a discount or rebate on materials used for retrofitting deficient properties. There would have to be compensating

<sup>3</sup> California Government Code, Article 12, Sections 50280-50290, California Revenue and Taxation Code, article 1.9, Sections 439-439.4

<sup>4</sup> Section 404 and 406 of the federal Stafford Act

factors such as increased volume or market share due to favorable publicity.

## Policy Incentives

### *Density/Intensity Bonuses*

Where a number of soft-story buildings contribute to the historical or architectural character of a district or area, a city may want to offer specific increases in the maximum allowable building density or intensity to help offset the added costs of seismic upgrades.

### *Exemptions for Nonconforming Conditions*

Many older buildings have nonconforming conditions that do not meet current code requirements, such as construction directly on the lot line, inadequate setbacks, or inadequate parking. If upgrade projects trigger changes to nonconforming conditions, such as when buildings are altered or enlarged, the City could offer some exemptions to these requires if owners seismically retrofit.

### *Zoning Incentives*

The City could exempt owners that retrofit from selected zoning restrictions, such as allowing concessions regarding encroachment into setbacks, increased floor/area ratios, height limits, density bonuses, and onsite parking requirements. These concessions could be more powerful if owners, who elect not to use them, could sell them to others, or transfer them to another location within the City (Transfer of Development Rights). An owner might be allowed to add an additional ground-floor unit to a building to partially offset the cost of a retrofit, even if addition of such a unit might result in densities that exceed those of existing zoning.

Palo Alto modified its zoning laws to encourage owners of unreinforced masonry buildings to retrofit. The zoning laws were modified to permit expansion of the floor area of downtown buildings included in the program if the owner performed seismic upgrades. These building were also exempted from onsite parking requirements and fees for offsite parking.

### *Condominium Conversion*

Converting multi-unit residential properties to condo-

miniums (or tenant in common) buildings is a lengthy, complex process generally intended to limit the number of conversions. This process, which is driven by the different in market value between rental and individually-owned units, could be used to trigger mandatory seismic retrofit, or could be eased as an incentive to those who retrofit voluntarily.

### *Exempt of Defer Triggered Work*

Owners that choose to voluntarily seismically retrofit their buildings might trigger other required work, such as Americans with Disabilities Act (ADA) upgrades, Fire resistance upgrades and sprinklers, Title 24 energy analysis and upgrades, or neighborhood notification. The City could exempt owners from some triggered requirement. Note that owners cannot be exempted from triggered ADA upgrades, which can be costly. This is a federal requirement and the courts have determined that seismic strengthening projects should not be exempted from this requirement.

### *Expedite Permits and Reviews*

The City could provide over the counter permits without delay whenever possible. All permit reviews for seismic retrofits could be expedited. Planning Department review for most projects with seismic retrofits could be bypassed.

### *Rebuilding Restrictions*

Currently a rent-controlled apartment building that is demolished after an earthquake could be replaced by a building having a greater return on investment than apartments. This potential could be viewed as a disincentive to seismically upgrade the city's worst buildings. Post-earthquake rebuilding policies could be changed to restrict this.

### *Transfer of Development Rights (TDR)*

The City could allow owners to transfer unused development rights to another site. This incentive might be especially valuable for owners of historic properties. The value of the development rights to be transferred should be comparable to the cost of a seismic retrofit.

## Technical Assistance Incentives

Many, maybe most, owners have never hired an engineer, sought permits or engaged a contractor and find the process



daunting. Technical assistance incentives help building owners navigate the complex engineering issues associated with building retrofits. City-offered technical review and advice would improve the chances that building owners would carry out effective retrofit projects.

### *Training Construction Professionals*

The City of Oakland could provide training to engineers and contractors in all stages of the retrofit process: building evaluation, retrofit design, and construction. A list with the names of those who complete the training successfully would be made available to building owners. However, training would not guarantee that those on the list are properly licensed and insured, or engage in good business practices.

Training could be provided free (FEMA grants could cover the cost), at a subsidized cost, or at-cost to prospective inspectors, civil engineers, architects, contractors and owners interested in developing a retrofit specialty. Training could be offered through existing organizations and training programs. A program name and logo could be copyrighted and trained individuals allowed to use it in advertising and business documents. The City's awareness literature could promote use of trained individuals.

The City of Berkeley provided training for civil engineers in preparation for its soft story building program, and ABAG has provided training to contractors for retrofitting cripple walls.

### *Information for Building Owners*

The City of Oakland could provide publications or other materials about how to work with engineers and contractors for evaluations, design and contracting. These could include information that will help them ask relevant questions and evaluate proposed costs and activities.

### *Independent Advice and Evaluations*

Technical advice could be provided through intermediaries with no financial interest in the outcome. The Department of Building Inspection could inspect properties before approving construction drawings and critique plans. Partner organizations – private non-profits and professional associations – could provide technical advice through the auspices of the Department of Building Inspection. This type of

program could be funded by a FEMA grant.

### *Assistance Navigating City Program*

Owners of multi-unit buildings have a variety of characteristics. Some live in their buildings, some live out of state; some have cash available, others might have all of their assets in the property with little monthly income. Many owners have never hired an engineer or architect for a major project and have never engaged a contractor. The process of retrofitting would be daunting for many. The City of Oakland could provide assistance on project financing and how to secure incentives. An ombudsman could be designated for all retrofit activities, guiding building owners through requirements, incentives, and financing options.

### *Building Owner Training Programs*

Building owners could be trained in:

- the City's retrofit program,
- the types of damage expected when buildings are retrofitted to different standards (performance objectives), and
- how to select engineers to evaluate building and design retrofits and contractors to conduct the work.

This could be integrated into an ongoing community-training program, such as the Fire Department's Citizens of Oakland Respond to Emergencies (CORE) program.

### *Information Incentives*

Many building owners and users do not know how their buildings will perform in an earthquake. Being better informed about risk can allow people to make informed choices about the level of risk they are willing to accept. Information can drive market-based decisions about seismic retrofitting. Owners choose to strengthen their building to protect their investments; tenants choose to occupy safer buildings; and retrofitted building should be more valuable when sold.

### *Real Estate Transfer Disclosures*

Existing state real estate disclosure laws require building owners to disclose any known seismic deficiencies when a building is sold. Sellers are not required to evaluate the

vulnerability of their building or to strengthen any known weaknesses.

The effectiveness of disclosure is compromised when owners often check the “do not know” option rather than speculating on deficiencies. Real estate earthquake vulnerability disclosure requirements could be amended to require an engineering evaluation of a building when sold. Existing state statute would need to be amended to require this.

The City of Oakland could note information about a building’s seismic status as part of its tax assessor/official record. This could include a “certificate of retrofit” or documentation of whether the building is on a list of potentially vulnerable buildings.

### *Tenant Notification*

Building owners can be mandated to notify tenants if their buildings are deemed to be potentially hazardous in earthquakes.

The City of Oakland would need to identify hazardous or potentially hazardous buildings before such a program could occur. For some types of hazardous buildings (e.g. URM’s) this is a relatively straightforward process. For others (e.g. older concrete buildings) this is challenging and could identify many buildings as potentially hazardous that actually pose little risk.

### *Building Ratings*

Proposals to evaluate and rate the earthquake performance of buildings are discussed frequently. The objective would be to create an evaluation system that would be meaningful and that would be replicated closely by a variety of inspectors or engineers. The ratings would reflect the risk of earthquake loss and the objective would be to influence market value, insurance premiums, and lending rates. Meaningful and replicable analysis methods are not yet available.

### *Placards*

Owners of unreinforced masonry buildings are required to post signs warning occupants of the building’s earthquake vulnerability. The objective is to give those who enter a chance to make an informed decision, and to warn those who might rent or purchase the building of its condition. These signs tend to not discourage persons from entering

for limited periods, but might have an impact on market or rental values. Owners of buildings found to have a weak first story could be required to post a notice and then be allowed to remove it upon completion of retrofit work

### *Standard of Care*

Owners have a responsibility to maintain their properties in a safe condition. Following earthquakes, those who are harmed might believe the owner is responsible for damages. A jury in a recent court case awarded damages against a property owner for bodily injury caused by their unreinforced masonry building (URM) during an earthquake.<sup>5</sup> The jury concluded that the building owner was negligent in failing to perform a seismic retrofit that could have prevented these deaths. Owner notification programs such as those taking place in Berkeley, Oakland, and Alameda are part of a broader societal trend recognizing the seismic hazards of soft-story buildings that will make it harder for owners to avoid liability in future court cases.

By establishing criteria for identifying vulnerable buildings, clear retrofit standards and compliance deadlines, the City of Oakland could affect how the standard-of-care would be interpreted and applied. Those who comply are more likely to be found as having acted reasonably than those who have not. Clarifying liability in this fashion might encourage those who are concerned about liability and might encourage liability insurers to exert pressure on owners to retrofit.

## Additional References

California Seismic Safety Commission, Incentive to Improve California’s Earthquake Safety: An “Agenda in Waiting”, June 1999, SSC 99-02

Earthquake Engineering Research Institute, Incentives and Impediments to Improving the Seismic Performance of Buildings, June 1998, SR 98-1

20% of owners voluntarily retrofitted their buildings. In preparation for Phase Two of the ordinance, the

<sup>5</sup> *Myrick v. Mastagni* (2nd Dist. 2010) 185 Cal. App. 4th 1082; 111 Cal. Rptr 3d 165

# Appendix A

## History of Efforts to Address Soft-Story Housing in Oakland<sup>1</sup>

### Building Inventory

In 2008, the Association of Bay Area Governments (ABAG), assisted by volunteer earthquake professionals,<sup>2</sup> conducted a sidewalk survey of multi-family apartment buildings within the city. The scope of the effort involved looking at parcels identified by the Alameda County Assessor's Office as having buildings on them (1) with 5 or more units, (2) between 2 and 7 stories, and (3) built prior to 1991. The volunteers collected information on (1) use of the first floor,<sup>3</sup> (2) whether or not the building was on a significant slope,<sup>3</sup> and (3) "openness" of the first floor. "Openness" was defined using the same criteria as a similar San Francisco inventory project using similar volunteer earthquake professionals.<sup>4</sup> In the process of visiting these parcels, we found 53 additional buildings that fit these criteria that were not listed as buildings to visit, largely because they were listed as having

<sup>1</sup> Based on a *Soft-Story Residential Buildings in Earthquakes—Risks and Public Policy Opportunities for Oakland*. Association of Bay Area Governments, Jeanne Perkins. May 28, 2009.

<sup>2</sup> The volunteers were people interested in earthquakes and public safety – mostly building design professionals, earthquake scientists, home inspectors, or university students – who are members of the Structural Engineers Association of Northern California (SEAONC), the Earthquake Engineering Research Institute Northern California Chapter (EERI-NC), the American Institute of Architects (AIA), the American Society of Home Inspectors (ASHI), or other related professional organization.

<sup>3</sup> Significant slope is defined for this program as a rise of the ground adjacent to the ground floor of more than six feet across any direction of the building. Using the criteria, larger buildings on a relatively modest slope may be considered to be on a significant slope.

<sup>4</sup> The San Francisco soft-story inventory was completed by the Community Action Plan for Seismic Safety. More information can be found online at <http://sfdbi.org/ftp/uploaded-files/dbi/Services/PlanReview/FinalSoftStoryHereTodayHereTomorrow022009.pdf>

"zero" stories. A total of 3,959 total parcels were visited and data were collected on 2,908 buildings.

This survey identified **24,273 residential units in 1,479 buildings** that met the original criteria and had parking or commercial uses on the ground floor. These buildings were termed "potential soft-story buildings" by the City. Of these, 942 buildings containing 12,991 units have EITHER at least one wall that is 80% or more "open" on the first floor OR have at least two walls that are 50% or more "open" on the first floor. These buildings are even more likely to be soft-story buildings.

Based on a statistical sample, an additional **1,060 4-unit buildings and 370 3-unit buildings** in Oakland have parking or commercial on the first floor. Almost all (97%) have significant openings. However, the vast majority of units are in the buildings with 5 or more units (24,273 of about 30,600 units).

### Mandatory Screening Ordinance

As a result of the building inventory, in 2009 the City adopted the Mandatory Seismic Screening of Multiple Story Residential Buildings Constructed Before 1991 Ordinance (Number 12966). The ordinance mandated that owners of "potential soft-story buildings" complete a Level 1 Screening–Non-Engineered Analysis. This screening was required to be performed by a registered design professional, licensed contractor or certified inspector to better understand the existing conditions on the ground floor of the building and whether there were many walls and partitions adding strength and stiffness to the ground floor, or whether it was very open—making it more likely to have a soft-story condition. The screening was not intended to replace an engineered analysis to quantify the building's capacity to withstand seismic forces, but to provide an additional tool

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to help prioritize buildings of concern for future retrofit ordinances.

The ordinance also outlined an optional Level 2 screening which owners could perform in lieu of a Level 1 screening. The Level 2 screening consists of structural calculations performed by an engineer to evaluate structural deficiencies in the ground floor and make a definitive determination about soft-story condition.

## Soft-Story Building Screening

ABAG and its Housing and Outreach Committee, along with the City designed the Level 1 screening evaluation that would meet the requirements of the mandatory screening ordinance.<sup>5</sup> Buildings that were on a significant ground slope were not required to complete the Level 1 screening. The engineering complexity of these buildings does not lend them to a simplified evaluation and require a more detailed engineering analysis to make any kind of risk determination. Property owners were instead required to document the slope condition pending a mandatory Level 2 screening at a later date.

The screening also gave owners the opportunity to remove themselves from the potential soft-story list if their building contained fewer than 5 units, had less than two stories, was built in 1991 or later (using the 1988 Uniform Building Code) when building codes became strong enough to prevent soft-story construction, or was previously retrofitted using relevant building codes.

ABAG trained 56 registered engineers, licensed contractors and home inspectors to complete the Level 1 screening. Letters were mailed to building owners requesting their compliance with the mandatory screening ordinance.

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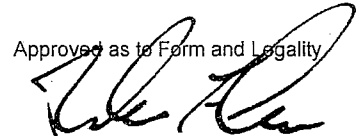
<sup>5</sup> The screening form collected information about the footprint of the ground floor, construction materials and length of solid walls versus wall openings in each of the exterior walls as well as interior walls or partitions. Screeners were asked to provide a dimensioned sketch of the ground floor and take pictures of the exterior walls.



2014 FEB 13 PM 1:37

# OAKLAND CITY COUNCIL

Approved as to Form and Legality

  
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 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

4-1  
COMMUNITY & ECONOMIC  
DEVELOPMENT CMTE.

FEB 25 2014

**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, to impose a 10 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 unit in a building; and be it further

**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:** 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 -

4-1

COMMUNITY & ECONOMIC  
DEVELOPMENT CMTE.

FEB 25 2014

ATTEST: \_\_\_\_\_

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

## EXHIBIT A

### 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 based on a reasonable estimate of the useful life of the capital improvement and shall be amortized over that time period. 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 first month following the end of the amortization period.

3. A monthly rent increase 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 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 benefited 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.

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 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.\

...

### 10.2.5 Building Wide Improvements

A landlord seeking a rent increase for a capital improvement that benefits all the units in a building must file an Owner's Petition. 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 a landlord petition for a building wide improvements rent increase may not increase the rent based on the capital improvement. The landlord need not name all the Tenants in the building as parties, but any rent increase permitted cannot be passed along to such Tenants or to the unit not included. 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.

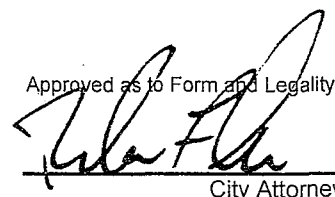
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FEB 25 2014



2014 FEB 13 PM 1:37 **OAKLAND CITY COUNCIL**

  
City Attorney

**ORDINANCE No.**

**C.M.S.**

**AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (O.M.C. 8.22.090B) TO REQUIRE PROPERTY OWNERS SEEKING RENT INCREASES BASED ON CAPITAL IMPROVEMENTS TO FILE OWNER PETITIONS**

**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 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 improvements 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 improvements passed through in a 12-month period, and require landlords to file petitions for capital improvement rent increases in buildings with 5 or more units, or for any building where capital improvements affect all tenants; and

**WHEREAS**, the City Council finds that amending the capital improvement Regulations will offer tenants relief from rent increases in excess of 10 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 improvement, such as seismic retrofits and energy efficient projects, 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);

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FEB 25 2014

Now, therefore, the Council of the City of Oakland does ordain as follows:

**Section 1:** The City Council hereby adopts the amendment to Oakland Municipal Code Section 8.22.090B attached as Exhibit B hereto that property owners file Owner Petition in order to obtain a rent increase based on Capital Improvements;

**Section 2:** This Ordinance takes effect seven (7) days after final adoption, unless it has been passed with at least six (6) votes, in which case it takes effect immediately upon adoption.

**Section 3:** This action is exempt under the California Environmental Quality Act ("CEQA") pursuant to, 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).

**Section 4:** If any section, subsection, sentence, clause or phrase of this Ordinance 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 the Chapter. The City Council hereby declares that it would have passed this ordinance 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.

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

DATE OF ATTESTATION: \_\_\_\_\_

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**EXHIBIT B**

Amendment to Oakland Municipal Code  
Chapter 8.22 Requiring Owner Petition for  
Capital Improvement Increases

(Underlined language is added, stricken  
language is deleted)

8.22.090

B. Owner Petitions and Owner Responses to Tenant Petitions.

1. An Owner may file an Owner Petition seeking to justify a Rent increase on any basis permitted by this Chapter 8.22. An Owner is required to file an Owner Petition for all the units the Owner wishes to have subject to the increase for the following justifications.

a. Capital Improvements

~~12.~~ In order for an Owner to file a response to a tenant petition or to file A petition seeking a rent increase, the owner must provide the following:

- a. Evidence of possession of a current city business license;
- b. Evidence of payment of the Rent Adjustment Program Service Fee;
- c. Evidence of service of written notice of the existence and scope of the Rent Adjustment Program on the tenant in each affected covered unit in the building prior to the petition being filed;
- d. A completed response or petition on a form prescribed by the Rent Adjustment Program; and
- e. Documentation supporting the owner's claimed justification(s) for the rent increase or supporting any claim of exemption.

~~23.~~ An Owner must file a response to a tenant's petition within thirty (30) Days of service of the notice by the Rent Adjustment Program that a Tenant petition was filed.

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