CITY OF OAKLAND

AGENDA REPORT

TO: HENRY L. GARDNER
INTERIM CITY ADMINISTRATOR

FROM: Michele Byrd

SUBJECT: Definition of Deferred Maintenance

DATE: October 16, 2014

City Administrator Approval

Date 11-20-14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council adopt:

A Resolution Amending Rent Adjustment Regulations, Appendix A, Sections 10.1 and 10.2.2 To Address Excluding the Costs of Deferred Maintenance From Capital Improvement or Housing Services Rent Increases

EXECUTIVE SUMMARY

On April 22, 2014, the City Council adopted amendments to the Rent Ordinance regarding capital improvements. At that time, the City Council also requested that Rent Adjustment Staff and the Rent Board address deferred maintenance in the context of capital improvements rent increases.

OUTCOME

After a series of meetings, the Rent Board voted on several versions of a definition of deferred maintenance, including the above recommendation that Staff is making to the City Council. However, the motions failed on each vote and the Rent Board was unable to make a recommendation.

Item: _____
CED Committee
December 2, 2014

ANALYSIS

Current Practice

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

Examples of facts the Hearing Officer would consider include, but are not limited to:

- How long the tenant has lived in the unit?
- Was landlord notified that repairs needed to be done inside of the unit?
- Did the landlord know or should have known about repairs needed to the outside of the building?
- The cost of the improvement.
- Whether the improvements involve habitability issues.

The recommended regulations addressing deferred maintenance are consistent with the current practice that requires landlords and tenants to have the responsibility for proving their claims related to capital improvements.

Burden of Proof in Other Jurisdictions

Of the nine major jurisdictions in California, only five allow capital improvements rent increases: Oakland, San Francisco, San Jose, Hayward and Los Angeles.

With the exception of Oakland, in every jurisdiction that allows capital improvement rent increases as a separate pass-through, the burden of proof is with the tenant for proving that a repair is due to a code violation or deferred maintenance. Other jurisdictions consider capital improvements as part of a net operating income analysis, but deferred maintenance is a defense to the capital improvement, making it a tenant burden to prove (for example, in Berkeley and Santa Monica.)

POLICY ALTERNATIVES

The alternative recommendation is to take no action and allow the Regulations to stand as written. Hearing Officers would continue to consider testimony from landlords and tenants and make decisions regarding deferred maintenance on a case by case basis.

Summary of Options

Making a determination to address deferred maintenance involves choosing between the following options:

- Take no action and allow the Regulations to stand as written and allow the Rent Adjustment Program to continue current practices when making decisions regarding deferred maintenance. (***See Attachment B***)

Adopt the Staff recommendation in Exhibit A, which includes:

1. A definition of deferred maintenance
2. Factors to consider when excluding deferred maintenance
3. Burden of proof for landlords and tenants
4. The exclusion of deferred maintenance from Housing Services costs

PUBLIC OUTREACH/INTEREST

On May 23, 2014, letters were sent to landlord and tenant advocates notifying them of a general discussion of deferred maintenance being held at the Rent Board meeting scheduled for June 12, 2014. The letter advised all interested parties to submit written comments for the Board's consideration.

Rent Board discussions on deferred maintenance took place on the following dates:

- June 12, 2014
- June 26, 2014
- July 10, 2014
- July 24, 2014
- September 25, 2014

Written comments were submitted by two tenant organizations, two tenants, and one landlord. Their concerns are outlined below in Table 1.

TABLE I

ISSUE	LANDLORD	TENANT
Deferred Maintenance definition	Definition of deferred maintenance is defined by the State law: implied warrant of habitability	Definition should include broader issues, such as "over improving"
Burden of Proof	The State law establishes the repairs landlords are responsible for	Tenants should not have the burden of proving a repair is deferred maintenance because tenants have no specific information on work performed or if the work resulted from deferred maintenance
Authority of Hearing Officer	Hearing Officers should not decide definition of capital improvement or deferred maintenance	Hearing Officer should keep deferred maintenance checklist at the hearing

Broader Tenant Concerns

While the lone landlord who submitted written comments believed that no further definition of deferred maintenance is needed, tenants expressed the desire to see broader changes to capital improvement regulations, such as:

- Tenants should be able to contest "over-improvements," or "gold-plating," which allows landlords to pass through a higher amount to tenants;
- There should be proportionate allocation of capital improvements based on unit size;
- There should be a separate classification for capital improvements done for disabled accessibility.

These issues are reserved for future potential regulations.

COORDINATION

This report and recommendations were prepared in coordination with the City Attorney's Office, and the report has been reviewed by the Budget Office.

COST SUMMARY/IMPLICATIONS

There is no fiscal impact from these proposed changes to the Ordinance and Regulations.

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 housings.
- Assist low and moderate income families to save money to become homeowners.

For questions regarding this report, please contact Connie Taylor, Rent Adjustment Program Manager at (510) 238-6245.

Respectfully submitted,

Michele Byrd, Director
Department of Housing and
Community Development

Prepared by:
Connie Taylor, Program Manager
Rent Adjustment Program

Attachment A: Hearing Decision regarding deferred maintenance

Attachment B: Current Regulations

ATTACHMENT A

P.O. BOX 70243, OAKLAND, CA 94612-2043

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

(510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

HEARING DECISION

CASE NUMBER: **T13-0175, Schneck v. Dang**

PROPERTY ADDRESS: **2230 Lakeshore Ave., #6, Oakland, CA**

DATE OF HEARING: **August 30, 2013**

DATE OF DECISION: **September 30, 2013**

APPEARANCES: **Jae Schneck, Tenant**
Douglas H. Atherley, Tenant's Friend
Ted Dang, Owner

SUMMARY OF DECISION

The tenant petition is granted in part

CONTENTIONS OF THE PARTIES

The tenant filed a petition which alleges that the rent increase exceeds the CPI adjustment and is unjustified. The owner filed a written response alleging banking and capital improvements as justifications for the rent increase.

THE ISSUES

1. Is the rent increase justified by banking, and if so, has it been properly calculated?
2. Is the rent increase justified by capital improvements, and if so, has it been properly calculated?

EVIDENCE

Background

The tenant moved into the subject unit on April 1, 2010, at an initial monthly rent of $1,200.00. The subject unit is located in an eight-unit residential building. On May 28, 2013, the tenant received a notice of rent increase from $1,200.00 to $1,450.00,

effective August 1, 2013. The tenant also received a written explanation from the owner that the increase was due to banking and capital improvements. (The letter of explanation, dated May 23, 2013, was submitted with the Tenant's Petition and admitted in Evidence as Exhibit A.) It is undisputed that the tenant received the Notice of Existence of the Rent Adjustment Program when she moved in and also with the notice of rent increase. The tenant's rent has not increased since she moved in on April 1, 2010.

The owner filed a timely response alleging banking and capital improvements as justification for the rent increase. The owner submitted a table called Building Improvement Costs with his response. The table lists various work done on the property and cost spent on each project. The table is admitted in evidence as Exhibit B. In support of the capital improvements justification, the owner submitted invoices, work reports, estimates from various contractors (over 50 pages), which were admitted in evidence as Exhibit C The owner also submitted copies of cancelled checks paid for the work completed (16 pages). The cancelled checks were admitted in evidence as Exhibit D.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Banking

An owner is allowed to bank increases and use them in subsequent years, subject to certain limitations.[1] However, the total of CPI adjustments imposed in any one rent increase, including the current CPI rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the rent increase notice.[2] The banking calculation set forth in the attached table indicates the allowable banking amount of $72.00 for the tenant's unit, allowing the rent to increase to $1,272. ($1,200 + $72.00 = $1,272.00.)

Capital Improvements

A rent increase in excess of the CPI Rent Adjustment may be justified by capital improvement costs [3] Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to the new building codes Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.[4]

The improvements must primarily benefit the tenant rather than the owner. Capital improvement costs are to be amortized over a period of five years, divided equally among the units which benefited from the improvement. The reimbursement of capital expense must be discontinued at the end of the 60-month amortization period.[5]

---

[1] O M.C Section 8 22 070(B)(5)
[2] RAP Regulations 10.5
[3] O M C Section 8.22 070(C)
[4] Regulations, Appendix, Section 10 2 2(5)
[5] Regulations Appendix, Section 10.2

An expense must pass three tests to meet the threshold definition of a Capital Improvement cost:

(1) It must materially add to the value of the property
AND
(2) It must either
A. Appreciably prolong the useful life of the property or
B. Adapt it to new building codes
AND
(3) It must primarily benefit the tenant.

The owner provided documentation for the following items: Omega Termite Control (Pest Report) for proposed work for $80,430.00, which included repairs of porch framing, decks, building framing, termite treatment, replacement of damaged doors, etc. Additional capital improvements items alleged by the owner include replacement of sewer lateral, yard clean up, tree trimming, installation of rear yard weed barrier, new hallway carpeting, painting, fixtures.

The owner submitted a table, listing the type of work done, estimated cost and actual cost (Exhibit B). In addition, the owner submitted over 50 pages of estimates, invoices and work reports from various contractors (Exhibit C). The vast majority of the work done was termite repairs, which included replacement of damaged doors, porches, decks, repairs to structural framing. The owner testified he had to do these repairs in order to purchase the building and obtain the financing. Because the termite work is considered deferred maintenance and not a capital improvement, the owner is not entitled to a capital improvement pass-through for these items.

The other type of work included yard work - tree trimming, weed barrier installation, weeding and hauling yard debris. Cleaning up, trimming and weeding of the year is part of the regular maintenance and not a capital improvement. Therefore, the owner is not entitled to a capital improvement pass-through for these items.

Finally, new carpeting in the common areas (hallway), painting and new fixtures (hallway and staircase) are considered capital improvements that greatly benefit all tenants, add value to the property and prolong its useful life. However, the owner has not submitted proof of payments spent on these individual items.

Prior to the hearing, on July 26, 2013, the Hearing Officer issued an Order to the parties stating that the minimum evidentiary requirement for a rent increase based on Capital Improvement is 'organized documentation, including invoices and proof of payment.' The owner submitted 15 pages of copies of cancelled checks, showing about 6 checks per page (Exhibit D). None of the check amounts correspond to actual cost next to the work items done in the common areas that are listed on Exhibit B. Some of the checks submitted are payable to EBMUD, Wells Fargo Bank, Franchise Tax Board, PG&E, AT&T, Ted Dang, the owner himself, but it is unclear which payments, if any, were made for the work done in the common areas. Because the owner has not submitted proof of payment for each project listed as capital improvements, the owner

has not met this requirement for the work done in the common areas. Therefore, the claim for capital improvement pass-through for the work done in the common areas is denied.

ORDER

1. Petition T13-0175 is granted in part.

2. The maximum allowable rent based on banking is $1,272.00.

3. The capital improvements justification for the rent increase is denied.

4. The anniversary date for future rent increases is August 1.

5. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

September 30, 2013

Linda M. Moroz
Hearing Officer
Rent Adjustment Program

10.1.9 The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs

10.1 10 When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&E. The best way to remedy the bill is to install individual meters If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent.

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

10 2.1 Credit for capital improvements will only be given for those improvements which have been completed and paid for within the twenty-four (24) month period prior to the date of the proposed rent increase However, no more than twelve (12) months of capital improvement costs may be passed on to a tenant in any twelve (12) month period For example: In year one a landlord makes a capital improvement by replacing a roof. In year two the landlord makes another capital improvement by painting the exterior of the building. The landlord would not be able to pass on the roof and exterior painting capital improvement costs during the same year, but would have to pass then on in separate years, subject to the twenty-four (24) month time limitations

Capital Improvements for Code Violations Regulations

10.2 2 Eligible capital improvements include, but are not limited to, the following items:

1. Those improvements which primarily benefit the tenant rather than the landlord. (For example, the remodeling of a lobby would be eligible as a capital improvement, while the construction of a sign advertising the rental complex would not be eligible). However, the complete painting of the exterior of a building, and the complete interior painting of internal dwelling units are eligible capital improvement costs

2. In order for equipment to be eligible as a capital improvement cost, such equipment must be permanently fixed in place or relatively immobile. (for example, draperies, blinds, carpet, sinks, bathtubs, stoves, refrigerators, and kitchen cabinets are eligible capital improvements. Hot plates, tonsters, throw rugs, and hibachis would not be eligible as capital improvements).

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 with in 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 for 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 the (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 demonstrated 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.

4. Use of a landlord's personal appliances, furniture, etc., or those items inherited or borrowed are not eligible for consideration as capital improvements.

5 Normal routine maintenance and repair of the rental until and the building is not a capital improvement cost, but a housing service cost (For example: while the replacement of old screens with new screens would be a capital improvement).

10.2.3 Capital Improvement costs are calculated according to the following rules

II. PLUMBING

Priority 1

A. Sewage overflow on surface

Priority 2

A. Open sewers or waste lines
B Unsanitary, inoperative fixtures; leaking toilets
C. T & P systems, newly or improperly installed

III. ELECTRICAL

Priority 1

A. Bare wiring, open splices, unprotected knife switches, exposed energized electrical parts
B. Evidence of overheated conductors including extension cords.
C Extension cords under rugs

Priority 2

A. Stapled cord wiring; extension cords
B Open junction boxes, switches, outlets
C. Over-fused circuits
D. Improperly added wiring

IV STRUCTURAL

Priority 1

A. Absence of handrail, loose, weakly -- supported handrail
B. Broken glass, posing potential injury immediate
C. Hazardous stairs
D. Collapsing structural members

Priority 2

A Garage wall separation
B. Uneven walks, floors, tripping hazards
C. Loose or insufficient supporting structural members
D. cracked glass, leaky roofs, missing doors (exterior) and windows
E. exit, egress requirements; fire safety

note: floor separation and stairway enclosures in multi-story handled on a case basis Applies to three or more stories, apartments and hotels; will priority

IV. OTHER

Priority 1

A. wet garbage
B. Open wells or unattended swimming pools
C. Abandoned refrigerators
D. items considered by field person to be immediate hazards

Priority 2

A. broken-down fences or retaining walls
B. High, dry weeds, next to combustible surfaces
C Significant quantity of debris
D. Abandoned vehicles

Questions concerning permits, repairs and compliance schedules should be referred to code enforcement office of the city of Oakland -- (510) 238-3381.

10.0 JUSTIFICATION FOR ADDITIONAL RENT INCREASES

10.1 Increased Housing Service Costs Increased Housing Service Costs are services provided by the landlord related to the use or occupancy of a rental unit, including, but not

limited to, insurance, repairs, replacement maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service and employee services.

10.1.1 In determining whether there has been an increase in housing service costs, consider the annual operating expenses for the previous two years. (For example: if the rent increase is proposed in 1993, the difference in housing service costs between 1991 and 1992 will be considered). The average housing service cost percentage (%) increase per month per unit shall be derived by dividing this difference by twelve (12) months, then by the number of units in the building and finally by the average gross operating income per month per unit (which is determined by dividing the gross monthly operating income by the number of units). Once the percentage increase is determined the percentage amount must exceed the allowable rental increase deemed by City Council The total determined percentage amount is the actual percentage amount allowed for a rental increase

10.1.2 Any major or unusual housing service costs (i e., a major repair which does not occur every year) shall be considered a capital improvement

10.1.3 Any item which has a useful life of one year or less, or which is not considered to be a capital improvement, will be considered a housing service cost (i e , maintenance and repair).

10 1.4 Individual housing service cost items will not be considered for special consideration. For example, PG&E increased costs will not be considered separately from other housing service costs.

10.1.5 Documentation (i.e., bills, receipts, and/or canceled checks) must be presented for all costs which are being used for justification of the proposed rent increase.

10.1.6 Landlords are allowed up to 8% of the gross operating income of unspecified expenses (i.e., maintenance, repairs, legal and management fees, etc.) under housing service costs unless verified documentation in the form of receipts and/or canceled checks justify a greater percentage.

10 1.7 If a landlord chooses to use 8% of his/her income for unspecified expenses, it must be applied to both years being considered under housing service cost (for example, 8% cannot be applied to 1980 and not 1981).

10.1 8 A decrease in housing service costs (i.e., any items originally included as housing service costs such as water, garbage, etc) is considered to be an increase in rent and will be calculated as such (i.e., the average cost of the service eliminated will be considered as a percentage of the rent). If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.

Approved as to Form and Legality

City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2014 NOV 20 PM 2:46

OAKLAND CITY COUNCIL

RESOLUTION NO. C.M.S.

A RESOLUTION AMENDING RENT ADJUSTMENT REGULATIONS, APPENDIX A, SECTIONS 10.1 AND 10.2.2 TO ADDRESS EXCLUDING THE COSTS OF DEFERRED MAINTENANCE FROM CAPITAL IMPROVEMENT AND HOUSING SERVICE COSTS RENT INCREASES

WHEREAS, on April 22, 2014, the City Council adopted amendments to the Rent Ordinance and Rent Adjustment Regulation regarding capital improvements. At that time, the City Council also requested that Rent Adjustment Staff and the Rent Board address how deferred maintenance is excluded to a capital improvement rent increases; and

WHEREAS, after several Rent Board meetings, the Rent Board was unable to decide on a regulation regarding deferred maintenance; however, Staff developed a regulation that is consistence with the current practice of the Rent Adjustment Program; and

WHEREAS, the City Council finds that amending the Rent Adjustment Regulations to address deferred maintenance will assist landlords and tenants in determining how deferred maintenance will be considered in capital improvement and housing services rent increase petitions; and

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

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

RESOLVED: That the City Council hereby adopts the amendments to the Rent Adjustment Regulation Appendix A Sections 10.1 and 10.2.2 as set out in Exhibit A to address deferred maintenance, and be it further

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

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

Exhibit A

Rent Adjustment Rules and Regulations

Appendix A

Deferred Maintenance

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

1. **[Existing]** Those improvements which primarily benefit the tenant rather than the landlord. (For example, the remodeling of a lobby would be eligible as a capital improvement, while the construction of a sign advertising the rental complex would not be eligible). However, the complete painting of the exterior of a building, and the complete interior painting of internal dwelling units are eligible capital improvement costs.

2. **[Existing]** In order for equipment to be eligible as a capital improvement cost, such equipment must be permanently fixed in place or relatively immobile. (for example, draperies, blinds, carpet, sinks, bathtubs, stoves, refrigerators, and kitchen cabinets are eligible capital improvements. Hot plates, toasters, throw rugs, and hibachis would not be eligible as capital improvements).

3. **[Existing, revised]** Except as set forth in subsection 4, repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements.

4. **[Existing, revised]** The following may not be considered as capital improvements:

a. **[Existing, renumbered]** Repairs for code violations may not be considered capital improvements if the Tenant proves the following:

i. 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:

(a) the condition was cited by a City Building Services Inspector as a Priority 1 or 2 Condition;

(b) 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.

ii. That the tenant

(a) informed the Owner of the condition in writing;

(b) otherwise proves that the landlord knew of the conditions, or

(c) proves that there were exceptional circumstances that prohibited the tenant from submitting needed repairs in writing; and

iii. 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.

iv. A reasonable time is determined as follows:

(a) 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

(b) 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 for 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 the (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 demonstrated 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:

(i) the Tenant proves a shorter time is reasonable based on the hazardous nature of the condition, and the ease of correction, or

(ii) 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.

(c) 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.

b. **[New]** Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.

i. Among the factors that may be considered in determining if the landlord knew or reasonably should have known of the problem that caused the damage:

(a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?

(b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?

(c) Did the landlord conduct routine inspections of the property?

(d) Did the tenant permit the landlord to inspect the interior of the unit?

ii. Examples:

(a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak cause ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case, replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.

(b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord or the landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition, and tenant complaints.

iii. Burden of Proof.

(a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.

(b) Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem.

c. **[Existing,renumbered]** Landlord's use of personal appliances, furniture, etc., or those items inherited or borrowed are not eligible for consideration as capital improvements.

d. **[Existing,renumbered]** Normal routine maintenance and repair of the rental until and the building is not a capital improvement cost, but a housing service cost. (For example: while the replacement of old screens with new screens would be a capital improvement, but repair of old screens would be repairs).

Rent Adjustment Rules and Regulations

Appendix A

10.0 JUSTIFICATION FOR ADDITIONAL RENT INCREASES

10.1 Increased Housing Service Costs: Increased Housing Service Costs are services provided by the landlord related to the use or occupancy of a rental unit, including, but not limited to, insurance, repairs, replacement maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service and employee services. Any repair cost that is the result of deferred maintenance, as defined in Appendix A, Section 10.2.2 cannot be considered a repair for calculation of Increased Housing Service Costs.

10.1.2 Any major or unusual housing service costs (i. e., a major repair which does not occur every year) shall be considered a capital improvement. However, any repair cost that is not eligible as a capital improvement because it is deferred maintenance pursuant to Appendix A, Section 10.2.2, may not be considered a repair for purposes of calculating Increased Housing Service Costs.