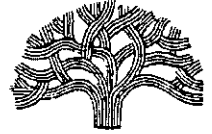


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CITY OF OAKLAND



CITY HALL - 1 FRANK H. OGAWA PLAZA - OAKLAND - CALIFORNIA 94612

To: Vice Mayor Larry Reid, Chair of the Community & Economic Development Committee, & Members of the Oakland City Council

cc: Michele Byrd, Director of Housing and Community Development, & Fred Blackwell, Assistant City Administrator

From: Councilmember Dan Kalb

Date: February 20, 2014

Subject: **SUPPLEMENTAL REPORT FOR THE FEBRUARY 25, 2014 AGENDA OF THE COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE OF THE OAKLAND CITY COUNCIL REGARDING COUNCILMEMBER KALB'S ADDITIONAL AMENDMENTS TO "AMENDMENTS TO CAPITAL IMPROVEMENTS REGULATIONS..." (ITEM 4)**

This supplemental report accompanies my proposed amendments to the amendments submitted by the Department of Housing and Community Development to the Capital Improvements Regulations. While I am appreciative of the staff amendments, which represent modest, positive improvements to the existing Regulations, I do not think they go far enough to protect tenants from exorbitant rent increases. The numerous methods and ease with which rent increases can be passed through to Oakland tenants in rent-controlled units effectively undermine the principles of rent control and rent stabilization. Moreover, significant and ongoing rent increases at times facilitate constructive evictions of our residents, including for seniors on fixed incomes whose rental residences they have called "home" for decades. Therefore, I have worked with the City Attorney's office to draft the enclosed additional amendments. The City Attorney's Office has conducted a preliminary review of the proposed changes, commented on them, and is continuing to review them.

I. Summary of the Regulation Amendments.

Presently, Oakland's Rent Adjustment Regulations provide that the entire rent increase pass through amount for capital improvement must be paid over a five-year period, that there is no limit on the percentage amount by which rent may be increased, and that a landlord may impose the increase without approval from the Oakland Rent Board, while tenants who believe that an increase is unlawful must petition the Rent Board. Additionally, the entire amount of an eligible capital improvement (absent charging a "use fee") may be passed through to each tenant.

Given that state of the law, the proposed amendments from staff have three positive elements: (1) a significantly longer potential amortization period for capital improvement rent increases that are passed on to tenants in rent (up to 20 years); (2) a 10% cap on rent increases for capital

improvements in a 12 month period; (3) a new Owner's petition requirement from building-wide improvements.

My proposed amendments expand upon and improve the staff proposals as follows:

- (1) Permitting an extended (more than 20 years) amortization period if needed to accord with the 10% cap on capital improvement rent;**

This proposal merely ensures that the new amortization rules accord with the new 10% cap.

- (2) Retaining the proposed 10% cap on capital improvement rent increases in a 12 month period, but adjusting the rent increase downward by an amount of any banked CPI rent increases for the same or overlapping period;**

Because rents can be increased in Oakland despite rent control for numerous reasons other than capital improvements (including increase housing service costs, uninsured repair costs, debt service, and banked CPI), placing an annual 10% limit on capital improvement rent increases can still result in scenarios where the overall rent increases far exceed 10% of the rent. As result, I have proposed that the capital improvement limit by further decreased during periods where banked CPI pass throughs occur.

- (3) Requiring tenants and landlords to share capital improvement costs by reducing by 50% the overall amount of eligible capital improvements that may be passed through to tenants as rent increases;**

Passing through 100% of the capital improvements costs to the tenant, including at times for basic housing components, has been justified under the reasoning the tenant benefits from the improvements. However, this is an unfair distribution of the costs, given the landlord also benefits from the improvements, including from increased or maintained equity, insurance proceeds for damage to improvements, and future rent values that have increased as result of the current improvements. Given that any realistic formula for apportioning capital improvements costs should acknowledge that both tenants and landlords benefit from the improvements, I have proposed a 50% limit on the overall amount pass through amount, as is the law in Los Angeles.

- (4) Expanding the Owner's petition requirement from building-wide capital improvements to capital improvements benefitting more than one unit, including planned improvements aggregating to more than one unit ("serial improvements" that add up to more than one), with these expanded petition requirements not taking effect until July 1, 2015;**

Many tenants do not understand their legal rights, fear retaliation for exercising their rights, or have insufficient communication skills (including English fluency) sufficient to file petitions challenging an improper rent increase. Given the power differential between landlords and tenants and the current burden that is placed on tenants to contest improper rent increases, I believe the staff proposal to require landlord petitions under certain circumstances does not go far enough and propose extending the requirement.

- (5) Providing penalties for (a) passing through or attempting to pass through a rent increase for capital improvements without a required Owner's petition and (b) continuing to charge or collect a capital improvement rent increase after expiration of the amortization period.**

Currently, there is no consequence for continuing to collect a capital improvement after the amortization period has expired. Similarly, the staff proposal does not contain a consequence for failure to adhere to the new landlord petition requirement. Provision of consequences, including administrative citation and rent refunded with interest, ensures that these requirements will be complied with.

II. The need for these additional tenant protections: the crisis of rising rents in Oakland.

For years and with no end in sight, there is a significant and increasing demand for rental housing in Oakland that is leading to rising rents. This demand is caused in part by the spillover of the notoriously expensive housing costs in San Francisco. The increased housing pressures for Oakland residents across a range of lower and middle income levels warrants improved rent stabilization policies.

Rents in Oakland increased 12% in 2012 and 15% in 2013 (Source: East Bay Express, February 12-18, 2014, "**The Rise of the New Land Lords**," sourcing Oakland Department of Housing and Community Development). The cited East Bay Express article describes a pattern in recent years of Bay Area communities of foreclosures-to-rentals. Our residents and Oakland communities are being pushed out of the City. As noted by February 8, 2014 Oakland Tribune Article ("**High prices sending Bay Area renters and homebuyers to outlying communities**"), "Squeezed by astronomical home prices and rents that are almost as unaffordable, a growing number of Bay Area residents are pulling up stakes and trading long commutes for cheaper housing. They're heading to places like Tracy...."

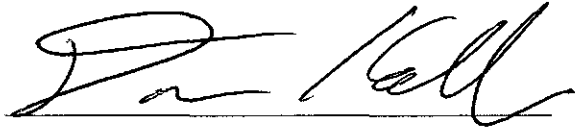
Improvements to Oakland's rent stabilization policies have remained stagnant for years. Cities such as Berkeley and Los Angeles, for example, have much stronger limits on capital improvements pass through rent increases than does Oakland. Los Angeles limits the amount of capital improvements that can be passed through as rent increases by 50% of the total costs of the improvements. Berkeley goes even further, limiting all rent increases except as strictly necessary to ensure the required "fair return" to landlords.

Oakland can and should remain a City where people of varying income levels can afford to live and raise a family. Given that state law prevents cities from increasing the number of units that are protected by rent control, thereby resulting in an irreversible decline in the percentage of rent controlled units over time, placing limits on rent increases that work around rent control is a prudent step for safeguarding our renters and our rent controlled housing stock.

III. Addressing potential City staffing impacts from the additional amendments.

Given that my proposals for additional landlord petition requirements for capital improvements rent increases may have City staffing impacts beyond those presently anticipated by the Department of Housing and Community Development for the staff proposed petition requirement for "building-wide" improvements, I have included a clause in my amendments that limits the effective date of the Regulation Section 10.2.5. for all non-building-wide improvements to July 1, 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Kalb", written over a horizontal line.

Dan Kalb, Councilmember

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OAKLAND CITY COUNCIL

City Attorney

RESOLUTION No.

C.M.S.

RESOLUTION APPROVING AN AMENDMENT TO THE RENT ADJUSTMENT PROGRAM REGULATIONS REVISING REGULATION 10.2.3 (2)(3) (APPENDIX A) TO ALLOW AMORTIZATION PERIODS UP TO 20 YEARS, TO IMPOSE A 10 PERCENT CAP ON ANY CAPITAL IMPROVEMENT PASS THROUGH IN A 12-MONTH PERIOD, AND TO REQUIRE THAT OWNERS FILE A PETITION FOR A CAPITAL IMPROVEMENT RENT INCREASE.

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTEST _____

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

Councilmember Dan Kalb

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EXHIBIT A

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

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

Rent Adjustment Regulations - Appendix A

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

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

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

3. A monthly rent increase of ~~1/60th of the average per unit capital improvement cost is allowable; that is, the landlord may divide the total cost of the capital improvement by 60 and divide this monthly increase equally among the units which benefitted from the improvement (i.e., a roof benefits all units.)~~ for a capital improvement is the average per unit cost of the capital improvement for each of the units the capital improvement benefits. The monthly amount is calculated by dividing one-half the total cost of the capital improvement by twelve (12) times the years of the amortization period and divide this monthly increase equally among the units which benefitted from the improvement (i.e., a roof benefits all units). ~~Provided, however, that no more than ten (10) percent of a tenant's rent can be passed through to a tenant as a capital improvement rent increase in any one twelve (12) month period. Any amounts in excess of the ten (10) percent annual limitation may be passed through in a subsequent twelve (12) month period (s), subject to a ten (10) percent limitation for those periods. Should a landlord include an additional basis for a rent increase (such as a banked CPI Rent increase) during the period that a capital improvement increase is also being passed through, the limit on the capital improvement rent increase shall be adjusted downward by the amount of the banked CPI increase for that twelve (12) month~~

period so that the total of all rent increases for this period does not exceed ten (10) percent.

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

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

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

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

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

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

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

A landlord seeking a rent increase for a capital improvement that benefits more than one all the units in a building must file an Owner's Petition. Capital improvements to more than one unit includes planned improvements to more than one unit. The landlord can pass-through the rent increase to each Tenant no earlier than the Tenant's first anniversary date after the final action on the landlord's petition. A landlord who does not file an Owner's Petition for a building-wide capital improvements rent increase when required to do so may not increase the rent based on the capital improvement. For capital improvements on more than one unit, the landlord need not name all the Tenants in the building subject to the capital improvements as parties, but any rent increase permitted cannot be passed along to such Tenants or to the unit not included. For all capital improvements, the rent increase cannot be passed-through to any tenant who first rented the unit after completion of capital improvement. A landlord who seeks a capital improvement increase that does not benefit all the units in the building is not required to seek approval of the rent increase through an Owner's 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. Other than for capital improvements that benefit all the units in a building, the requirements for an Owner's Petition in Section 10.2.5 shall take effect on July 1, 2015.

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