

Policies Options for Capital Improvement Petition Process as Agreed to in January 25, 2021 RHC Meeting

On January 25, 2021, the RHC held a study session to provide feedback to staff on potential policy options for two types of petition processes: Specified Capital Improvement Petitions for Temporary Upward Adjustments of Rent and Joint Petition Between Property Owner(s) and Tenant(s). The RHC reviewed policy areas for the Capital Improvement Petition Process as outlined below and gave direction to staff for future regulations. They requested staff provide policy recommendations for the share of costs for capital improvements that included a tier structure that reflects property size, the number of tenants potentially impacted and ownership records. Staff was requested to provide a cost-modeling example to further illustrate the proposed structure.

The RHC also reviewed policy areas for a Joint Petition Process which will be presented in regulations at a future RHC meeting.

Table 1: Policy Option Areas Discussed at January 25, 2021 RHC Meeting

Policy Option Area	Policy Options Determined	Further Discussion Requested
Area 1: Policy Basics	✓	
Area 2: Capital Improvement Petition Process	✓	
Area 3: Major Qualifications	✓	
Area 4: Categories and Authorized Expenses	✓	
Area 5: Documentation	✓	
Area 6: Share of Costs		✓
Area 7: Amortization and Sunset Periods	✓	
Area 8: Joint Petition Process	✓	

FEATURES OF THE PROPOSED POLICIES AS DETERMINED IN THE JANUARY 25, 2021 RHC MEETING

The RHC provided the following feedback and recommendations for each policy option area as outlined below. Staff will incorporate this feedback into future regulations as requested by the RHC.

Policy Option Area 1: Policy Basics

Staff presented and the RHC discussed and provided the following recommendations for regulations related to Policy Basics for Specified Capital Improvement Petitions for Temporary Upward Adjustment.

Table 2: Features of the Proposed Policy Basics as Determined in the January 25, 2021 RHC Meeting

Policy Option Area 1: Policy Basics	
Specified Capital Improvement Fair Return Standards	<ul style="list-style-type: none"> • A fair rate of return can be achieved either by the MNOI petition or by the recovery of costs of certain capital improvements (Specified Capital Improvements)
Length of Increase	<ul style="list-style-type: none"> • Temporary adjustment to recover authorized costs and ends at end of amortization period or at vacancy decontrol
Increase Parameters	<ul style="list-style-type: none"> • Not considered rent as defined in CSFRA • Not included when calculating AGA • Pro Rata allocation to all units benefitted
Tenant Hardship Petitions	<ul style="list-style-type: none"> • Tenant Hardship Petitions are allowed

Policy Option Area 2: Capital Improvement Petition Process

Staff presented and the RHC discussed and provided the following recommendations for regulations related to Capital Improvement Petition Process for Specified Capital Improvement Petitions for Temporary Upward Adjustment.

Table 3: Features of the Proposed Capital Improvement Petition Process as Determined in the January 25, 2021 RHC Meeting

Policy Option Area 2: Capital Improvement Petition Process	
Petition and Hearing Process	<ul style="list-style-type: none"> • Landlords complete a petition that includes documentation on the type and cost of Specified Capital Improvement installed; serve on tenants and file with City • Allow for a shorter, administrative decision process unless a full hearing is requested by affected parties; hardship petitions allowed • If no hearing, hearing officer decides on petition administratively with a formal decision • If hearing requested, hearing will be held within 30 days and a subsequent appealable decision will be issued • If no appeal, the decision is final

Policy Option Area 3: Major Qualifications

Staff presented and the RHC discussed and provided the following recommendations for regulations related to major qualifications for Specified Capital Improvement Petitions for Temporary Upward Adjustment.

Table 4: Features of the Proposed Major Qualifications as Determined in the January 25, 2021 RHC Meeting

Policy Option Area 3: Major Qualifications	
Major Qualifications	<ul style="list-style-type: none"> • Be necessary to bring the property or Covered Rental Unit into compliance, or to maintain compliance, with applicable building or housing codes; and • Primarily benefit the Tenant, rather than the Landlord; and • Be permanently fixed in place or relatively immobile; and • Have a useful life of more than five years and is required to be amortized over the useful life of the improvement; and • Appreciably prolong the useful life of the property. • <i>Additionally, Capital Improvements that adhere to the above qualifications and also improve the environmental sustainability of the property while reducing costs to tenants may be considered Specified Capital Improvements eligible for the expedited petition process.</i>
Exclusions	<p>The following are not eligible as Capital Improvements:</p> <ul style="list-style-type: none"> • Costs of additions or modifications of a physical feature, or portions of additions or modifications, that could have been avoided by the Landlord’s exercise of reasonable diligence in maintaining and making timely repairs after the Landlord knew or should reasonably have known of the problem that caused the damage leading to the addition or modification; or • Use or installation of a Landlord’s personal appliances, furniture, etc., or those items inherited or borrowed; or • Ordinary or routine repair, replacement, or maintenance to a Covered Rental Unit or property containing a Covered Rental Unit; or • Overimprovements (for example, replacing a standard bathtub with a Jacuzzi bathtub), unless the Tenant approved the improvement in writing, the improvement brought the Covered Rental Unit up to current building or housing codes, the improvement was necessary to meet California Green Building

Policy Option Area 3: Major Qualifications	
	Standards, or the improvement did not cost more than a substantially equivalent replacement.

Policy Option Area 4: Categories And Authorized Expenses

Staff presented and the RHC discussed and provided the following recommendations for regulations related to categories and authorized expenses for Specified Capital Improvement Petitions for Temporary Upward Adjustment.

Table 5: Features of the Proposed Approved Categories and Authorized Expenses as Determined in the January 25, 2021 RHC Meeting

Policy Option Area 4: Categories and Authorized Expenses	
Approved Categories	<ul style="list-style-type: none"> • New roof covering all or substantially all of a building or a structurally independent portion of a building; and/or • Significant upgrade of the foundation of all or substantially all of a building or a structurally independent portion of a building, including seismic retrofits; and/or • New or substantially new plumbing, electrical or heating, ventilation and air conditioning (HVAC) system for all or substantially all of a building; and/or • Exterior painting or replacement of siding on all or substantially all of a building; and/or • Repairs reasonably related to correcting and/or preventing the spread of defects which are noted as findings in a Wood Destroying Pest and Organisms Inspection Report; and/or • Installation of water conservation devices intended to reduce the use of water or energy efficient devices, such as solar roof systems; and/or • Improvements or upgrades to the Rental Unit or the building/complex that meet or exceed disability/accessibility standards as required by law.
Authorized Expenses	<ul style="list-style-type: none"> • Approved as presented in Authorized Expenses and Amortization Schedule B (See Attachment 2) • Staff will request code applicability from appropriate department as necessary
Implementation	<ul style="list-style-type: none"> • Staff to provide guidelines that outline certain categories anticipate future code regulations and assist petitioners in petition process

Policy Option Area 5: Documentation

Staff presented and the RHC discussed and provided the following recommendations for regulations related to documentation for Specified Capital Improvement Petitions for Temporary Upward Adjustment.

Table 6: Features of the Proposed Documentation as Determined in the January 25, 2021 RHC Meeting

Policy Option Area 5: Documentation	
Documentation	<ul style="list-style-type: none"> • Specific description of Capital Improvement (as provided in Amortization Schedule) • Invoices, receipts, contracts or similar documentation to prove expense • Evidence of loan and the interest rate (if applicable) • Cost estimate by third-party (if the Landlord is requesting approval in advance of expense) • Business license (if applicable) • CSFRA compliance • Tenant rent roll with initial move-in date • Permits (if applicable)

Policy Option Area 7: Amortization And Sunset Periods

Staff presented and the RHC discussed and provided the following recommendations for regulations related to amortization and sunset periods for Specified Capital Improvement Petitions for Temporary Upward Adjustment.

Table 7: Features of the Proposed Amortization and Sunset Periods as Determined in the January 25, 2021 RHC Meeting

Policy Option Area 7: Amortization and Sunset Periods	
Amortization Period	<ul style="list-style-type: none"> • Approved as presented in Authorized Expenses and Amortization Schedule B (See Attachment 2)
Sunset Period	<ul style="list-style-type: none"> • Increase ends at end of amortization period or at vacancy decontrol