



Presents:

## **Landlord Petition Process Workshop**

**January 15, 2020**

## Who are we?

Project Sentinel, Inc. is a non-profit housing services agency serving many communities in Northern California. Neutral Landlord /Tenant Counseling and Dispute Resolution is one of our core services. This includes supporting some Cities with the administration of their rent stabilization hearing and petition processes.

**Michael Dittmer**, Rent Stabilization Programs Analyst

**Emily Hislop**, Rent Stabilization Programs Manager

*PLEASE NOTE:* We are not able to offer legal advice or legal representation, but we can offer tips, best practices, and an overview of local and State laws. For legal services, please contact an attorney or a lawyer referral service.

# Landlord Petition Process Workshop



## AGENDA

1. RRSO Overview
2. Rent Stabilization Rules
3. Noticing Requirements
5. Rent Review Petition Process
6. Landlord Petitions
7. Capital Improvement Pass-Through
8. Fair Return
9. Resources

3

## What is the RRSO?



The City of Hayward encourages investment in local residential rental housing by allowing landlords to make a fair return on their real estate investments while also protecting the welfare of its citizens who are its tenants. The goals of the RRSO are to:

1. Stabilize rising rents
2. Provide eviction protections to tenants
3. Ensure a fair rate of return to landlords
4. Provide protection from harassment and retaliation
5. Stop bias about sources of income (including Section 8 vouchers)

4

## How long has the RRSO been law?



Hayward City Council approved the Residential Rent Stabilization Ordinance (RRSO) summer of 2019 which completely replaced the old rent review ordinance. The RRSO has been in effect since:

**July 25, 2019**

5



## Rent Stabilization Rules

6

## What is Rent Stabilization under the RRSO?



### Basic Rule for Rent Increases:

- Only 1 increase allowed per 12-month period
- 5% Rent Increase Threshold (*some exceptions may apply*)
- Rent Review Process available to challenge certain increases in rent or decreases in housing services

7

## Who is covered by Rent Stabilization?



- Most Residential Units built on or before July 1, 1979 are Covered
- Key Exceptions:
  - Care facilities
  - motels, hotels, inns, tourist houses
  - boarding houses where tenants stay less than 30 days
  - non-profit cooperatives, non-profit transitional housing
  - where owner shares residence including common areas
  - housing with other government rent restrictions
  - mobile homes (covered by separate ordinance)
- 'De-controlled' status under the previous ordinance no longer applies

8

## Who is covered by Rent Stabilization?



What if the building was built after July 1, 1979?

- Units *may* be covered under a new State law (AB 1482), however, the rent cap is higher (currently 9%) than the RRSO rent increase threshold.

9

## Exceptions to the Rent Increase Threshold of 5%



- Banking
- Vacancy Decontrol
- Utility Increases (with limitations)
- Capital Improvement Pass-through\*
- Fair Return increase\*

*\*Landlord must file a petition and be granted permission for these types of increases BEFORE increasing the tenant's rent. This is a process which tenants may participate in.*

10

## What is Banking?



Banking is when a Landlord does not use some or all of the 5% threshold in a prior year. The unused part is “banked” and can be used in a future year, subject to some limitations:

- The total increase, including the “banked” amount, cannot exceed 10%
- If the property changes ownership, the new owner cannot use any portion of a Rent Increase Threshold the prior owner “banked” (did not use)

11

## Banking Example



- Tenant received an increase of 3% beginning February 1, 2019
- This means the Landlord “banked” 2% [5% - 3% = 2%]
- Landlord *could* increase Tenant’s rent on or after February 1, 2020 by 7%

$$5\% \text{ (Rent Increase Threshold)} + 2\% \text{ (Banked amount)} = 7\%$$

12

## What is Vacancy Decontrol?



- When a tenant (ALL of the tenants in the unit) moves out of a covered unit *voluntarily*, the landlord may set the rent for the new tenant(s) without restriction.
- Once a new tenant (or tenants) move in, a new tenancy has begun and subsequent increases are subject to RRSO.

13

## Vacancy Decontrol Exceptions



- After a Non-Voluntary Vacancy: Landlords can only charge a new tenant up to 5% more of previous tenant's rent.
- If a tenant is evicted for cause (after an unlawful detainer/eviction lawsuit), this is considered a voluntary vacancy and the Landlord may set the new rent without restriction.

14

## Increases in Utility Costs



When charges by a public agency/utility have increased and are billed to the Landlord (*water, sewer, gas, electric, garbage, etc.*):

**IF**

1. the lease provides that Tenant will pay utility costs separate from rent **and**
2. there are no individual meters and a ratio utility billing system (RUBS) is used **and**
3. the new INCREASE is more than 1% of current rent amount or there is a rate increase,

**THEN** Tenant may

1. request supporting documents (must be done within 60 days of the notice) **and**
2. challenge the utility increase if the Landlord does not provide the supporting documentation or the increase is greater than 1% of the tenant's rent (petition for utility cost pass-through review)

15

## Landlord Petitions



Landlords may petition to seek approval for pass-through or increase that is excess of the 5% threshold on two grounds:

1. Pass-Through of Capital Improvement Costs
2. Fair Return Review

*Both petitions require documentation and an arbitration hearing. Tenants may and are encouraged to participate. Tenants receive notices during all stages of the process and the landlord cannot increase rents > 5% unless they received a favorable decision from the arbitrator and Tenants have been given notice of that decision.*

16



## Additional RRSO Provisions



- Just Cause Termination
- Discrimination based on Source of Income prohibited
- Harassment / Retaliation Prohibited

17



## Noticing Requirements

18

## Noticing Requirements



### Copy of RRSO or Summary of RRSO

- Landlord must give a notice to tenant that identifies which parts of the RRSO apply to the unit
- Must be given by August 24, 2019 or before renting a unit

### Rent Increase: at Least 30 days' Notice

- For covered units, the notice must explain the rent increase and give the tenant information about rent review
- If not given proper notice, Tenant can challenge an eviction or rent increase

### Utility Costs Increase: at Least 30 days' Notice

- If Tenant requests it, landlord must give the tenant information that explains the increase in utility costs

19

## Just Cause Noticing Requirements



### Notice to Cease: *Before* Termination Notice

- To cure alleged violation by tenant - Sec. 13(b)(2), (3), (5), (13)
- Written and properly served

### Notice of Termination: 3/30/60 days

- Detail specific reason for termination
- Copy of notice must be filed with City of Hayward within 30 days.

### Notice of Intent (Ellis Act): 120 days / 1 year

- Withdrawal of units from the rental market (Ellis Act evictions) has strict requirements.

20

## Notice to Cease



- Required as written warning for grounds of:
  1. Breach of Lease
  2. Damage
  3. Disruption of peace/quiet enjoyment
  4. Violation of rules/regulations
- Suggested details to include in notice:
  1. Any information necessary to determine date, time, place, and other circumstances concerning the reason of the notice
  2. Sufficient details on how to cure and reasonable period to do so.

21

## Notice of Termination



### Notice to Pay Rent or Quit

- 3 Day\* notice if Tenant has failed to pay rent as required

*\*excludes weekends and judicial holidays*

### Termination Notice

- 30 Day notice if Tenant has rented unit for < 1 Year
- 60 Day notice if Tenant has rented unit for > 1 Year

### File Copy with City of Hayward

- Within 30 days of serving Tenant, file a copy of Notice with City's Rent Review Office in person, by mail or electronically RSSO Sec. 16(c)

22

## Service of Notices



### Proper

- ✓ Give notice to the Tenant in person
- ✓ Mail to the Tenant (add 5 days)
- ✓ Post notice on door AND mail
- ✓ Give notice to occupant over 18 AND mail

### NOT Proper

- X By email
- X By text
- X Orally
- X By giving the notice to an occupant who is a minor

23



## Rent Review Petition Process

24

## Rent Review Petitions



- TENANTS IN COVERED UNITS may file a Petition to have their rent reviewed for reasons involving the amount of increase, the notice given, reduction in housing services, or outstanding maintenance / habitability issues
- LANDLORDS may file one of two types of Petition seeking approval to pass-through certain costs or increase rents to **covered units** beyond the allowed annual threshold (5%)

25

## Tenant Petitions for Rent Review



Grounds for Tenant in a **covered unit** to file a Rent Review Petition:

- Annual rent increase is above 5%
- Tenant received more than one rent increase in a 12-month period
- Rent increase with a “banked amount” applied
- An increase in utility costs of more than 1% of Tenant’s current rent
- Landlord fails to provide supporting documentation for utility increase (after Tenant request)
- To seek help regarding decreases in housing services
- If the property has health, safety or fire code violations, or repairs that the landlord will not fix.
- Tenant failed to receive proper notice regarding a rent increase

26

## Proper Notice of Rent Increase



### **Proper Notice Must Include:**

1. Amount of increase in both \$\$ and %
2. Amount of Banked Increase applied in both \$\$ and %
3. Statement that Landlord believes that the rent increases and/or banked increases are in compliance with the ordinance
4. Identify the reason for a rent increase above 5% and provide supporting documentation
5. Contact information for the tenant to meet & confer with the landlord about a rent increase with best times to call
6. Contact information for the Hayward Rent Review Office
7. A copy of a Tenant Petition form
8. Hayward Rent Review Office will get copies of all increase notices

27

## Proper Notice: Utility Increase or Cap Imp. Pass-through



If the Notice of increase includes an increase in Government Utility Service costs OR a Capital Improvement Pass-Through,

➤ these **must be identified** as separate from any Rent Increase.

A Notice with a capital improvement pass-through **must also include:**

1. Statement that the LL believes a capital improvement cost pass-through complies with the ordinance
2. Approval from the City of Hayward **must be attached** to notice for Capital Improvement Pass-through (i.e. Arbitrator Decision)

28

## Failure to Provide Documentation of Utility Increase



When a Tenant receives notice of a Utility rate increase or cost increase that is >1% of their current rent, Tenant **may request** documentation supporting the increase from the Landlord. At minimum, the Landlord **must provide to the Tenant**:

1. The gov't-utility cost for the entire building showing amount paid for each period in the 12 month period prior to the Increase
2. The cost by month or billing period apportioned to each unit in the 12 month period prior to the Increase
3. Notices from service agency showing increase
4. The RUBS calculation used to apportion costs among tenants

29

## Review Based on Reduction in Services



Tenant may petition for a reduction in rent based on a decrease in Housing Services:

**"Housing Service."** A service 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.

30

## Outstanding Code Violations or Repairs



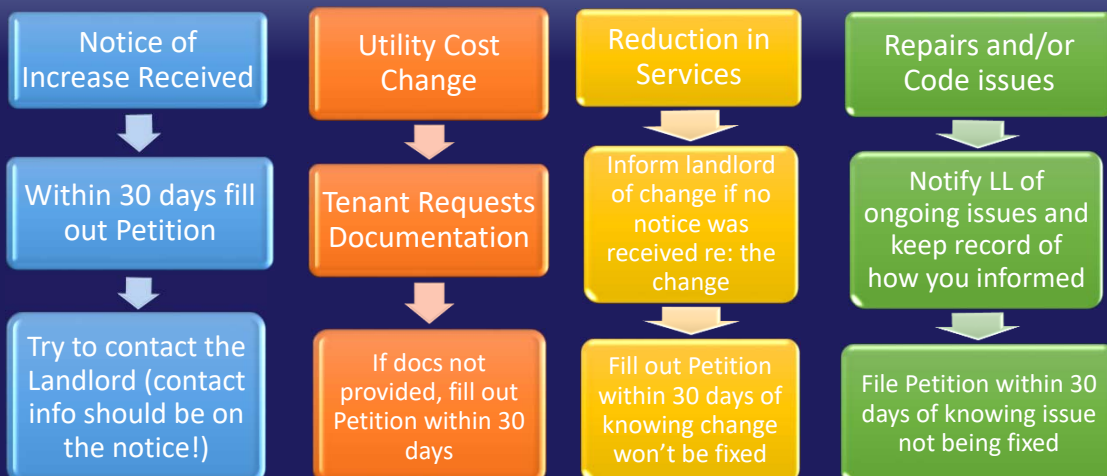
Tenant may request review of rent when the property has outstanding health, safety, fire, building violations, or repairs that the landlord will not make.

- Outstanding Code violations can be grounds for:
  1. Denial of rent increase, OR
  2. Reduction of rent.

Landlord can fix the problem(s) prior to arbitration in order to avoid an ongoing rent decrease or a denial of rent increase.

31

## Tenant Petition Process: Before Filing



32



## Tenant Petition Process Timelines



1. Tenant files Petition
2. City sends landlord notice of receipt, the petition and a blank response form.
3. Tenant has 10 days to try to “meet & confer” with Landlord
4. If Petition not withdrawn after 10 days, Project Sentinel sends acceptance notice.
5. Mediation scheduling; petitions in same complex with similar issues grouped together
6. Notice of Mediation sent 14 days before mediation date.
7. LL submits written response at least 5 days prior to mediation
8. If mediation waived or no agreement at mediation, arbitrator assigned within 21 days.
9. Notice of Arbitration sent 14 days before Arbitration date
10. Parties may submit additional documents or statements at least 7 days before the Arbitration
11. Arbitrator has 20 days to issue a Written Decision

33

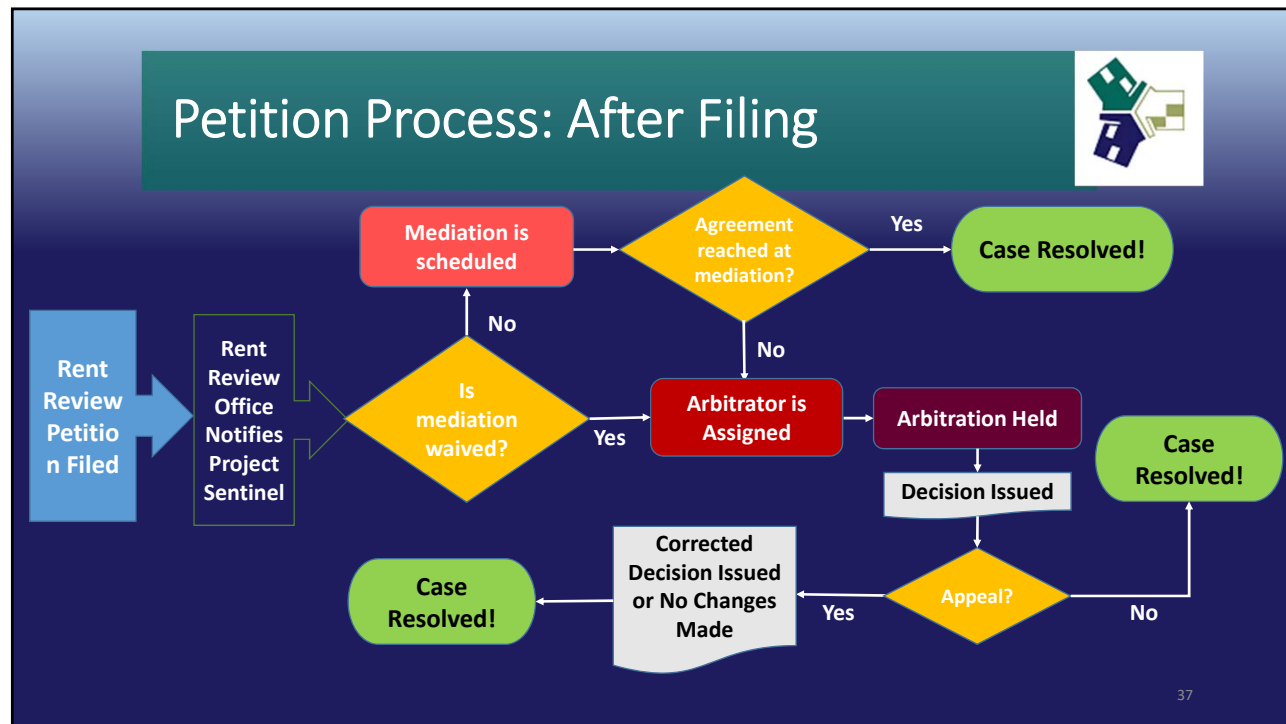
## Tenant Petition: Responding



- A Landlord’s written response to a Tenant Petition must be submitted at least 5 days prior to mediation
- Response can be emailed or mailed to the RRO, who will forward copies to tenants
- How to Respond?

34





## Two Basis for Landlord Petitions



The RRSO at Sec. 5(g)(2) establishes a Landlord Petition Process.  
Grounds:

1. Pass-Through of Capital Improvement Costs
2. “Fair Return Increase” – an increase in excess of RRSO allowed amounts, (excluding Cap. Imp. Costs and debt service) necessary for LL to obtain a “Fair Return”

39



## Capital Improvement Pass-Through

40

## Capital Improvement Pass-Through



### What is an allowable Capital Improvement cost?

Costs for capital improvements that:

- Materially add to the value of the Property and appreciably prolong its useful life or adapts it to new uses;
- Materially benefit(s) the Tenant(s); and
- Are amortized over the useful remaining life of the improvement to the Property.

Also includes:

- improvements to the seismic safety of the Property
- improvements which increase the energy efficiency of the Property (including any improvement to allow a significantly more accurate allocation of utility costs).

41

## Capital Improvement Pass-Through



### What is an allowable Capital Improvement cost? EXAMPLES

Capital Improvement	Ordinary Repair
Replacing the entire roof	Replacing a few roof tiles to fix a leak
Replacing windows (with frames)	Replacing a pane of glass in a window
New floor structure	Replacing carpet
Exterior Painting	Interior Painting
	Window coverings
	Replace refrigerator

42

## Capital Improvement Pass-Through



### General Requirements

- If LL invests money to improve the property for the benefit of tenants, LL may petition to "pass-through" up to 50% of the costs
- Requires a hearing and the Arbitrator will determine eligible capital improvement costs and if the pass-through period needs to be extended beyond 5 years.
- Tenants may participate in the hearing process
- An approved Capital Improvement Pass-Through will end of after the pass-through period (5+ years)
- Total rent increase and pass-through cannot exceed 10% of Tenant's rent
- LL can request a **provisional decision** prior to start of capital improvement project. The work must be complete and paid for before the City will give a final approval.

43

## Capital Improvement Pass-Through



### **What Capital Improvement Costs may NOT be included in a pass-through?**

Capital Improvements costs related to:

- Increased property damage or improvements for ordinary repairs, replacements, and maintenance
- Deterioration due to unreasonable delay or code violation remaining unabated for > 90 days without any work done

44

## Capital Improvement Pass-Through: Limitations



- Work must be complete and paid for at the time of filing petition (*unless a provisional petition*).
- Only work completed and paid for after July 25, 2019
- Petition must be filed within 2 years of completion
- Only 50% of the total amount paid by the Landlord may be passed through.
- Other restrictions:
  1. Cannot include costs related to any period of time a tenant was not entitled to use and occupy the Covered Rental Unit;
  2. Only costs attributed to a Covered Rental Unit and/or share of costs attributed to a Covered Rental Unit can be passed through.
  3. Costs of equipment where a "use fee" is charged (i.e. coin-operated washer and dryers) cannot be passed through.

45

## Amortization Period Capital Improvement Costs



Costs are amortized over 5 years unless:

1. Pass-through cost alone would exceed 10% of existing Rent
2. Rent Increase, or Rent Increase with Banking Increase, *plus* pass-through costs:
  - would exceed 10% in one year, or
  - In 5 years, would exceed 30% of the rent rate at the start of the pass-through period.

### Then

1. The Capital Improvements amortization period may be extended in yearly increments sufficient to cover the excess; and
2. Landlord must notice Tenant of any extended amortization period in accordance with State rent increase notice requirements

46

## Provision Petition for Capital Improvement Pass-Through



### **Petition for Provisional Decision by Arbitrator on Capital Improvement Costs Pass-through:**

1. LL can submit petition prior to performance of Capital Improvement work to evaluate ability to recover costs;
2. Petition must include a written proposal, cost estimates and other supporting documentation;
3. LL cannot pass through costs to the tenant based on provisional decision.
4. LL must submit petition for final decision after the work is complete and paid for in order to pass-through costs.

47



## Capital Improvement Pass-Through Form

48



## Landlord Petition Form



- Whether you want to waive Mediation and go straight to Arbitration
- Preferred days/times for Mediation or Arbitration to be scheduled.
- Declaration regarding compliance with the RRSO and condition of the property
- Type of Petition
- Property information
- Ownership/Management information
- Tenant contact list

49

## Schedule A: Capital Imp. Pass-Through



Coversheet and Declaration  
(preceding pages  
are instructions)

**LANDLORD PETITION - SCHEDULE A**  
**Capital Improvement Pass-Through**  
**Coversheet**

This Petition is requesting:

- ☐ A provisional decision on a Capital Improvement pass-through based on a scope of work and bids.
- ☐ A final decision on Capital Improvement pass-through based on completed work and proof of payment.

Rental Property Address		
City	State	Zip code
Parcel number (found on property tax bill)		

**CHECKLIST**

- ☐ Contact information for affected tenants (see Section V of Landlord Petition Form) [REQUIRED]
- ☐ Coversheet (pgs. 8 - 9 of this document) [REQUIRED]
- ☐ Declaration (pg. 10 of this document) [REQUIRED]
- ☐ Exhibit 1: Property Wide Capital Improvements Benefiting All Tenants (if applicable)
  - ☐ Bids, written proposal, cost estimates (provisional decision only), or other documents describing the project (e.g., work and/or change orders)
  - ☐ Work orders, change orders, or other documents describing capital improvement project.
  - ☐ Invoices (required for final decision)
  - ☐ Cancelled checks, credit card statements, etc. showing proof of payment for project expenses (required for final decision)
  - ☐ Provide a written explanation for incomplete or missing documentation.
- ☐ Exhibit 2: Building Specific Capital Improvements (if applicable)
  - ☐ Bids, written proposal, cost estimates (provisional decision only), or other documents describing the project (e.g., work and/or change orders)
  - ☐ Work orders, change orders, or other documents describing capital improvement project.
  - ☐ Invoices (required for final decision)
  - ☐ Cancelled checks, credit card statements, etc. showing proof of payment for project expenses (required for final decision)
  - ☐ Provide a written explanation for incomplete or missing documentation.
- ☐ Exhibit 3: Unit Specific Capital Improvements (if applicable)
  - ☐ Bids, written proposal, cost estimates (provisional decision only), or other documents describing the project (e.g., work and/or change orders)

Check whether a provisional petition or petition for final decision (work has been performed)

Indicate which items on the checklist are submitted with your petition.

Note that some items are required.

Whether you are filling out Exhibits 1, 2 and/or 3 all depends on the type of property and what kind of work was performed.

50

# Schedule A: Capital Imp. Pass-Through



Coversheet and  
Declaration (2<sup>nd</sup>  
page)

**LANDLORD PETITION - SCHEDULE A**  
**Capital Improvement Pass-Through - Coversheet**

☐ Explanation of any missing or incomplete documentation (if applicable)

☐ Other (please describe) \_\_\_\_\_

**DECLARATION**

I (we) declare under penalty of perjury pursuant to the laws of the State of California that the contents of the foregoing Petition and all attachments are true, correct, and complete.

I further declare under penalty of perjury under the laws of the State of California that:

☐ All of the supporting documents attached to the petition are originals or are true and correct copies of the originals.

☐ I understand that the Rent Increase + Banked Increase that I can apply to a unit on this property for the next 5 years is the difference between 10% and the percentage of Capital Improvement applied to the Tenant's current rent in this Petition. (i.e. any combination of Rent Increase + Banked Increase for the next 5 years together with the pass-through cannot exceed 10% of the tenant's rent).

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_ ☐ I opt in for communication via email

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_ ☐ I opt in for communication via email

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

If you do not have documentation for certain costs (e.g. owner performed) provide an explanation, check this box and include it with the petition

51

# Schedule A: Capital Imp. Pass-Through



Exhibit 1

**Exhibit 1: Capital Improvement to the Property Benefiting All Tenants (if applicable)**

**Table 1.1 Total Adjusted Property-wide Capital Improvement Costs**

	A Date Complete	B Date Paid	C Improvement Description	D Cost	E Undocumented Labor Costs	F Usage Fee Equipment	G Reimbursements for Costs	H = (D+E-F-G) Total Adjusted Costs
EX	8/10/2019	9/1/2019	New Roof	\$20,000	+0	-0	-0	\$20,000
1					+	-	-	
2					+	-	-	
3					+	-	-	
4					+	-	-	
5					+	-	-	
6					+	-	-	
7					+	-	-	
8					+	-	-	
9					+	-	-	
10					+	-	-	
11	Total Adjusted Capital Improvement Costs							

**Table 1.2 Per Unit allocation of property wide Capital Improvements benefiting all Tenants**

1	Adjusted Capital Improvement costs. Add from Table 1.1.	\$		Example \$20,000
2	Only 50% of the Costs can be pass-through to the Tenant.	x	0.5	0.5
3	Total allowable pass-through costs. Multiply Line 1 by 0.5.	\$		\$10,000
4	Total number of rental units (including staff units or owner-occupied units).	+		10
5	Total per unit allocation. Divide line 3 by line 4.	\$		\$1,000

Use this Table for Capital Improvements that benefit ALL Tenants. **Example:** new Roof for a single structure apartment complex

52

# Schedule A: Capital Imp. Pass-Through



## Exhibit 2

**Exhibit 2: Building Specific Capital Improvement** (Use if needed for multiple buildings and/or mixed-use)

**Table 2.1 Building Specific Capital Improvement Costs**

Building Address or Identifier:		Apt. #s of units affected/units that benefit					
List of Units affected:							
A	B	C	D	E	F	G	H = (D+E-F-G)
Date Complete	Date Paid	Improvement Description	Cost	Undocumented Labor Costs	Usage Fee Equipment	Reimbursements for Costs	Total Adjusted Costs
1				+	-	-	
2				+	-	-	
3				+	-	-	
4				+	-	-	
5				+	-	-	
6				+	-	-	
7				+	-	-	
8				+	-	-	
9				+	-	-	
10				+	-	-	
11							
Total Adjusted Capital Improvement Costs							

Use this Table when there is more than one building in the complex (and the improvement does not affect all units) OR if the property is mixed-use commercial/residential

**Table 2.2. Capital Improvement Costs Allocated to Residential Space**

1	Total building square footage.	
2	Commercial space square footage.	
3	Residential Space square footage.	
4	Percentage (in decimals) of property that is residential. Divide line 3 by line 1.	
5	Adjusted Capital Improvement costs. Add from line 11 on Table 2.1.	
6	Capital Improvement costs allocated to residential space. Multiply line 5 by line 4.	

53

# Schedule A: Capital Imp. Pass-Through



## Exhibit 3

**Exhibit 3: Unit Specific Capital Improvements** (Use if some or all improvements do not benefit all units)

**Table 3.1 Building Specific Capital Improvement Costs**

List of Units affected: 6 and 7			Apt. #s of units affected/units that benefit					
A		B	C	D	E	F	G	(D+E-F-G)
Date Complete		Date Paid	Improvement Description	Cost	Undocumented Labor Costs	Usage Fee Equipment	Reimbursements for Costs	Total Adjusted Costs
EX	8/10/2019	9/1/2019	Portion of wall with dry rot damage replaced	\$4,750	+\$250	-0	-\$2,000	\$3,000
1					+	-	-	
2					+	-	-	
3					+	-	-	
4					+	-	-	
5					+	-	-	
6					+	-	-	
7					+	-	-	
8					+	-	-	
9					+	-	-	
10					+	-	-	
11	Total Adjusted Capital Improvement Costs							

Use this Table when the improvements only affect / benefit specific units.

**Table 3.2 Per Unit Allocation of Unit Specific Capital Improvements**

		EXAMPLE
1	Total Adjusted Capital Improvement Costs. Add from line 11 on Table 3.1.	\$3,000
2	Only 50% of the Costs can be pass-through to the Tenant.	x 0.5
3	Total allowable pass-through costs. Multiple line 1 by 0.5.	\$1,500
4	Total number of rental units the scope applies to (including staff units or owner-occupied units).	2
5	Total per unit allocation (Divide line 3 by line 4).	750

54

## Schedule A: Capital Imp. Pass-Through



Exhibit 4,  
Table 4.1

**Table 4.1 Total Per Unit Monthly Allocation of Capital Improvement Costs. [REQUIRED]**

A	B	C	D	E	F	G = (D+E+F)	H	I = (G/H)
Line No.	Unit No.	<input type="checkbox"/> Owner-Occupied/Employee Unit	Property-wide Allocation of Costs Exhibit 1 Table 1.2	Building Specific Allocation of Costs Exhibit 2 Table 2.3	Unit Specific Allocation of Costs Exhibit 3 Table 3.2	Amount of Capital Improvement Pass-Through	Pass-through period (60-month minimum)	Monthly Allocation of Costs
Ex.	6	<input type="checkbox"/>	\$1000	0	\$750	\$1750	60	\$29.17
1		<input type="checkbox"/>						
2		<input type="checkbox"/>						
3		<input type="checkbox"/>						
4		<input type="checkbox"/>						
5		<input type="checkbox"/>						
6		<input type="checkbox"/>						
7		<input type="checkbox"/>						
8		<input type="checkbox"/>						
9		<input type="checkbox"/>						
10		<input type="checkbox"/>						
11		<input type="checkbox"/>						
12		<input type="checkbox"/>						
13		<input type="checkbox"/>						
14		<input type="checkbox"/>						
15		<input type="checkbox"/>						
16		<input type="checkbox"/>						
17		<input type="checkbox"/>						

This is where you calculate what portion of the costs get allocated to each unit.

55

## Schedule A: Capital Imp. Pass-Through



Exhibit 4,  
Table 4.2

**Table 4.2 Rent Schedule and Determination of Percent Increase [REQUIRED]**

A	B	C	D	E	F	G	H	I	J = (I/F)*100	K=G+J	L
Line No.	Unit No.	Move-In Date (mm/dd/yyyy)	Date of Last Rent Increase (mm/dd/yyyy)	Amount of Last Rent Increase (\$)	Current Monthly Rent (\$)	Anticipate Annual Rent Increase	Anticipate d Annual Banked Increase (if applicable)	Amount of Capital Improvement Pass-Through (Add from Table 4.1)	Pass-through as a Percentage of Rent	Rent Inc. + Pass-Through Percentage of Rent (%)	<input type="checkbox"/> If J > 10%
EX	6	03/06/2016	4/01/2018	\$100	2,100.00	5%	0%	29.17	1.4%	6.4%	<input type="checkbox"/>
1											<input type="checkbox"/>
2											<input type="checkbox"/>
3											<input type="checkbox"/>
4											<input type="checkbox"/>
5											<input type="checkbox"/>
6											<input type="checkbox"/>
7											<input type="checkbox"/>
8											<input type="checkbox"/>
9											<input type="checkbox"/>
10											<input type="checkbox"/>
11											<input type="checkbox"/>
12											<input type="checkbox"/>
13											<input type="checkbox"/>
14											<input type="checkbox"/>
15											<input type="checkbox"/>
16											<input type="checkbox"/>
17											<input type="checkbox"/>

This is to test whether the pass-through + a 5% increase would exceed 10%, and if so, whether the amortization period should be extended

56

# Schedule A: Capital Imp. Pass-Through



Final page

If a Capital Improvement cost standing alone or a Capital Improvement cost coupled with a Rent Increase and Banking Increase would exceed ten percent (10%) or thirty percent (30%) in five years, the excess can only be recovered by extending the Capital Improvements amortization period in yearly increments sufficient to cover the excess. If an annual 5% rent increase is anticipated, then the Capital Improvement cost pass-through should not exceed 5%.

1 Do you plan to apply Rent Increases in the next 5 years? ☐ YES ☐ NO

2 Do you plan to apply Banked Increases in the next 5 years? ☐ YES ☐ NO

3 If yes, indicate which year and the percentage you plan to apply. If the information is unit specific, please provide a table. (This asked is so an Arbitrator can calculate if the annual increase will exceed 10% in any year or if the total increase over 5 years exceeds 30%.)

	Anticipated Annual Rent Increase	Anticipated Banked Rent Increase
Year 1	_____ %	_____ %
Year 2	_____ %	_____ %
Year 3	_____ %	_____ %
Year 4	_____ %	_____ %
Year 5	_____ %	_____ %

The amount in excess of 10% of a Rental Unit's existing Rent can only be recovered by extending the Capital Improvements amortization period in yearly increments sufficient to cover the excess. In addition, the Landlord must comply with the requirements to notice the Tenant of the extended amortization period with the initial Capital Improvement cost.

This information is needed to test whether the pass-through + allowable increases will:

- a. exceed 10% in any year of the amortization period, **OR**
- b. Exceed 30% of the rent at the start of the pass-through period at any point during the 5 year amortization period.

*If either of the above results, the amortization period will be extended*

57



## Fair Return

58

## Fair Return - Generally



- LL may petition to increase rent more than 5% in any given year to obtain a fair return on investment. Causes may be:
  - Increases unavoidable maintenance and allowable operating expenses (recurring costs such as taxes, insurance, management fees, maintenance)
- Debt service and Capital Improvement Costs are not included when calculating a Fair Return.
- Requires an Arbitrator's decision in support of petition
- Tenants would receive notice of LL's petition so that tenants may respond

59

## Fair Return Standard



- California Constitution and the RRSO guarantee Landlords a "fair return" on their investment.
- RRSO at Sec. 9(a)(6) establishes a Fair Return Standard based on maintenance of net operating income:

**"Fair Return Standard.** A Fair Return is the Initial Year Net Operating Income adjusted by the percentage increase in the Consumer Price Index since the Initial Year. "Net Operating Income " is the Gross Income from a Covered Rental Unit net of Operating Expenses . Debt service and Capital Improvement costs are not included in calculating Net Operating Income."

**"Initial Year"** = the 2018 calendar year.

**"Current Year"** = most recent calendar year preceding petition submission.

**"CPI"** = percentage increase comparing the monthly CPI for All Urban Consumers for all items for the San Francisco-Oakland-Hayward metropolitan area as reported by the U.S. Bureau of Labor Statistics, for December of the comparison year to the monthly CPI for December 2018

60

## Maintenance of Net Operating Income



- ✓ **Calculate Initial Year Net Operating Income (NOI)**

Initial Year NOI = 2018 Total Income – 2018 ALLOWABLE Costs

- ✓ **Calculate Current Year (CY) Net Operating Income (NOI)**

CY NOI = CY Total Income – CY ALLOWABLE Costs

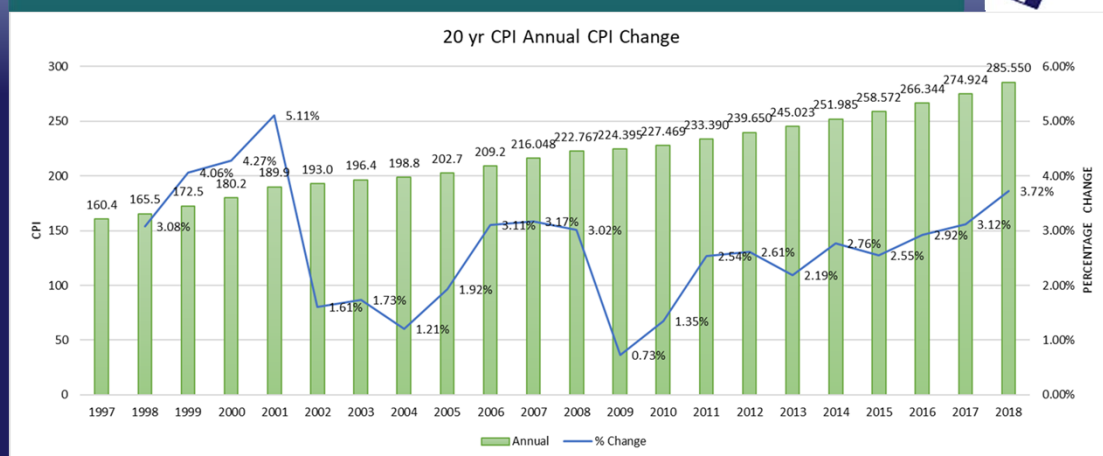
- ✓ **Consumer Price Index (CPI) Adjustment\* Measures Fair Return**

CPI Adjustment % =  $1 - [258.55^* \div (\text{Current Year CPI})]$

\*CPI amount as of December 2018

61

## CPI-All Items Change over Time



\* CPI for All Urban Consumers for all items for the San Francisco-Oakland-Hayward metropolitan area as reported by the U.S. Bureau of Labor Statistics. Source: <https://data.bls.gov> Series ID: CUURS49BSA0

62

## Fair Return



### When does a fair return petition apply?

After applying allowable 5% and/or Banked Increase:

- The property's NOI *decreased* as compared to the property's NOI in the Initial Year (2018)
- The percent increase of NOI from one year to the next is less than the percent increase CPI

63

## Determining if Fair Return Petition is Necessary



1. Determine if you have taken all annual rent increases. If not, determine if using Banking increases will ensure a fair return.
2. Compare NOI from Initial Year (2018) to Current Year and calculate the percent increase.
3. Calculate the percent increase in CPI (check City's website to see if it is available).
4. Compare percent increase of NOI to percent increase in CPI
5. If the percent increase in CPI is greater than the percent increase in NOI, than a rent increase above 5% may be allowed as determined by the arbitrator.

64



## Determining if Fair Return Petition is Necessary



EXAMPLE: Calculation of percent increase in NOI

	Current Year	Initial Year	Difference	Percent Change
Operating Revenue	\$10,500	\$10,000	\$500	5%
Less Operating Expenses	-\$5,400	-\$5,000	-\$400	8%
Net Operating Income	\$5,100	\$5,000	\$100	2%

Assuming CPI increases 3% from Initial Year to Current Year LL did not realize a fair return

65

## Grounds for Denial of Increase



**Additional factors considered in granting or denying a Rent Increase:**

- Code violations have been allowed to persist
- Failure to pay Rent program service fee
- Failure to provide Tenant proper notice of a Rent Increase, Banked Increase, or

66

## Resources



### City of Hayward – Rent Review Office

- <https://www.hayward-ca.gov/your-government/programs/rent-review-residential-rent-stabilization>
- (510) 583-4454
- [housing@Hayward-ca.gov](mailto:housing@Hayward-ca.gov)



### Echo Housing

- <https://www.echofairhousing.org/>
- Fair Housing and mediation services
- (510) 581-9380



### Project Sentinel

- Inquiries about active Petitions only
- (510) 709-4561
- [Hayward@housing.org](mailto:Hayward@housing.org)

67

## Legal Resources



### City of Hayward – Rent Review Office

- <https://www.hayward-ca.gov/your-government/programs/rent-review-residential-rent-stabilization>
- (510) 583-4454



### Alameda County Bar Association Lawyer Referral Service

- <https://www.acbanet.org/need-a-lawyer/>
- 510-302-2222, Option 4



### Alameda County Superior Court Self-Help

- <http://www.alameda.courts.ca.gov/Pages.aspx/Representing-Yourself>
- <https://www.courts.ca.gov/selfhelp-eviction.htm>



### Nolo Press – California Landlord's Law Books

- Rights and Responsibilities <https://store.nolo.com/products/the-california-landlords-law-book-lbrt.html>
- Evictions <https://store.nolo.com/products/the-california-landlords-law-book-lbev.html>

68