

1 [Ordinance codifying amortization schedules for 100% passthrough of certified capital
2 improvement, rehabilitation and energy costs from landlords to tenants, except that an
3 application for \$1,000,000.00 or more filed before April 8, 2002 but not decided or subject to
4 direct review as of that date is limited to a 50% passthrough; and providing a maximum
5 annual increase of 10% of a tenant's base year rent or \$30.00, whichever is greater.]

6 **Ordinance amending the Residential Rent Stabilization and Arbitration ordinance by**
7 **amending Section 37.7: to codify seven and ten-year amortization schedules for**
8 **certified capital improvement, rehabilitation and energy costs passed through from**
9 **landlords to tenants who benefit; to provide that 100% of such certified costs may be**
10 **passed through to tenants, except that where an application was filed before April 8,**
11 **2002 and the decision was not yet final or was subject to direct review as of April 8,**
12 **2002, only 50% of the certified costs may be passed through to tenants; providing that**
13 **no rent increase under this Section 37.7 shall exceed, in a twelve-month period, ten**
14 **percent (10%) of the tenant's base rent at the time the petition was filed or \$30.00,**
15 **whichever is greater; and providing that a landlord may accumulate any qualifying**
16 **certified increase that exceeds this twelve-month cap and impose it in subsequent**
17 **years, still subject to this same ten percent or \$30.00 limitation in a twelve-month**
18 **period.**

19 Note: Additions are single-underline italics Times New Roman font;
20 deletions are ~~strikethrough italics Times New Roman font~~.
21 Board amendment additions are double underlined Arial font;
22 Board amendment deletions are ~~strikethrough normal Arial font~~.

23 Be it ordained by the People of the City and County of San Francisco:

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1 Section 1. The San Francisco Administrative Code is hereby amended by amending
2 Section 37.7, to read as follows:

3 SEC. 37.7. CERTIFICATION OF RENTAL INCREASES FOR CAPITAL
4 IMPROVEMENTS, REHABILITATION WORK AND ENERGY CONSERVATION MEASURES.

5 (a) Authority. In accordance with such guidelines as the Board shall establish, the
6 Board and designated Administrative Law Judges shall have the authority to conduct hearings
7 in order to certify rental increases to the extent necessary to amortize the cost of capital
8 improvements, rehabilitations, and energy conservation measures. Costs determined to be
9 attributable to such work shall be amortized over a period which is fair and reasonable for the
10 type and the extent of the work and which will provide an incentive to landlords to maintain,
11 improve and renovate their properties while at the same time protecting tenants from
12 excessive rent increases. Costs attributable to routine repair and maintenance shall not be
13 certified.

14 (b) Requirements for Certification. The Board and designated Administrative Law
15 Judges may only certify the costs of capital improvements, rehabilitation, and energy
16 conservation measures where the following criteria are met:

17 (1) The landlord completed capital improvements or rehabilitation on or after April
18 15, 1979, or the landlord completed installation of energy conservation measures on or after
19 July 24, 1982, and has filed a proof of compliance with the Bureau of Building Inspection in
20 accordance with the requirements of Section 1207(d) of the Housing Code;

21 (2) The landlord has not yet increased the rent or rents to reflect the cost of said
22 work;

23 (3) The landlord has not been compensated for the work by insurance proceeds;

24 (4) The building is not subject to a RAP loan in a RAP area designated prior to July
25 1, 1977; *and,*

1 (5) The landlord files the certification petition no later than five years after the work
2 has been completed.

3 (c) Amortization and Cost Allocation. The Board shall establish amortization periods
4 and cost allocation formulas in accordance with this Section. Costs shall be allocated to each
5 unit according to the benefit of the work attributable to such unit.

6 (1) The following provisions shall apply to all applications for capital improvement,
7 rehabilitation and/or energy conservation work except those applications subject to Section
8 37.7(c)(2).

9 (A) Amortization Periods. Costs shall be amortized on a straight line basis over a
10 seven or ten-year period depending upon which category described below most closely relates to the
11 type of improvement or work and its estimated useful life.

12 (i) Schedule I, Seven-Year Amortization. The following shall be amortized over a
13 seven-year period: Appliances, such as new stoves, disposals, refrigerators, washers, dryers and
14 dishwashers; fixtures, such as garage door openers, locks, light fixtures, water heaters and blankets,
15 shower heads, time clocks and hot water pumps; and other improvements, such as carpeting, linoleum,
16 and exterior and interior painting of common areas. If the appliance is a replacement for which the
17 tenant has already had the benefit, the cost will not be amortized as a capital improvement, but will be
18 considered part of operating and maintenance expenses. Appliances may be amortized as capital
19 improvements when (1) part of a remodeled kitchen, (2) based upon an agreement between the tenant
20 and landlord, and/or (3) it is a new service or appliance the tenant did not previously have.

21 (ii) Schedule II, Ten-Year Amortization. The following shall be amortized over a ten-year
22 period: New foundation, new floor structure, new ceiling or walls - new sheetrock, new plumbing (new
23 fixtures or piping), weather stripping, ceiling insulation, seals and caulking, new furnaces and heaters,
24 new wiring, new stairs, new roof structure, new roof cover, new window, fire escapes, central smoke
25 detection system, new wood or tile floor cover, new partitioning sprinkler, boiler replacement, air

1 conditioning-central system, exterior siding or stucco, elevators, additions such as patios or decks,
2 central security system, new doors, new mail boxes, and new kitchen cabinets or sinks.

3 (B) Allowable Increase. One hundred percent (100%) of the certified costs of capital
4 improvement, rehabilitation and/or energy conservation work may be passed through to the tenants
5 who benefit from such work. However, no increase under this Section 37.7 shall exceed, in a twelve-
6 month period, ten percent (10%) of the tenant's base rent at the time the petition was filed or \$30.00,
7 whichever is greater. A landlord may accumulate any certified increase that exceeds this amount and
8 impose the increase in subsequent years, subject to this same 10% or \$30.00 limitation.

9 (2) The following provisions shall apply to each application seeking to pass through total
10 costs for capital improvement, rehabilitation and/or energy conservation work in excess of
11 \$1,000,000.00, where the application was filed before April 8, 2002 and the decision was not yet final
12 or was subject to direct review as of April 8, 2002.

13 (A) Amortization Periods. Costs shall be amortized on a straight line basis over a
14 seven or ten-year period depending upon which category described below most closely relates to the
15 type of improvement or work and its estimated useful life:

16 (i) Schedule I, Seven-Year Amortization. The following shall be amortized over a
17 seven-year period: Appliances, such as new stoves, disposals, refrigerators, washers, dryers and
18 dishwashers; fixtures, such as garage door openers, locks, light fixtures, water heaters and blankets,
19 shower heads, time clocks and hot water pumps; and other improvements, such as carpeting, linoleum,
20 and exterior and interior painting of common areas. If the appliance is a replacement for which the
21 tenant has already had the benefit, the cost will not be amortized as a capital improvement, but will be
22 considered part of operating and maintenance expenses. Appliances may be amortized as capital
23 improvements when (1) part of a remodeled kitchen, (2) based upon an agreement between the tenant
24 and landlord, and/or (3) it is a new service or appliance the tenant did not previously have.

25 (ii) Schedule II, Ten-Year Amortization. The following shall be amortized over a ten-year

1 period: New foundation, new floor structure, new ceiling or walls - new sheetrock, new plumbing
2 (new fixture or piping), weather stripping, ceiling insulation, seals and caulking, new furnaces and
3 heaters, new wiring, new stairs, new roof structure, new roof cover, new window, fire escapes, central
4 smoke detection system, new wood or tile floor cover, new partitioning sprinkler, boiler replacement,
5 air conditioning-central system, exterior siding or stucco, elevators, additions such as patios or decks,
6 central security system, new doors, new mail boxes, and new kitchen cabinets or sinks.

7 (B) Allowable Increase. Only fifty percent (50%) of the certified costs of capital
8 improvement, rehabilitation and/or energy conservation work may be passed through to the tenants
9 who benefit from such work. However, no increase under this Subsection 37.7(c) shall exceed, in a
10 twelve-month period, ten percent (10%) of the tenant's base rent at the time the petition was filed or
11 \$30.00, whichever is greater. A landlord may accumulate any certified increase that exceeds this
12 amount and impose the increase in subsequent years, subject to this same 10% or \$30.00 limitation.

13 (d) Estimator. The Board or its Executive Director may hire an estimator where an
14 expert appraisal is required.

15 (e) Filing Fee. The Board shall establish a filing fee based upon the cost of the
16 capital improvement, rehabilitation, or energy conservation measures being reviewed. Such
17 fees will pay for the costs of an estimator. These fees shall be deposited in the Residential
18 Rent Stabilization and Arbitration Fund pursuant to Section 10.117-88 of this Code.

19 (f) Application Procedures.

20 (1) Filing. Landlords who seek to pass through the costs of capital improvements,
21 rehabilitation, or energy conservation measures must file an application on a form prescribed
22 by the Board. The application shall be accompanied by such supporting material as the Board
23 shall prescribe. All applications must be submitted with the filing fee established by the Board.

24 (2) Filing Date. Applications must be filed prior to the mailing or delivery of legal
25 notice of a rent increase to the tenants of units for which the landlord seeks certification and in

1 no event more than five years after the work has been completed.

2 (3) Effect of Filing Application. Upon the filing of the application, the requested
3 increases will be inoperative until such time as the Administrative Law Judge makes findings
4 of fact at the conclusion of the certification hearing.

5 (4) Notice to Parties. The Board shall calendar the application for hearing before a
6 designated Administrative Law Judge and shall give written notice of the date to the parties at
7 least 10 days prior to the hearing.

8 (g) Certification Hearings.

9 (1) Time of Hearing. The hearing shall be held within 45 days of the filing of the
10 application.

11 (2) Consolidation. To the greatest extent possible, certification hearings with respect
12 to a given building shall be consolidated. Where a landlord and/or tenant has filed a petition
13 for hearing based upon the grounds and under the procedure set forth in Section 37.8, the
14 Board may, in its discretion, consolidate certification hearings with hearings on Section 37.8
15 petitions.

16 (3) Conduct of Hearing. The hearing shall be conducted by an Administrative Law
17 Judge designated by the Board. Both parties may offer such documents, testimony, written
18 declarations or other evidence as may be pertinent to the proceedings. Burden of proof is on
19 the landlord. A record of the proceedings must be maintained for purposes of appeal.

20 (4) Determination of the Administrative Law Judge. In accordance with the Board's
21 amortization schedules and cost allocation formulas, the Administrative Law Judge shall make
22 findings as to whether or not the proposed rent increases are justified based upon the
23 following considerations:

24 (A) The application and its supporting documentation.

25 (B) Evidence presented at the hearing establishing both the extent and the cost of

1 the work performed.

2 (C) Estimator's report, where such report has been prepared.

3 (D) Any other such relevant factors as the Board shall specify in rules and
4 regulations.

5 (5) Findings of Fact. The Administrative Law Judge shall make written findings of
6 fact, copies of which shall be mailed within 30 days of the hearing.

7 (6) Payment or Refund of Rents to Implement Certification Decision. If the
8 Administrative Law Judge finds that all or any portion of the heretofore inoperative rent
9 increase is justified, the tenant shall be ordered to pay the landlord that amount. If the tenant
10 has paid an amount to the landlord which the Administrative Law Judge finds unjustified, the
11 Administrative Law Judge shall order the landlord to reimburse the tenant said amount.

12 (7) Finality of Administrative Law Judge's Decision. The decision of the
13 Administrative Law Judge shall be final unless the Board vacates his or her decision on
14 appeal.

15 (8) Appeals. Either party may file an appeal of the Administrative Law Judge's
16 decision with the Board. Such appeals are governed by Section 37.8(f) below.

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19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By:

22 THEODORE R. LAKEY
23 Deputy City Attorney

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