



DATE: March 21, 2019

TO: Homelessness-Housing Task Force

FROM: Deputy City Manager

SUBJECT: Follow-up Discussion Regarding Amendments to the Residential Rent Stabilization Ordinance and Review of Council Referral Regarding a Moratorium on Rent Increases

RECOMMENDATION

That the Homelessness-Housing Task Force discusses this report following up on the February 19, 2019 Council work session regarding amendments to the Residential Rent Stabilization Ordinance as well as the Council referral regarding a moratorium on rent increases.

SUMMARY

The purpose of this report is: 1) to summarize the City Council's comments related to amendments to the Residential Rent Stabilization Ordinance (RRSO) from the February 19, 2019 work session; 2) to discuss the referral made to the Homelessness-Housing Task Force regarding a moratorium on rent increases; and 3) to describe the process for soliciting further community input and for returning to Council with proposed legislation.

During the February 19, 2019¹ work session, the Council reached general consensus on multiple measures to improve housing stability that would require amendment of the RRSO. These measures include:

- Develop a mandatory mediation program with binding arbitration that would be available to tenants upon rent increases greater than five percent and applicable to all pre-1979 units except single family homes and condominiums consistent with State law;
- Consider elimination of the vacancy decontrol provisions (Section 8) of the RRSO, based on a pending report from Management Partners.
- Create provisions to protect Section 8 voucher holders from discrimination;

¹ February 19, 2019 Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=3863371&GUID=E3FF2A1F-D770-463F-ACC2-8EBEFC711CF3&Options=&Search=>

- Require that landlords file rent increase notices and eviction notices with the City to obtain accurate data about rental housing activity;
- Explore with the Housing and Homelessness Task Force retaliation provisions and relocation assistance; and
- Extend eviction for cause protections to all residential rental properties, including single family homes and condominiums, which was enacted by Council action on March 5, 2019.²

These items outline an approach for modifying the RRSO. Staff will continue to work with stakeholders and the Task Force to develop proposed legislation and anticipate returning to City Council with proposed legislation in May/June 2019.

BACKGROUND

Hayward, like other cities in the Bay Area, is experiencing rising housing prices, severe housing instability for its most vulnerable populations, displacement of existing residents of all incomes, and increasing homelessness. The increase in Hayward's and the Bay Area's population, absent a corresponding increase in housing units, has caused rents and prices to rise as supply has failed to meet demand. As a result, approximately 55% of Hayward renters experience a cost burden as they spend over 30% of their household income on rent. Between 2013 and 2017, rents increased in the City by 46% while the median income of renters only increased 25%. While low income renters are the most impacted by rising rents and lack of available rental housing, all Hayward renters are experiencing the impacts of a tight rental market. Additionally, renter-occupied units are disproportionately comprised of African-American and Hispanic households compared to all occupied units, which raises concerns that the risk of potential displacement is greater for certain racial and ethnic populations within the City.

On January 31, 2017³, the City Council convened a work session to review housing affordability strategies and resources in Hayward and Alameda County. Subsequently, stakeholder meetings were hosted in early 2018, follow-up City Council work sessions were held on February 6, 2018⁴, March 27, 2018⁵, and legislation was enacted to on May 29, 2018⁶

² March 5, 2019 Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=3874594&GUID=09926C2C-0347-4756-8980-23BE5F61BE84&Options=&Search=>

³ January 31, 2017 Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=2947412&GUID=7B833FA7-2B44-404D-86D2-031C37926B34&Options=&Search=>

⁴ February 6, 2018 Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=3335549&GUID=DDD8866E-BAEB-44BF-8EBB-2F716A750170&Options=&Search=>

⁵ March 27, 2018 Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=3458584&GUID=A516B525-DC67-41CD-A8FF-C4779E6B8FE9&Options=&Search=>

⁶ May 29, 2018 Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=3512726&GUID=CC5F9A5F-1885-4AD7-81B1-BFA7C9A88C41&Options=&Search=>

to place a moratorium on vacancy decontrol provisions of the RRSO to allow staff time to evaluate the ordinance without losing additional units to decontrol. On February 19, 2019, the City Council convened a work session that defined the parameters for an approach to amend the City of Hayward RRSO. Based on preliminary Council direction, staff has identified the following key actions:

- Develop a mandatory mediation program with binding arbitration that would be available to tenants upon rent increases greater than five percent and applicable to all pre-1979 units except single family homes and condominiums consistent with State law;
- Consider elimination of the vacancy decontrol provisions (Section 8) of the RRSO, based on a pending report from Management Partners.
- Create provisions to protect Section 8 voucher holders from discrimination;
- Require that landlords file rent increase notices and eviction notices with the City to obtain accurate data about rental housing activity;
- Explore with the Housing and Homelessness Task Force retaliation provisions and relocation assistance; and
- Extend eviction for cause protections to all residential rental properties, including single family homes and condominiums, which was enacted by Council action on March 5, 2019.

On February 26, 2019⁷ Council directed staff to return with an emergency ordinance to prevent no cause evictions for all rental units in the City out of concern that the proposed modifications to the RRSO will cause evictions that will destabilize the community. Additionally, the City Council made a referral to discuss a possible moratorium on rent increases citywide to the Homelessness-Housing Task Force.

DISCUSSION

The Council Homelessness-Housing Task Force was established for a two-year period to review and consider possible policies related to individuals experiencing homelessness and housing. Rental housing discussions at the February 19, 2019 work session created a framework for amending the RRSO. Additionally, on February 26, 2019, the Council made a referral to the Task Force to consider whether a moratorium on rent increases citywide would be appropriate. This report provides a summary of the direction provided by City Council at the February 19, 2019 work session related to amendments to the RRSO, discusses the referral regarding a moratorium on rent increases, provides information regarding proposed modifications raised by stakeholders, and describes next steps for a community engagement process and returning to the City Council with proposed legislation.

Approach to Modifying the Residential Rent Stabilization Ordinance

⁷ February 26, 2019 Meeting Video:

http://hayward.granicus.com/MediaPlayer.php?view_id=1&clip_id=590

On February 19, 2019, the City Council provided consensus direction on a framework for amending the RRSO, which is summarized in Attachment II.

Mandatory Mediation with Binding Arbitration

On February 19, 2019, the City Council demonstrated support for creating a mandatory mediation program with binding arbitration to improve communication between tenants and landlords. There was consensus for a mediation program with binding arbitration that would be available to tenants upon rent increases greater than five percent and applicable to all pre-1979 units except single family homes and condominiums consistent with State law. The change will make it easier to identify units covered under the ordinance and will provide protection to approximately 9,500 units from large rent increases that cause displacement.

The existing mediation/arbitration process under the RRSO provides a baseline for the development of a new mediation and binding arbitration program. In general, tenant and landlords are first encouraged to communicate regarding the rent increases. If unsuccessful, mediation would be available to both parties. If mediation is unsuccessful, the case would be referred to a neutral third-party arbitrator who would render a binding decision based on review of evidence and testimony provided by each party.

While five percent is the proposed rent increase threshold for determining who would be eligible to utilize the mediation/arbitration program, rent increases above five percent would be allowed if justified based on established criteria. The Standards of Review in Section 9 of the RRSO establish the criteria for evaluating rent increases above five percent. These criteria include rental history, unavoidable increases due to maintenance or operating expenses, cost of substantial rehabilitation or capital improvements, or increased cost of debt service. The standards of review both protect the landlord's right to a fair return and ensure that a tenant is not overburdened by financial decisions made by the landlord.

Over the next month, staff will evaluate the existing mediation-binding arbitration process described in the ordinance and work with stakeholders to update the process. The City's current mediation consultant, Project Sentinel, has indicated that the described process for mediation is outdated and has suggestions for improving the process. One of the procedural issues that should be addressed in the ordinance is that a mediator should remain neutral and should not issue a decision when agreements are not reached. If agreements are not reached, the petition would then be referred to an arbitrator. Also under consideration is the addition of a step that requires landlords to participate in a peer review with other landlords. This step would allow industry professionals to provide guidance to other landlords and may be helpful for less experienced landlords.

Another item to consider is eliminating the requirement that at least 25% of affected tenants participate in the mediation-binding arbitration process. Each tenant situation is unique and while the percentage rent increase may be the same, the impact on the tenant's ability to pay, lease terms, length of tenancy, and condition of the unit may be different. Lastly, as directed in the February 19, 2019 City Council Work session, staff will evaluate the standard of review that allow increases based on the increase of debt service (loans on the property). These are

some examples of provisions that will be discussed with stakeholders and potentially proposed as changes to the ordinance. Other items may be identified as staff continues to work with stakeholders.

Vacancy Decontrol Process (Section 8 of the RRSO)

On May 29, 2018, the City Council adopted a moratorium on vacancy decontrols to provide staff time to evaluate the vacancy decontrol process while protecting units protected by the rent increase limitations of the RRSO. Under the vacancy decontrol provisions of the RRSO, a unit will no longer be subject to the rent increase limitations once a tenant voluntarily vacates the unit and the landlord makes an investment in the unit in an amount greater than the City's established improvement value (between \$1,500 and \$3,100 depending on the number of bedrooms in the unit).

On February 19, 2019, the City Council demonstrated support for eliminating vacancy decontrol (Section 8) from the RRSO; however, there was also support for waiting for the findings from consultant hired to evaluate the vacancy decontrol process which is anticipated in May 2019. There have been nearly 8,000 applications for decontrol submitted to the City, which leaves between 1,000 to 1,600 units protected by rent increase limitations. Elimination of the vacancy decontrol provisions will ensure these units remain protected. The findings from the consultant report will be presented to the Council in May.

Discrimination Protection for Section 8 Housing Choice Voucher Holders

On February 19, 2019, the City Council demonstrated support for prohibiting discrimination of Section 8 Housing Choice Voucher Holders. Voucher holders receive a subsidy from the U.S. Department of Housing and Urban Development (HUD) that covers the difference between a tenant's required rental payment and the fair market rents. Federal law does not prohibit landlords from rejecting applicants that receive rental subsidies. To prevent discrimination, local governments have enacted laws that prohibit discrimination based on the sources of income to qualify for a housing unit. In addition to rental subsidies, some laws include sources of income such as alimony or disability benefits. This prohibition would not impact landlords' ability to charge market rent for their units or prevent a landlord from rejecting an applicant based on rental or credit history. It would, however, prevent a landlord from rejecting an applicant merely because of the housing choice voucher. Landlords who participate in the housing choice voucher program are required to sign a contract with the local housing authority and the property would be subject to annual housing quality inspection.

Filing Rent Increase and Eviction Notices

On February 19, 2019, the City Council demonstrated support for requiring landlords to file rent increase and eviction notices. Filing notices with the City will provide the City with data related to rent increases and reasons for evictions. Better data will help the City identify and address issues related to rent increases and evictions.

Relocation for No Fault Evictions and Tenant Retaliation Protections

On February 19, 2019, the City Council referred no fault evictions and retaliation protection to the Task Force. These two provisions require further evaluation and community engagement; however, some preliminary information is provided for reference.

Tenant Relocation. Under a tenant relocation assistance program, tenants would be eligible for and entitled to relocation assistance from a landlord if the termination of tenancy was due to a landlord caused termination including substantial rent increases within a 12-month period. It can also include government ordered vacations due to health and safety code violations. A landlord's failure to comply with any requirements under the program can be used as an affirmative defense in an action brought by the landlord to recover possession of the residential property.

The amount of assistance to be provided to the tenant and the scope of the program is still under evaluation. However, as an example, the City of San Leandro requires assistance for landlord caused evictions including if the rent increase exceeds 12 percent of the base rent and causes displacement. The amount of assistance provided equals three times the greater of the tenant's actual rent or the Fair Market Rent (FMR) for the Oakland-Fremont metropolitan area as established by the Department of Housing and Urban Development not to exceed \$7,000. However, the maximum amount of assistance may be low considering that the 2018 FMR for a three-bedroom unit is \$3,219. Some types of terminations of tenancy would be excluded from the program because they protect the wellbeing of other residents and the property and are not considered landlord caused. For example:

- Failure to pay the rent;
- Violations of any provision of the lease or rental agreement;
- Material damages to the rental property; and
- Substantial interference with other tenants.

Tenant Retaliation Protections. A tenant protection ordinance provides tenants with legal recourse if they are harassed or retaliated against by the property owner and provides civil remedies for violations. Many testimonies provided by community members during Council work sessions have documented that some residents are experiencing harassment or retaliation from their landlords. A tenant protection ordinance would define harassment and provide tenants protection from bad faith business practices such as:

- Refusal to accept or acknowledge receipt of a tenant's lawful rent payment in an effort to initiate a three-day notice-based termination of tenancy;
- Threatening to or interrupt, terminate, or fail to provide housing services;
- Intimidating or threatening to report the tenant to U.S. Immigration and Customs Enforcement (ICE);
- Substantially and directly interfering with a tenant's right to quiet use and enjoyment of the rental unit;
- Removal of a housing service for the purpose of causing the tenant to vacate the rental unit;

- Attempting to coerce a tenant to vacate with offer(s) of payments to vacate in addition to threats or intimidation; or
- Threatening the tenant, by word or gesture, with physical harm;

The items listed above are examples sampled from ordinances from other cities. The actual proposed legislation is yet to be determined.

Both the relocation assistances and tenant retaliation protections require additional work including evaluating ordinances from other cities and working with stakeholder groups as discussed later in the report.

Referral of a Moratorium on Rent Increases

On February 26, 2019, the City Council made a referral regarding a potential moratorium on rent increases citywide to the Homelessness-Housing Task Force. A survey of other cities (Oakland, Santa Cruz, and Mountain View) that have imposed a moratorium on rent increases demonstrates that these cities have done so to mitigate concerns that pending legislation would cause immediate increases in rents. While there is concern that rents may be increased, there is also concern that imposing a rent increase moratorium may cause some developers with housing projects in the pipeline to delay construction of these projects until the conclusion of the moratorium, further compounding the issue of housing availability. Some of these pipeline projects include the construction of affordable units within the projects. Regardless, staff continues to monitor inquiries related to rent increases and has not seen an increase in rent increase inquiries since February 19, 2019. Since February 19, 2019, there have been 9 inquiries related to rent increases, which were both from landlords and tenants.

Other Recommendations from Stakeholders

The housing provider community has proposed solutions to mitigate concerns with housing instability and improving the quality of housing. One suggestion is to require mandatory leases at application and at renewal. Mandatory leases would provide tenants with stability for a specified period if the tenant does not violate the terms of their lease. A second suggestion is to extend rent increase noticing periods by 30 days beyond the State's standards to provide tenants more time to adjust to proposed changes in rent or to find alternate housing. Lastly, they propose suspending rent increases if the property has an open maintenance issue as identified through the rental Housing Inspection Program. Staff is supportive of these recommendations in conjunction with direction provided by City Council.

The business/landlord community has requested a "working group" or advisory board be assembled, which would include members of their group to give input to City staff and City Council prior to adopting legislation related to rental housing. Staff does not support this recommendation because this Task Force will provide an additional forum to review and discuss housing and homelessness related policies. Staff has been actively involved with

stakeholders and, to address the business communities' concern, will include the business community and landlords in further targeted outreach efforts.

Process and Community Engagement Workshop

The City of Hayward is committed to ongoing community engagement regarding rent affordability issues and is planning a workshop on Saturday, April 6, 2019 from 9:30AM to 12:30PM. As such, stakeholders will have an opportunity to learn more from staff regarding the proposed approach to modifying the RRSO and register their opinions. Staff will host booths/discussion tables to get input on the following topics:

- Mediation-binding arbitration program
 - Proposed process workflow
 - Standards of review for increases above 5%
- Possible elimination of vacancy decontrol provisions
- Process for filing rent increase and eviction notices
- Relocation program for no fault evictions
- Tenant retaliation protections

Community members will be able to discuss the proposals with staff and communicate their priorities regarding each of the topics. The location is yet to be determined and childcare will be provided if the location of the event can accommodate it. Community members can drop-in at any time. Information obtained from the event will be used to inform next steps regarding amendments to the RRSO going forward.

During the Task Force meetings in April and/or May 2019, staff will provide a summary of community feedback from the Community Engagement Workshop and will propose draft legislation for discussion. After this review process, staff will return to Council with proposed legislation in May/June 2019. *Table 1* below summarizes the timeline.

Table 1. Rent Stabilization Ordinance Amendment Timeline

Community Engagement Workshop	April 6, 2019 (9:30am-12:30pm)
Homelessness-Housing Task Force	April 18, 2019 (5:00 pm)
Homelessness-Housing Task Force	May 2019 (TBD) (5:00 pm)
City Council Work Session	May 2019 (7:00 pm)
City Council Approval	June 2019 (7:00 pm)

FISCAL IMPACT

City staff is conducting a fiscal impact analysis on the budget impacts of administering and enforcing all the proposed amendments to the RRSO that resulted from the February 19, 2019 work session, including the expansion of the just cause provisions to all rental units in the City. However, costs associated with the RRSO are recovered through the Rent Review Administration Fee. Consequently, the amount of the fee will also be updated to cover these

expenses. The fee is paid by the landlord and half of the fee can be passed through to the tenant. Staff will provide an estimated budget for the program with any proposed legislation.

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities Initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work, and play for all. This item supports the following goal and objectives:

Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

Objective 1: Centralize and expand housing services.

Objective 3: Conserve and improve the existing housing stock.

PUBLIC CONTACT

In January 2018, staff hosted meetings with tenants, landlords, representatives of community-based organizations, and advocates to listen to these stakeholders' perspectives on housing issues. Additionally, staff conducted an online survey to provide an alternate mechanism for participation in the housing discussion. Analysis of the results of the survey were included in the February 6, 2018 staff report. On February 26, 2018, staff hosted a subsequent listening session to hear the stakeholders' feedback on Council supported affordable rental housing strategies. In October 2018, staff conducted four tenant focus groups. From December 2018 through February 2019, staff met with community stakeholders affiliated with landlords, realtors, and tenants to develop potential amendments to the RRSO to address issues of rent stabilization more comprehensively in the City.

NEXT STEPS

Over the next month, staff will evaluate legislation from other jurisdiction and meet with stakeholders to discuss proposed legislation and hold a community workshop on April 6th. Staff will then return to the Task Force with proposed legislation during the April and/or May 2019 Task Force meetings; return to the Council for a work session in May 2019; and bring proposed legislation to the City Council in June 2019.

Table 1. Rent Stabilization Ordinance Amendment Timeline

Community Engagement Workshop	April 6, 2019 (9:30am-12:30pm)
Homelessness-Housing Task Force	April 18, 2019 (5:00 pm)
Homelessness-Housing Task Force	May 2019 (TBD) (5:00 pm)
City Council Work Session	May 2019 (7:00 pm)
City Council Approval	June 2019 (7:00 pm)

Prepared by: Christina Morales, Housing Division Manager

Recommended by: Jennifer Ott, Deputy City Manager

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

Kelly McAdoo, City Manager