



DATE: March 26, 2019

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Adoption of Emergency Ordinance Amending Just Cause for Tenant Evictions to Exempt Affordable Housing Conversion Projects

RECOMMENDATION

That the City Council adopts an emergency Ordinance amending Just Cause for Tenant Evictions to exempt affordable housing conversion projects.

SUMMARY

On March 5, 2019¹, the City Council adopted an emergency ordinance requiring just cause for tenant evictions for all rental units within the City and repealing the eviction for cause provisions under the Residential Rent Stabilization Ordinance (RRSO). The Just Cause for Tenant Eviction Ordinance provides tenants with a defense against no cause evictions and establishes what constitutes justified evictions. The just causes required for eviction identified under the new ordinance are the same as the justifications for eviction under the RRSO, however, the exemptions are different. Specifically, the new ordinance does not exempt affordable housing.

While funding sources for affordable housing generally require eviction for cause, elimination of this exemption prevents investment in properties that will convert market rate properties to affordable rent restricted properties because the property owners would not be able to terminate the tenancy of over-income tenants in order to complete the conversion.

Staff is recommending enacting this exemption as an emergency ordinance due to the immediate impacts the ordinance has on Leisure Terrace Apartments, which initiated applications for funding the conversion of the project from market rate to affordable prior to the enactment of the emergency Just Cause for Tenant Eviction Ordinance. The project also received approval from City Council on February 19, 2019² to issue multifamily housing revenue bonds. Enactment of an emergency ordinance would require at least five affirmative

¹ March 5, 2019 Staff Report and Attachments:

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

² February 19, 2019 Staff Report and Attachments:

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

votes from the City Council and would go into effect immediately. If only four Council members vote for the proposed ordinance, then adoption would occur at the next City Council meeting and the ordinance would go into effect 30 days after adoption. However, if this is not adopted as an emergency Ordinance, this is likely to jeopardize the financing of the conversion of the Leisure Terrace Apartments to affordable housing, as well as other affordable housing conversions in other jurisdictions being developed by the same project proponent.

BACKGROUND

On February 19, 2019, the City Council convened a work session that defined the parameters for an approach to amend the RRSO including extending eviction for cause protections to all residential rental properties. On this same night, the City Council conducted a public hearing under the Tax and Equity Fiscal Responsibility Act (TEFRA) and adopted a resolution approving the issuance of multifamily housing revenue bonds to finance the acquisition and rehabilitation of Leisure Terrace Apartments by the California Public Finance Authority.

Subsequently, on February 26, 2019³, the Council referred and directed staff to return with an emergency Ordinance to the full Council to prevent no cause evictions out of concern that the proposed modifications to the RRSO will cause evictions that will destabilize the community. On March 5, 2019, the Council adopted an emergency ordinance extending Just Cause for Eviction protections to all residential rental units.

The Just Cause for Eviction Ordinance provides tenants with a defense against no cause evictions and establishes what constitutes justified evictions. The just causes required for eviction identified under the new ordinance are the same as the justifications for eviction under the RRSO; however, the exemptions were different. Specifically, the new ordinance does not exempt affordable housing.

DISCUSSION

Prior to the enactment of the Emergency Just Cause for Tenant Eviction Ordinance, Reliant Group Management (Reliant) acquired a seven-property portfolio across the Bay Area, which included the Leisure Terrace Apartments, located at 638 E Street, and initiated applications for financing that will convert three of the market rate properties, including Leisure Terrace, to Section 42 low-income housing tax credit (LIHTC) communities. These complexes will serve low and very low-income residents of their respective communities at or below the 60% and 50% of area medium income (AMI) levels. The other two properties being converted to affordable housing include 112 units in the City of Antioch and 84 units in the City of Hercules, which will increase the overall affordable housing supply in the Bay Area. Applications for LIHTC credits and the required tax-exempt bonds is an extensive one, requiring material funds to be advanced for third party reports and development plans in order to ensure compliance with the LIHTC rules. The formal applications for tax credits and

³ February 26, 2019 Meeting Video:
http://hayward.granicus.com/MediaPlayer.php?view_id=1&clip_id=590

bonds were submitted to the California Tax Credit Allocation Committee and to the California Debt Limit Allocation Committee on January 18, 2019. The TEFRA hearing was held and unanimously approved by the Council on February 19th, 2019.

The proposed project will improve the quality of housing provided by Leisure Terrace Apartments, protect residents most vulnerable to displacement caused by the new acquisition and investment, and create a total of 264 units of affordable housing throughout the Bay Area. However, to comply with LIHTC requirements, Reliant would have to terminate the tenancy of over-income tenants. Under the eviction for cause provisions of the RRSO, applicable at the time of the TEFRA hearing and application for LIHTC, affordable housing regulated by a government agency was exempt and, therefore, did not preclude Reliant from terminating the tenancy of over-income tenants. Under the recently adopted Just Cause for Tenant Eviction Ordinance, affordable housing is not exempt.

If Reliant cannot use public bond financing and LIHTC, they will finance the project with private financing and will have to significantly increase rents to market levels in order to finance the intended investment and rehabilitation of the apartment units. In this scenario, the most vulnerable tenants will experience an economic displacement and be at-risk of homelessness. Additionally, the City of Antioch and the City of Hercules would lose 112 units and 80 units respectively of affordable housing.

Not only is this an issue for the conversion of Leisure Terrace Apartments to affordable housing, the recently adopted Just Cause for Eviction Ordinance would prevent similar types of investment intended to bring much needed affordable housing to the City of Hayward and improve the quality of existing housing stock. As a result, staff recommends amending the Just Cause for Tenant Eviction Ordinance to exempt affordable housing acquisition and rehabilitation development projects that receive funding from a federal, state, or local agency for the purpose of substantially rehabilitating a property and converting the rental units to affordable rental housing. The exemption only applies in connection with, or related to a conversion, which includes such time as an award of the subsidy or funding is made by the federal, state, or local agency and to units that are not occupied by tenants meeting the eligibility requirements of the program under which such subsidy or funding is made.

Some of the current tenants residing at Leisure Terrace Apartments may meet the income qualifications for the new affordable units. Others may not. However, Reliant has not yet done a comprehensive tenant survey to determine compliance with rent limit guidelines. This will not occur until after their financing is complete so they do not have a good estimate for the number of market rate tenants that may be displaced as a result of this conversion to affordable housing.

Additionally, staff is currently working with the Homelessness-Housing Task Force and stakeholders to develop a relocation ordinance that could provide relocation benefits for no cause evictions including evictions that result from the conversion of market rate housing to affordable housing.

Staff is recommending enacting this as an emergency ordinance so as not to jeopardize the LIHTC financing of the Leisure Terrace Apartments and the other proposed affordable properties in the recently acquired property portfolio. Enactment of an emergency ordinance would require at least five affirmative votes from Council. If only four Council members vote for the proposed ordinance, then adoption would occur at the next City Council meeting and the ordinance would go into effect 30 days after adoption. This delay is likely to jeopardize the financing of the conversion of the Leisure Terrace Apartments to affordable housing, as well as other affordable housing conversions in other jurisdictions.

FISCAL IMPACT

There are no fiscal impacts associated with the amendment of the Just Cause for Tenant Eviction Ordinance. However, the enactment of the emergency ordinance expanding just cause provisions to all rental units will likely increase costs associated with administering the RRSO due to educational efforts and an increase in call volumes from affected landlords and tenants. City staff is conducting a fiscal 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. Given the emergency nature of the Just Case for Eviction Ordinance, this fiscal analysis is not yet complete. 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. As outlined in the Next Steps section below, the staff report scheduled for May regarding amendments to the RRSO will provide an estimated budget for the program.

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, 2018⁴ 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. Lastly, staff discussed the Just Cause for Tenant Eviction Ordinance with Eden Housing to identify if there were any other concerns with the Just Cause for Tenant Eviction Ordinance as it relates to affordable housing, and none were identified.

NEXT STEPS

Staff continues to work on amendments to the RRSO including exploring a relocation assistance guidelines. Over the next month, staff will evaluate legislation from other jurisdictions and meet with stakeholders to discuss proposed legislation and hold a community workshop on April 6. Staff will then return to the Task Force with proposed legislation during the April and/or May 2019 Task Force meetings and bring proposed legislation to the City Council in May 2019.

Table 1. Rent Stabilization Ordinance Amendment Timeline

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|---------------------------------|--------------------------------|
| 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 Approval | May 21, 2019 (7:00 pm) |

Prepared by: Christina Morales, Housing Division Manager

Recommended by: Jennifer Ott, Deputy City Manager

Approved by:



Kelly McAdoo, City Manager

⁴ February 6, 2018 Staff Report and Attachments:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=3335549&GUID=DDD8866E-BAEB-44BF-8EBB-2F716A750170&Options=&Search=>