

Analysis of the Tenant Protection Act

The Tenant Protection Act (TPA) includes provisions for a rent increase limit, just cause eviction, and tenant relocation assistance. Staff from the Rent Review Office have met with the City Attorney's Office to discuss the ways in which the TPA may apply to Hayward, given that the City's RRSO was enacted before the TPA. The TPA and RRSO each address just cause for eviction and rent increase limits; however, only the TPA addresses relocation assistance for no fault eviction. Attachment III provides a table with a detailed comparison of how the TPA and RRSO address each of these sections.

Just Cause and Relocation Assistance

The TPA just cause provisions and tenant relocation do not apply to property "subject to a local ordinance requiring just cause for termination adopted on or before September 1, 2019" and sunsets on January 1, 2030.¹ Therefore, the City Attorney's Office and Housing Division Staff's interpretation is that Hayward's RRSO just cause provisions takes precedence over the TPA just cause provisions and Hayward residents are not eligible for relocation assistance under the state law.

Rent Increase Limitations

The TPA's rent increase limitations do not apply to properties that have local rent control ordinances where the rent increase is below the threshold established in the TPA. However, the TPA may provide rent increase relief to some tenants who do not currently have protection under the RRSO due to Costa Hawkins. Rent Review Office staff estimate that approximately 6,300 rental units currently not covered under the RRSO's rent increase threshold are now covered under the TPA's rent increase limit.² With some exemptions (see **Error! Reference source not found.**), the TPA will provide a rent increase limit for properties built between 1979 and 2005. Properties not covered under the RRSO's residential rent increase threshold may be subject to state law.

Applicability of the Tenant Protection Act

Staff have analyzed the legislation in consultation with the City Attorney's Office and have determined that revisions to the RRSO are necessary to both ensure Hayward residents are provided with the same protections afforded other Californians under the new State law and provide clarity for the application of the TPA in Hayward. With some exceptions (see Attachment III) all residential units are covered under the RRSO's just cause protections, which are similar to those established by the TPA; however, the TPA links no-fault evictions to relocation assistance, which is not provided for in the City's RRSO. Therefore, tenants in units covered by the RRSO are currently not entitled to the same relocation benefits provided to tenants living in units covered by the TPA. Additionally, as the RRSO provides for banked rent increases and pass-throughs for capital improvements or fair return up to 10%, it is possible that rent increases allowable under the RRSO could exceed the rent cap established by the

¹ Assembly Bill No. 1482, Tenant Protection Act of 2019, Legislative Counsel's Digest: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1482

² Estimates are based on American Community Survey 2011-2015 5-Year Estimates Tenure by Year Structure Built data.

TPA (i.e., 5% plus the percentage change in the cost of living or 10%, whichever is lower). The TPA states in section 1947.12(d)(3) that housing subject to rent controls restricting increases to an amount less than the TPA's cap is exempt from the TPA cap. Increases in Hayward that reach the RRSO's 10% threshold could possibly exceed the TPA's cap, thus making those increases subject to the TPA. Currently, the RRSO has no language addressing this ambiguity and does not give local arbitrators the resources to resolve disputes that may involve the TPA's cap.

Table 1. Comparison of the Tenant Protection Act and City of Hayward's RRSO

Provision	Tenant Protection Act	City of Hayward's RRSO
Rent Increase Limit		
Limit	<p>Until January 1, 2030, an owner is prohibited from increasing, within a 12-month period, the total rent of a unit more than 5% plus the percentage change in the cost of living, or 10% whichever is lower.</p> <ul style="list-style-type: none"> • Owners cannot increase the rent more than two times during a 12-month period • Owner is still able to establish the initial rent for a new tenancy, and the limitation on increases applies after that initial rate has been established. • Tenant may not enter a sublease that results in the total rent exceeding the allowable rental rate authorized. 	<p>A rent increase, including any increase of Housing Services, for any unit covered by the increase threshold that exceeds the five percent (5%) Rent Increase Threshold within a twelve (12) month period, may be challenged by a tenant and subject to the mediation/arbitration section of the ordinance.</p> <ul style="list-style-type: none"> • Prohibits more than one increase in a 12- month period. • Owner is still able to establish the initial rent for a new tenancy after lawful eviction, voluntary vacancy. Rent threshold limitations apply thereafter.
Applicability	<p>Limit only applies to residential rental units built more than 15 years ago.</p> <p>Limit applies to all residential rental units not covered by local rent control legislation.</p>	<p>Only applies to pre-1979 residential rental units.</p>
Exemptions	<p>The following units are exempt:</p> <ul style="list-style-type: none"> • Housing restricted by deed, regulatory restriction in agreement with government agency (affordable housing) • Dormitories • Housing restricted by a public agency's police power consistent with Costa Hawkins that restricts annual increases in the rental rate to an amount less than that provided by the TPA • Housing that has been issued a COO in the last 15 years 	<p>The following units are exempt:</p> <ul style="list-style-type: none"> • Mobile home units • Hospital, extended care facility • Dormitory/educational housing • Motels, hotels, tourists' houses, rooming house • Rental units in a nonprofit cooperative occupied and controlled by majority of residents • Rental Units controlled or regulated by another governmental agency during the specified contractual term • Rental Units with COO after July 1, 1979.

Provision	Tenant Protection Act	City of Hayward's RRSO
	<ul style="list-style-type: none"> • Single family house provided owner is not a real estate investment group/LLC/Corp. • Owner occupied duplex 	<ul style="list-style-type: none"> • Rental units in lawful compliance with Hayward's ADU reg. • Single family homes (alienable separate) • Condos sold separately by a Subdivider
Just Cause for Eviction		
Reasons for Just Cause	<p>The owner of a residential unit cannot terminate tenancy if the tenant has lawfully occupied the residence for 12 months, unless just cause. Just Cause reasons include:</p> <ul style="list-style-type: none"> • Default in payment of rent • Breach of material term of lease • Maintaining, committing or permeating the presence of a nuisance • Committing waste • Tenant refused to execute a new lease with similar provisions that do not violate this legislation (rent limitations) • Criminal Activity on the residential property • Assigning or subletting in violation of lease • Tenant refusal to allow owner access to unit • Using unit for unlawful purpose • Tenant fails to deliver the premises after providing written notice of intent to vacate. • Owner, spouse, child, parent, grandparent intend to occupy the unit. For a lease after 1/1/2020, there must be a term in the lease to allow owner unilateral decision to do so. • Withdrawal of unit from the rental market • Intent to demolish or substantially remodel unit 	<p>Just Cause reasons include:</p> <ul style="list-style-type: none"> • Tenant failed to pay rent • Tenant violated and continues after notice to cease, to violate a material term of the lease • Tenant caused or allowed substantial damage to the premises • Tenant refused to agree to a new rental agreement that is substantially identical to prior lease and not inconsistent with local/ca/us law • Tenant destroy peace and enjoyment of other tenants- after notice to cease • Tenant refused to allow landlord access -after notice to cease • LL seeks to undertake substantial repair in compliance with H&S codes • LL seeks to remove unit from market and demolish • LL seeks to recover possession for his or his family member's occupancy • Tenant used rental unit for illegal purpose and convicted • Tenant rental unit for illegal drug manufacture, sale, distribution • LL terminated tenant's employment, where tenant employment was express condition of tenancy • Tenant threatened verbally or in writing to commit a crime that would result in death or GBI to LL/Tenants/Guests

Provision	Tenant Protection Act	City of Hayward's RRSO
Exemptions	<p>The following units are exempt from Just Cause provisions:</p> <ul style="list-style-type: none"> • Transient and tourist hotel occupancy • Nonprofit hospital, religious facility extended care, licenses residential care for elderly • Dormitories • Housing accommodations wherein tenant shares bathroom or kitchen with owner • Single-family owner-occupied residences • Duplex where owner occupies one unit as principal residence • Housing issued Cert. of Occupancy after 2005 • Residential real property that is alienable and separate as long as the owner is not a real estate investment trust, LLC, or Corporation and for any lease entered into after July 1, 2020 the tenants have been provided notice in the agreement 	<p>The following units are exempt from Just Cause provisions:</p> <ul style="list-style-type: none"> • Mobile home units • Hospital, extended care facility • Dormitory/educational housing • Motels, hotels, tourists' houses, rooming house • Rental units in a nonprofit cooperative occupied and controlled by majority of residents • Drug and alcohol treatment facilities • Nonprofit facility structured to help homeless • Rental units where the owner of record occupies a unit in the same property as a principal place of residence • Certain Affordable housing acquisition and rehab projects
Failure to Give Notice	The owner's failure to comply with the notice provisions render the termination void.	The owner's failure to give notice shall be a defense for any action for possession of a rental unit covered by this ordinance.
Relocation Assistance		
	<p>When the owner issues a no-fault termination of the tenant, the owner is required to notify the tenant of their right to relocation assistance</p> <p>The owner is required to pay relocation assistance as a direct payment of one month's rent or as waiver of the final month's rent</p>	No relocation assistance required
Recourse		
	Tenants may pursue claims of unlawful rent increases or evictions through the court system.	Tenants may petition the Rent Review Office for any violation of the RRSO.