



**DATE:** May 9, 2019  
**TO:** Homelessness-Housing Task Force  
**FROM:** Deputy City Manager  
**SUBJECT:** Consider Recommendations to the City Council Regarding Vacancy Decontrol Provisions within the Residential Rent Stabilization Ordinance

### **RECOMMENDATION**

That the Homelessness-Housing Task Force (HHTF) receives and reviews the consultant's report regarding the vacancy decontrol provisions within the Residential Rent Stabilization Ordinance (RRSO) and considers a recommendation to Council on the decontrol provisions.

### **SUMMARY**

The purpose of this report is to solicit direction from the HHTF regarding recommended amendments to the RRSO regarding permanent vacancy decontrol provisions. 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, Management Partners, hired to evaluate the vacancy decontrol process. For clarification, the elimination of permanent decontrol would not interfere with a landlord's right to increase rents to market rate once a tenant voluntarily vacates a unit as required by state law.

Management Partners has concluded its report, which is included as Attachment II. Some of the key findings include:

1. Many of the housing units subject to the City's rent control ordinance are already decontrolled, leaving a very small number subject to the rent stabilization policies of the ordinance;
2. The City has historically viewed its role as a repository of decontrol applications as opposed to arbitrator of vacancy decontrol decisions;
3. Decontrol applications included the basic information required under the terms of the decontrol ordinance, yet applicants were not always required to provide receipts or other substantiation of improvements implemented; and
4. The current and historic improvement thresholds that allow a unit to qualify for vacancy decontrol are quite low and do not seem to reflect values that would indicate significant improvement was made to the property to justify it being rent decontrolled permanently.

While Management Partners also identified areas that could improve the administration of the decontrol process, their final recommendation emphasizes the need to establish a comprehensive set of housing policies that equitably address affordability and the needs of tenants and property owners because the permanent decontrol provisions may no longer be relevant. At the February 19, 2019 work session, Council provided a framework for staff to start the work to develop a comprehensive set of housing policies and Council has initiated these actions with the extension of just cause for eviction protections to all rental units in the City of Hayward.

Based on previous Council direction and the Management Partner's findings, the HHTF could recommend the elimination of the permanent vacancy decontrol provisions because the Council is considering a broader package of rent stabilization policies and the decontrol provisions may have run their intended course. Alternatively, the HHTF could consider a recommendation to significantly increase the improvement threshold for decontrol.

Staff anticipates returning to City Council with proposed legislation reflecting the recommendations of the HHTF as part of a comprehensive tenant protection policy on May 21, 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 May 29, 2018<sup>1</sup>, the City Council adopted a moratorium on vacancy decontrols in response to the community's concern about the loss of controlled rental units and to provide staff time to evaluate the vacancy decontrol process. Hayward's vacancy decontrol provisions are unique. Under state law, vacancy decontrol refers to a landlord's ability to raise rents to market rate, in rent-controlled units, once a tenant voluntarily vacates. While the rent is increased to market rate upon unit turn-over, the new tenant still has rent increase protections until that time. Under the vacancy decontrol provisions of the RRSO, a landlord

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<sup>1</sup> May 29, 2018 Staff Report and Attachments:  
<https://hayward.legistar.com/LegislationDetail.aspx?ID=3512726&GUID=CC5F9A5F-1885-4AD7-81B1-BFA7C9A88C41&Options=&Search=>

can file an application with the City to permanently eliminate 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. The improvement value is currently between \$1,500 and \$3,100 depending on the number of bedrooms and it was \$200 when the majority of the units were decontrolled in the 1980s. In the context of this report, vacancy decontrol refers to the permanent decontrol of rent-controlled units. The state's definition would still apply to any provisions created that limit rent increases.

On February 19, 2019<sup>2</sup>, 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 the consultant hired to evaluate the vacancy decontrol process.

A Request for Proposals to evaluate the decontrol process was released on September 9, 2018. Proposals were received on October 9, 2018. City staff selected and has contracted with Management Partners to review the vacancy decontrol process. The scope of work included the following:

- Gather information to develop an understanding of the RRSO, how its implementation has changed over time, how the vacancy decontrol process works, and related issues;
- Analyze the City's role in the decontrol process;
- Review a sampling of decontrol application and arbitrator's decisions specific to petitions requesting review of the status of a unit as decontrolled;
- Evaluation of the improvement value threshold;
- Conduct analysis for the purpose of making recommendations to improve the ordinance or administrative policies and identify any opportunities for program improvements; and
- Prepare a draft staff report and presentation to City Council.

Management Partners started this work on January 18, 2019 and has completed the report, which is included as Attachment II.

## **DISCUSSION**

Management Partners has completed the report on vacancy decontrol provisions that release housing units from rent stabilization permanently. In summary, Management Partners report found the following regarding the vacancy decontrol process:

1. Many of the housing units subject to the City's rent control ordinance are already decontrolled, leaving a very small number subject to the rent stabilization policies of the ordinance;

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<sup>2</sup> February 19, 2019 Staff Report and Attachments:

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

2. The City has historically viewed its role as a repository of decontrol applications as opposed to arbitrator of vacancy decontrol decisions;
3. Decontrol applications included the basic information required under the terms of the decontrol ordinance, yet applicants were not always required to provide receipts or other substantiation of improvements implemented; and
4. The current and historic improvement thresholds that allow a unit to qualify for vacancy decontrol are quite low and do not seem to reflect values that would indicate significant improvement was made to the property to justify it being rent decontrolled permanently.

Management Partners evaluated the City's role in the vacancy decontrol process and found that the City has historically viewed its role as a recordkeeper and has provided minimal oversight over the vacancy decontrol applications. This means that applicant landlords did not receive a positive notice of their unit's status following submission of the application and determination of the status of the unit as decontrolled is left to the arbitrator. As a result, the majority of the decontrol applications have no "determination" of the status.

Management Partners also reviewed vacancy decontrol applications. Management Partners found the decontrol applications were processed consistently and complied with the requirements of the ordinance. However, the ordinance is silent regarding submittal of supporting documentation to substantiate compliance with the ordinance. Management Partners also found that landlords frequently did not properly notice tenants regarding the status of a unit as decontrolled following initial compliance with the decontrol provisions.

Related to the improvement value threshold, Management Partners found that the threshold is relatively low. The improvements allowed provide little to no long-term value to tenants in exchange for permanent exclusion from the rent increase limitations as improvements are specifically related to unit improvements such as carpeting and replacement of appliances and exclude long-term capital improvements. The types of improvements allowed, and the amount required to be invested relative to the value of permanent release from rent stabilization accomplishes no clear long-term policy goal such as maintaining affordability or improving habitability of the rental inventory.

While Management Partners has identified areas where the vacancy decontrol process could be improved, they also recommend looking at the larger policy objective, which is rent stabilization and housing affordability. The vacancy decontrol process does not contribute to the overall objective of rent stabilization and allowed improvements to decontrol a unit do not provide long term value to the community. If active rent stabilization and housing affordability is desired, the current ordinance that includes permanent vacancy decontrol does not provide it.

### *Recommendation Options*

On February 19, 2019, the City Council expressed support for eliminating vacancy decontrol (Section 8) from the RRSO. Management Partners has completed its report and based on their findings, one option is the elimination of the permanent vacancy decontrol provisions because

the value of permanent release from rent stabilization accomplishes no clear long-term policy goal such as maintaining affordability or improving habitability of the rental inventory. Management Partners “suggest(s) that the current provisions be comprehensively retooled to cover more units and to use modern techniques that have been developed in other Bay Area communities over the last several years.” This is in line with Council direction on February 19, 2019 to create a mandatory mediation program with binding arbitration that will be extended to as many units as possible, the HHTF’s direction to propose to Council tenant retaliation protection provisions, and Council’s action on March 5, 2019 to extend just cause for eviction provisions to all units in Hayward.

An alternative option would be to consider significantly increasing the improvement threshold value and requiring the City to play a more active role in the determination of decontrol status.

In either of these options, rent-controlled units within the City would still convert to market rate rents upon tenants voluntarily vacating the units.

#### *Summary of Public Comments*

Comments from the Community Open House and related online survey both supported and opposed the elimination of vacancy decontrol. Comments in opposition were concerned that landlords would be disincentivized from investing in their properties, and that elimination of these provisions was unjust to landlords that have maintained rent-controlled units all these years. There was also a proposal to maintain the vacancy decontrol provisions but increase the decontrol threshold. Comments also indicated that the proposed elimination of Hayward’s vacancy decontrol was not completely understood. Some comments seem to indicate that community members thought the City was proposing to eliminate landlord’s right to raise the rents to market rate upon vacancy.

#### *Response to Comments*

If provisions of permanent decontrol are eliminated, due to state law, the City would retain provisions that allow rents to be raised to market rate rents upon voluntary vacancy. While the improvement value can be increased to provide a greater investment in Hayward housing stock, it is only an one-time investment for a permanent benefit to the landlord and there is no guarantee that the landlord will continue to invest in the property based on the unrestricted rents. While there is concern that landlords would not invest in their properties without the permanent vacancy decontrol provisions, even with rent increase limitations, a landlord can increase rents beyond the limit if they experience an unavoidable increase in operating and maintenance costs or are investing in capital improvements. Even without permanent vacancy decontrol provisions, a landlord would still be able to recover costs of investment in the property.

#### **FISCAL IMPACT**

There is no fiscal impact associated with this agenda item.

## 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 rental housing affordability 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.

On April 6, 2019, staff hosted a community open house to provide information about proposed changes to the RRSO and to solicit community feedback. At least 57 people/households attended based on the sign in information. Of these, 20 identified themselves as tenants, 10 identified themselves as landlords, 7 as industry professionals, 3 as other, and the balance did not disclose the information.

## NEXT STEPS

Over the next month, staff will draft legislation based on the HHTF's feedback. Staff will then return to the City Council with proposed legislation at the May 21, 2019 Council Meeting.

*Table 1. Rent Stabilization Ordinance Amendment Timeline*

Meeting	Topic	Date
City Council	Proposed Comprehensive Tenant Protection Legislation to Amend RRSO	May 21, 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.

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Kelly McAdoo, City Manager