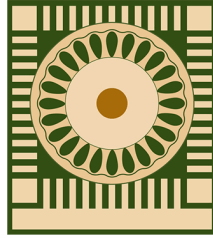


CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov



CITY OF
HAYWARD
HEART OF THE BAY

Agenda

Tuesday, June 18, 2019

7:00 PM

Council Chambers

City Council

CITY COUNCIL MEETING**CALL TO ORDER Pledge of Allegiance: Council Member Lamnin****ROLL CALL****CLOSED SESSION ANNOUNCEMENT****PUBLIC COMMENTS**

The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Information Items. The Council welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.

PRESENTATIONS

National Police Week

Commendation for Police Chief Mark Koller

Commendation for Hayward Students Awarded at Skills USA Competition

ACTION ITEMS

The Council will permit comment as each item is called for the Consent Calendar, Public Hearings, and Legislative Business. In the case of the Consent Calendar, a specific item will need to be pulled by a Council Member in order for the Council to discuss the item or to permit public comment on the item. Please notify the City Clerk any time before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.

1. [APPT 19-006](#) Appointment and Reappointment to the Hayward Youth Commission (Report from City Clerk Lens)

Attachments: [Attachment I Staff Report](#)
[Attachment II Resolution](#)

CONSENT

2. [MIN 19-083](#) Minutes of the Special Joint City Council/Hayward Redevelopment Successor Agency/Hayward Housing Authority Meeting on May 21, 2019

Attachments: [Attachment I Draft Minutes of 05/21/2019](#)

3. [MIN 19-084](#) Minutes of the City Council Meeting on May 28, 2019

Attachments: [Attachment I Draft Minutes of 5/28/2019](#)

4. [CONS 19-398](#) Adopt Resolutions Authorizing Sole Source Purchase of a John Deere 245G Excavator from PAPÉ Machinery and Transfer and Appropriation of Funds from the Water Replacement Fund to the Fleet Capital Management Fund

Attachments: [Attachment I Staff Report](#)
[Attachment II Resolution Authorizing Sole Source Purchase](#)
[Attachment III Resolution Authorizing Transfer](#)

5. [CONS 19-429](#) Approval of a Resolution Amending the Fiscal Year 2019 Operating Budget and Authorization to Transfer and Appropriate Water Operating Fund in the amount of \$45,400 for the Car Sharing Pilot Program

Attachments: [Attachment I Staff Report](#)
[Attachment II Resolution](#)

LEGISLATIVE BUSINESS

6. [LB 19-029](#) Approval of Round 1, Tier 2 Commercial Cannabis Permit for Always on Time Consulting and Precision Apothecary (Report from City Manager McAdoo)

Attachments: [Attachment I Staff Report](#)
[Attachment II Resolution](#)
[Attachment III Summary of Business Plans](#)
[Attachment IV Email and Memo](#)

7. [LB 19-031](#) Introduction of an Ordinance adding Chapter [X] of the Hayward Municipal Code to Adopt a New Residential Rent Stabilization and Tenant Protection Ordinance to Mitigate Displacement of Hayward Residents, including an Associated Budget Allocation and Updated Rent Review Fee to Administer the Program, and to Repeal the Existing Residential Rent Stabilization Ordinance No. 83-023 and the Emergency Ordinance Requiring Just Cause for Eviction Ordinance No. 19-04 (Report from City Manager McAdoo)

Attachments:

[Attachment I Staff Report](#)

[Attachment II Residential Rent Stabilization Ordinance](#)

[Attachment III Resolution Appropriating Funds](#)

[Attachment IV Resolution Amending the Master Fee Schedule](#)

[Attachment V Open House Materials](#)

[Attachment VI Public Comments from Open House](#)

[Attachment VII Final Project Report](#)

[Attachment VIII Summary of Proposed Mediation](#)

CITY MANAGER'S COMMENTS

An oral report from the City Manager on upcoming activities, events, or other items of general interest to Council and the Public.

COUNCIL REPORTS AND ANNOUNCEMENTS

Council Members can provide oral reports on attendance at intergovernmental agency meetings, conferences, seminars, or other Council events to comply with AB 1234 requirements (reimbursable expenses for official activities).

COUNCIL REFERRALS

Council Members may bring forward a Council Referral Memorandum (Memo) on any topic to be considered by the entire Council. The intent of this Council Referrals section of the agenda is to provide an orderly means through which an individual Council Member can raise an issue for discussion and possible direction by the Council to the appropriate Council Appointed Officers for action by the applicable City staff.

8. [RPT 19-313](#) Consider an Item for Discussion on a Future City Council Agenda Regarding Providing a Down Payment Assistance Program to Hayward Residents to Purchase Their First Home in Hayward, CA (Report from Council Member Wahab)

Attachments:

[Attachment I City Council Referral Memo](#)

ADJOURNMENT**NEXT MEETING, June 25, 2019, 7:00 PM****PUBLIC COMMENT RULES**

Any member of the public desiring to address the Council shall limit her/his address to three (3) minutes unless less or further time has been granted by the Presiding Officer or in accordance with the section under Public Hearings. The Presiding Officer has the discretion to shorten or lengthen the maximum time members may speak. Speakers will be asked for their name before speaking and are expected to honor the allotted time. Speaker Cards are available from the City Clerk at the meeting.

PLEASE TAKE NOTICE

That if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing.

PLEASE TAKE FURTHER NOTICE

That the City Council adopted Resolution No. 87-181 C.S., which imposes the 90-day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

****Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. Written comments submitted to the Council in connection with agenda items will be posted on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. ****

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.

Assistance will be provided to those requiring language assistance. To ensure that interpreters are available at the meeting, interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400.



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: APPT 19-006

DATE: June 18, 2019

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Appointment and Reappointment to the Hayward Youth Commission

RECOMMENDATION

That the City Council adopts the resolution (Attachment II) confirming the appointment to the Hayward Youth Commission of six (6) voting members, eleven (11) alternate members, as well as the reappointment of one (1) continuing member and the promotion of three (3) 2018 alternate members to voting members.

SUMMARY

The City conducted its annual recruitment for the Hayward Youth Commission (HYC) between March 7 and May 24, 2019, and a panel of representatives from the three local agencies (City of Hayward, Hayward Area Recreation and Park District (HARD), and the Hayward Unified School District (HUSD)) reviewed sixty-nine (69) applications and interviewed forty-nine (49) eligible applicants on June 6, 2019. The panel selected a total of seventeen (17) regular voting and alternate members. The same panel confirmed the reappointment of one (1) current member and the promotion of three (3) 2018 alternate members of the HYC.

ATTACHMENTS

Attachment I Staff Report
Attachment II Resolution



DATE: June 18, 2019

TO: Mayor and Council Members

FROM: City Clerk

SUBJECT: Appointment and Reappointment to the Hayward Youth Commission

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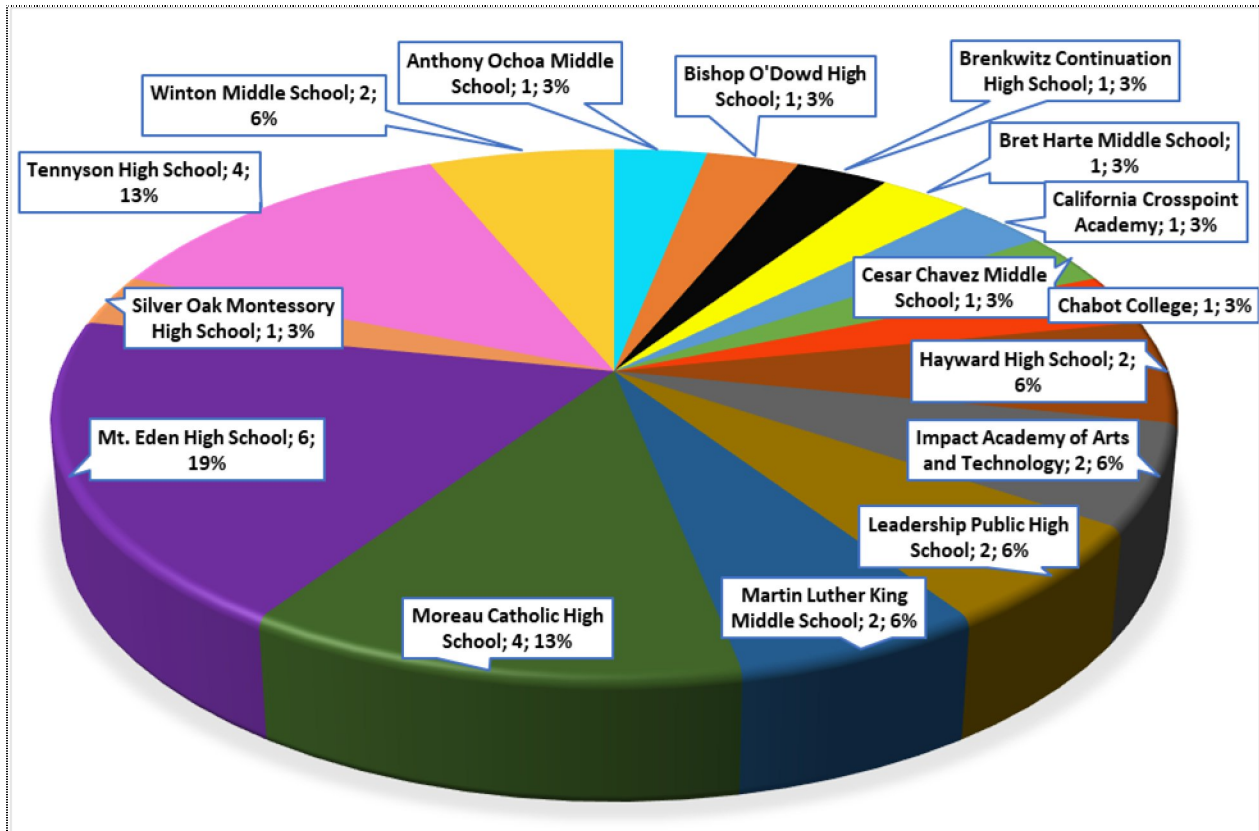
BACKGROUND

The annual recruitment for the HYC began on March 7, 2018. To allow a more inclusive representation of schools in the Hayward Youth Commission, recruitment materials were sent to seventeen (17) schools and institutions in Hayward, as well as the Eden Youth and Family Center and the Eden Area Regional Occupational Program Center (ROP). By the application deadline on May 24, 2019, the Office of the City Clerk had received sixty-nine qualified applications from every Hayward school.

On June 6, 2019, an interview panel comprised of representatives from the three local public agencies (City of Hayward, Hayward Area Recreation and Park District (HARD), and the Hayward Unified School District (HUSD)) interviewed fifty-two (52) candidates to fill vacancies on the Hayward Youth Commission (HYC). The agency representatives were: Mayor Halliday and Council Member Francisco Zermeño from the City of Hayward; Board President Rick Hatcher and Board Director Carol A. Pereira from HARD; and Board Trustee Dr. April Oquenda and Board Clerk Ken Rawdon from HUSD.

The interview panel unanimously selected seventeen (17) regular voting members and approved the reappointment of one (1) current member as presented in Attachment II. Following the process established in 2017, the panel also approved the promotion of 2018 alternate members Alessandra Eiras, Yessenia Yasmin Mendez Cohetero, and Darien West. The three agencies also unanimously approved an increase to the number of alternate members from nine to eleven positions to increase youth participation and ensure diversity. As vacancies occur throughout the year, appointment will be made from the alternate list of eleven candidates that was established. The current 2019 membership consists of thirty-two (32) representatives from all schools as depicted in the chart below.

2019 HAYWARD YOUTH COMMISSION MEMBERSHIP



FISCAL IMPACT

There is no fiscal impact with the adoption of this resolution.

STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Initiatives.

PUBLIC CONTACT

Information about the annual recruitment was disseminated through various channels as outlined below.

OUTREACH	CONTACT
Press release	324 page views
City's website	495 page views
Community Open House	57 individuals
36th Annual Citywide Clean-Up & Community Fair	200 individuals
Cinco de Mayo Celebration	~ 5,000 individuals
Schools and Institutions	17
Facebook	5,824 followers
Twitter	4,146 followers
NextDoor	19,372 followers
Instagram	1,304 followers
The Stack	67,807 readers
HUSD Subscribers	11,000 subscribers

NEXT STEPS

Following Council's action, the City Clerk will administer the oath of affirmation to the newly and reappointed members.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-

Introduced by Council Member _____

RESOLUTION CONFIRMING THE APPOINTMENT AND REAPPOINTMENT OF
MEMBERS OF THE HAYWARD YOUTH COMMISSION

BE IT RESOLVED that the City Council of the City of Hayward does hereby confirm the appointment of the below-named persons as members of the Hayward Youth Commission, for the terms as designated.

VOTING MEMBER	SCHOOL	SUCCEEDS	TERM EXPIRES
Yahya M. Elshawarbi	Brenkwitz High School	Shivani Ahuja	6/30/2021
Joseph Isaiah Franco	Chabot College	Danna Chavarria-Cruz	6/30/2021
Luis Ledezma	Tennyson High School	Francisco Chavez	6/30/2021
Yusef Talha Samimi	Mt. Eden High School	Celena Johnson	6/30/2021
Anna Vi Tran	Hayward High School	Briseida A. Rodriguez	6/30/2021
Cynthia Vertiz-Jimenez	Tennyson High School	Yacira Correa	6/30/2021
ALTERNATE MEMBER	SCHOOL		TERM EXPIRES
Saul Arrizon	Ochoa Middle School	Alessandra Eiras	6/30/2020
Ivan Benedikt Arroyo	Winton Middle School	Yessenia Cohetero	6/30/2020
Alejandro Correa-Alejo	Leadership Public School	Hugo Corona	6/30/2020
Linhdan Hoang Le	Martin Luther King Middle School	Erandi Rodriguez	6/30/2020
Israel Jose Mendez	Bret Harte Middle School	Leslie Sanchez	6/30/2020
James Mira	Moreau High School	Samara Sanders	6/30/2020
Christian Eric Morgan	Cesar Chavez Middle School	Dustin Shumate	6/30/2020
Katherine Q. Nhu Tran	Moreau High School	Darien West	6/30/2020
Pooja Rathaur	Mt. Eden High School	Mainyanna West	6/30/2020
Sruthy Sabesan	Impact Academy of Arts and Technology		6/30/2020
Vanna Van	Mt. Eden High School		6/30/2020

BE IT RESOLVED that the City Council of the City of Hayward does hereby confirm the reappointment of the below-named person as a member of the Hayward Youth Commission, for the term as designated.

VOTING MEMBER	SCHOOL	TERM EXPIRES
Cristian Hernandez-Perez	Hayward High School	6/30/2021

BE IT FURTHER RESOLVED that the City Council of the City of Hayward does hereby confirm the promotion of the below-named persons as members of the Hayward Youth Commission, for the term as designated.

VOTING MEMBER	SCHOOL	TERM EXPIRES
Alessandra Eiras	Mt. Eden High School	6/30/2021
Yessenia Cohetero	Mt. Eden High School	6/30/2021
Darien West	Bishop O'Dowd High School	6/30/2021

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: MIN 19-083

DATE: June 18, 2019

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Minutes of the Special Joint City Council/Hayward Redevelopment Successor Agency/Hayward Housing Authority Meeting on May 21, 2019

RECOMMENDATION

That the City Council approves the minutes of the Special Joint City Council/Hayward Redevelopment Successor Agency/Hayward Housing Authority meeting on May 21, 2019.

SUMMARY

The City Council held a meeting on May 21, 2019.

ATTACHMENTS

Attachment I Draft Minutes of 5/21/2019



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/HAYWARD
REDEVELOPMENT SUCCESSOR AGENCY/HAYWARD HOUSING AUTHORITY
MEETING
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, May 21, 2019, 7:00 p.m.**

The meeting of the City Council was called to order by Mayor Halliday at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Zermeño.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Márquez, Mendall, Lamnin, Wahab, Salinas
MAYOR Halliday
Absent: None

CLOSED SESSION ANNOUNCEMENT

The City Council convened in closed session at 6:00 p.m., concerning two items: 1) conference with real property negotiators pursuant to Government Code 54956.8 regarding Caltrans Parcel Group 8: Grove Way APNs: 415-0180-070-00, 415-0180-068-01, 415-0180-076-00, 415-0180-084-01, 415-0180-073-00, 415-0180-074-00, 415-0180-075-00, 415-0180-072-00, 415-0180-071-00, 415-0180-069-01, 415-0190-064-00, 415-0180-083-01, 415-0180-080-00, 415-0180-082-01, 415-0180-081-01; and 2) conference with legal counsel pursuant to Government Code section 54956.9(d)(2) regarding one case. City Attorney Lawson noted that Item 1 was dropped and not discussed and there was no action taken related to Item 2. City Attorney Lawson added that the City Council unanimously approved, with Council Member Zermeño moving and Council Member Márquez seconding, to add the case AGG, et al. v. City of Hayward, et al., to the agenda, pursuant to Government Code 54954.2 (b) (2), and there was no reportable action.

PRESENTATION

Mayor Halliday announced the City of Hayward's 2019 Environmental Sustainability Awards presentation. Council Member Mendall announced staff and students from Cherryland Elementary School and Fairview Elementary School for implementing activities that protect or enhance the environment and increase the environmental awareness in the student community. Council Member Mendall also recognized residents, Anita Cruz, Amanda Groziak and Kenneth Woodward, for their participation in the City's residential recycling program, energy-efficiency program and community leadership. Hayward Chamber of Commerce President, Kim Huggett, recognized businesses for energy efficiency, renewable energy, water conservation, recycling, organic composting, sustainable transportation and environmental education. The businesses were: Cox Automotive Manheim San Francisco Bay Area, EKC Technology, Life Chiropractic College West, St. Rose Hospital, and Eden Issei Terrace.

PUBLIC COMMENTS

Mr. David Whatley spoke about the teachers at New Haven Unified School District and schools in Hayward that have been on a strike and urged the City to support the schools.

Ms. Wynn Grcich, Hayward resident, spoke about the non-working fire alarms at Hayward schools and a shooter threat at Hayward High School.

Mr. Romeo Cruz, Hayward resident, submitted a speaker card but did not speak.

Ms. Amanda Groziak suggested the Council pass a resolution setting a goal for Hayward to transition to 100% clean energy renewable by a certain date. Council Member Mendall noted the City had already established a goal for all Hayward's municipal operations to be powered by 100% onsite renewable energy by 2025.

Mr. Charlie Peters, Clean Air Performance Professional representative, noted the United States Postal Service was exploring the idea of putting mail on self-driving trucks and spoke about making the use of methanol voluntary.

CONSENT

Consent Item No. 2 was removed from the Consent Calendar.

1. Minutes of the Special City Council Meeting on May 7, 2019 **MIN 19-069**

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously, to approve the minutes of the Special City Council Meeting on May 7, 2019.

2. Hayward Boulevard Safety Improvements Feasibility Study - Authorization for the City Manager to Execute a Professional Services Agreement with Kimley-Horn and Associates, Inc. and Appropriation of \$150,000 from the Measure BB, Fund 212 **CONS 19-295**

Staff report submitted by Public Works Director Ameri, dated May 21, 2019, was filed.

Council Member Mendall requested to continue the item to June 4, 2019, to allow the Council Infrastructure Committee the opportunity to review the item.

3. Approval of Plans and Specifications and Call for Bids for Trash Capture Device Installation on Arf Avenue **CONS 19-339**

Staff report submitted by Public Works Director Ameri, dated May 21, 2019, was filed.

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously, to approve the resolution:

Resolution 19-096, "Resolution Approving Plans and Specifications for the Arf Avenue Trash Capture Device Installation Project, Project No. 07675, and Call for Bids"



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/HAYWARD
REDEVELOPMENT SUCCESSOR AGENCY/HAYWARD HOUSING AUTHORITY
MEETING
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, May 21, 2019, 7:00 p.m.**

4. Fire Stations 2-5 Landscape Improvements: Approval of Plans and Specifications (Project Nos. 07476, 07477, 07478, and 07480) and Call for Bids **CONS 19-364**

Staff report submitted by Public Works Director Ameri, dated May 21, 2019, was filed.

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously, to approve the resolution:

Resolution 19-097, "Resolution Approving Plans and Specifications for the Fire Stations 2-5 Landscape Improvements (Project Nos. 07476, 07477, 07478 And 07480) and Call for Bids"

5. Resolution Authorizing the City Manager to Execute an Amendment to the Professional Services Agreement with Mark Thomas & Company in an Amount Not-to-Exceed \$475,000 for the Mission Boulevard Corridor Improvements Phase 3 Project **CONS 19-376**

Staff report submitted by Public Works Director Ameri, dated May 21, 2019, was filed.

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously, to approve the resolution:

Resolution 19-098, "Resolution Authorizing the City Manager to Execute an Amendment to the Professional Services Agreement with Mark Thomas & Company for Additional Services Associated with the Mission Boulevard Corridor Improvements Phase 3 Project"

6. Approval of a One-Year Extension of the Skywest Golf Course Lease Agreement between the City of Hayward and Hayward Area Recreation & Park District **CONS 19-356**

Staff report submitted by Public Works Director Ameri, dated May 21, 2019, was filed.

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously, to approve the resolution:

Resolution 19-099, "Resolution Authorizing the City Manager to Negotiate and Execute a One-Year Extension of the Skywest Golf Course Lease Agreement Between the City of Hayward and Hayward Area Recreation and Park District"

7. Authorize the City Manager to Negotiate and Execute an Agreement in the Amount of \$140,000 with Lookingpoint for Voicemail Upgrade to Cisco Unity **CONS 19-374**

Staff report submitted by Director of Technology/CIO Kostrzak, dated May 21, 2019, was filed.

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously, to approve the resolution:

Resolution 19-100, "Resolution of the City Council of the City of Hayward Authorizing the City Manager to Negotiate and Execute an Agreement Between the City of Hayward and Lookingpoint for Voicemail Upgrade to Cisco Unity"

8. Authorize the City Manager to Negotiate and Execute an Agreement with Lookingpoint for Next Care Complete Services in the Amount of \$105,600 Annually **CONS 19-378**

Staff report submitted by Director of Technology/CIO Kostrzak, dated May 21, 2019, was filed.

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously, to approve the resolution:

Resolution 19-101, "Resolution of the City Council of the City of Hayward Authorizing the City Manager to Negotiate and Execute an Agreement Between the City of Hayward and Lookingpoint for Next Care Complete Services"

PUBLIC HEARING

9. Gann Appropriations Limit for FY 2020 (Report from Finance Director Claussen) **PH 19-046**

Staff report submitted by Finance Director Claussen, dated May 21, 2019, was filed.

Finance Director Claussen provided a synopsis of the staff report.

There being no public comments, Mayor Halliday opened and closed the public hearing at 8:02 p.m.



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/HAYWARD
REDEVELOPMENT SUCCESSOR AGENCY/HAYWARD HOUSING AUTHORITY
MEETING
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, May 21, 2019, 7:00 p.m.**

It was moved by Council Member Lamnin, seconded by Council Member Mendall, and carried unanimously, to approve the resolution:

Resolution 19-102, "Adoption of Appropriations Limit for Fiscal Year 2020 Pursuant to Article XIII B of the Constitution of the State of California"

10. Public Hearing for the Proposed FY 2020 Operating Budgets for the City of Hayward, Hayward Redevelopment Successor Agency, and Hayward Housing Authority; and FY 2020 Capital Improvement Program Budget; and Approval of the FY 2020 Operating Budgets and Appropriations for FY 2020; Approval of the FY 2020 Capital Improvement Program Budget and Appropriations for FY 2020; Approval of the Hayward Redevelopment Successor Agency Budget; and Approval of the Hayward Housing Authority Budget (Report from Finance Director Claussen) **PH 19-049**

Staff report submitted by Finance Director Claussen, dated May 21, 2019, was filed.

Finance Director Claussen provided a synopsis of the staff report.

Discussion ensued among Council Members and City staff regarding the Groundskeeper positions; the proposed budget; the use of Real Property Transfer Tax funds; and funding the OPEB liabilities.

There being no public comments, Mayor Halliday opened and closed the public hearing at 8:18 p.m.

Council Member Zermeño offered a motion per staff's recommendation. Council Member Márquez seconded the motion.

It was clarified that the additional \$4,000 for Arts category, which was approved at a prior Council meeting, was included in the recommended budget; that the recommended budget did not include the additional \$100,000 for Social Services funding; and the proposal included four (4) FTE Groundskeeper positions out of Measure C.

Members of the City Council acknowledged staff efforts preparing the budget and thanked labor groups, the organization, residents, and the Council Budget and Finance Committee.

It was moved by Council Member Zermeño, seconded by Council Member Márquez, and carried unanimously, to approve the resolution:

Resolution 19-103, “Resolution Approving the Operating Budget of the City of Hayward for Fiscal Year 2020; Adopting Appropriations for Fiscal Year 2020, Except for General Fund Community Agency Funding”

Resolution 19-104, “Resolution Approving and Appropriating Community Development Block Grant (CDBG) Allocations for FY 2020”

Resolution 19-105, “Resolution Approving and Appropriating General Fund Community Agency Allocations for Fiscal Year 2020”

Resolution 19-106, “Resolution Approving Capital Improvement Projects for Fiscal Year 2020”

Redevelopment Successor Agency Resolution 19-01, “Resolution of the City Council of the City of Hayward, Acting as the Governing Board of the Successor Agency for the Redevelopment Agency of the City of Hayward, Approving the Budget of the Redevelopment Successor Agency of the City of Hayward and Adopting Appropriations for Fiscal Year 2020”

Hayward Housing Authority Resolution 19-01, “Resolution Confirming the Proposed Hayward Housing Authority Budget for Fiscal Year 2020”

CITY MANAGER’S COMMENTS

City Manager McAdoo announced the Police Department would be hosting the Tip-A-Cop at Applebee’s on May 23, 2019, to support the Special Olympics-Northern California.

COUNCIL REPORTS AND ANNOUNCEMENTS

Council Member Zermeño announced the Keep Hayward Clean and Green Task Force was organizing a neighborhood clean-up event to beautify the Southgate neighborhood on May 25, 2019.

Mayor Halliday shared that interviews to serve on the Community Advisory Panel to the Chief of Police were underway and the last day of interviews was scheduled for May 29, 2019.

COUNCIL REFERRALS

11. Consider an Item for Discussion on a Future City Council Agenda Regarding the Provision of Housing Development Incentives **RPT 19-295**



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/HAYWARD
REDEVELOPMENT SUCCESSOR AGENCY/HAYWARD HOUSING AUTHORITY
MEETING
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, May 21, 2019, 7:00 p.m.**

Council memorandum submitted by Council Member Wahab, dated May 21, 2019, was filed.

Council Member Wahab spoke about the referral and City Manager McAdoo responded to questions posed from members of the City Council.

There being no public comments, Mayor Halliday opened and closed the public comments section at 8:50 p.m.

It was moved by Council Member Wahab, seconded by Mayor Halliday, and failed by the following vote, to consider an item for discussion on a future City Council agenda regarding the provision of housing development incentives:

AYES: COUNCIL MEMBERS Márquez, Wahab
NOES: COUNCIL MEMBERS Zermeño, Mendall, Lamnin, Salinas
MAYOR Halliday
ABSENT: None
ABSAINT: None

12. Consider an Item for Discussion on a Future City Council Agenda Regarding a Hayward Fourth of July Morning Diversity Parade and Evening Fireworks Show **RPT 19-296**

Council memorandum submitted by Council Member Wahab, dated May 21, 2019, was filed.

Council Member Wahab spoke about the referral and City Manager McAdoo responded to questions posed from members of the City Council.

There being no public comments, Mayor Halliday opened and closed the public comments section at 9:02 p.m.

It was moved by Council Member Wahab, seconded by Mayor Halliday, and failed by the following vote, to consider an item for discussion on a future City Council agenda regarding a Hayward Fourth of July morning diversity parade and evening fireworks show:

AYES: COUNCIL MEMBER Wahab
NOES: COUNCIL MEMBERS Zermeño, Márquez, Mendall, Lamnin, Salinas
MAYOR Halliday
ABSENT: None
ABSAINT: None

ADJOURNMENT

Mayor Halliday adjourned the meeting at 9:06 p.m. in memory of retired Battalion Chief Edmond “Ed” Franke Jr.

Edmond “Ed” Franke Jr. was hired as a Firefighter and stayed with the Hayward Fire Department for 29 years, became Hayward’s First Firefighter of the Year in 1970 and retired in 1991 as Battalion Chief with the assignment of Fire Marshal. Mayor Halliday asked City staff to work with the family and plant a tree in memory of retired Battalion Chief Edmond “Ed” Franke Jr.

APPROVED

Barbara Halliday
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: MIN 19-084

DATE: June 18, 2019

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Minutes of the City Council Meeting on May 28, 2019

RECOMMENDATION

That the City Council approves the minutes of the City Council meeting on May 28, 2019.

SUMMARY

The City Council held a meeting on May 28, 2019.

ATTACHMENTS

Attachment I Draft Minutes of 5/28/2019



MINUTES OF THE CITY COUNCIL MEETING

Council Chambers

777 B Street, Hayward, CA 94541

Tuesday, May 28, 2019, 7:00 p.m.

The meeting of the City Council was called to order by Mayor Halliday at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Mendall.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Mendall, Lamnin, Wahab, Salinas
MAYOR Halliday

Absent: COUNCIL MEMBER Márquez

Mayor Halliday noted that Council Member Márquez was attending her sister's graduation, and she would not be participating on Public Hearing No. 11 due to the close proximity to her family's business.

CLOSED SESSION ANNOUNCEMENT

The City Council convened in closed session at 5:00 p.m., concerning four items: 1) conference with real property negotiators pursuant to Government Code 54956.8 regarding City Center, 22300 Foothill Boulevard, Hayward, APNs: 415-0250-112-00, 415- 0250-111-02 and 415-0250-113-00; 2) conference with real property negotiators pursuant to Government Code 54956.8 regarding Caltrans Parcel Group 8: Grove Way APNs: 415-0180-070-00, 415-0180-068-01, 415-0180-076-00, 415-0180-084-01, 415-0180-073-00, 415-0180-074-00, 415-0180-075-00, 415-0180-072-00, 415-0180-071-00, 415-0180-069-01, 415-0190-064-00, 415-0180-083-01, 415-0180-080-00, 415-0180-082-01, 415-0180-081-01; 3) conference with legal counsel pursuant to Government Code 54956.9(d)(2) regarding one anticipated case; and 4) public employment pursuant to Government Code 54957 regarding the City Attorney's annual evaluation. Mayor Halliday reported there was no reportable action related to Item 4 and City Attorney Lawson indicated there was no reportable action related to Items 1, 2 and 3.

The following speakers addressed the City Council prior to the Closed Session and expressed concern about the sale of Caltrans Parcel Group 8 and supported a Community Land Trust to ensure affordability of homes for underserved community residents.

Ms. Ida Alvarez
Mr. Nestor Castillo
Mr. Tyler Dragoni
Ms. Sandy Frost
Mr. Paul Keim
Ms. Ann Maris
Mr. Peter Rosen
Ms. Barisha Spriggs

PRESENTATION

Mayor Halliday read a Proclamation declaring the month of June as Lesbian, Gay, Bisexual, Transgender, Questioning, Queer, Intersex, 2-Spirit and Gender Non-Conforming Pride Month in the City of Hayward and further recognized Gay Queer Youth Prom as an affirmative, valuable, welcoming, and all-inclusive diverse community event. Ms. Rochelle Collins, Project Eden Program Director, accepted the Proclamation.

PUBLIC COMMENTS

Mayor Halliday, with City Council's concurrence, moved Public Hearing No. 9 before public comments as the item had been continued from the May 14, 2019 Council meeting.

CONSENT

1. Minutes of the Special City Council Meeting on May 11, 2019 **MIN 19-075**

It was moved by Council Member Zermeño, seconded by Council Member Mendall, and carried unanimously, to approve the minutes of the Special City Council Meeting on May 11, 2019.

2. Approval of FY 2019-2020 Proposed Downtown Business Improvement Area Budget **CONS 19-387**

Staff report submitted by Deputy City Manager Ott, dated May 28, 2019, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Mendall, and carried unanimously, to approve the resolution:

Resolution 19-108, "Resolution Accepting the Final Funding Recommendation for the Downtown Hayward Business Improvement Area (DBIA) for Fiscal Year 2020"

3. Adoption of a Resolution to Dissolve the Downtown Business Improvement Area Advisory Board **CONS 19-388**

Staff report submitted by Deputy City Manager Ott, dated May 28, 2019, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Mendall, and carried unanimously, to approve the resolution:

Resolution 19-109, "Resolution Dissolving the Downtown Business Improvement Area Advisory Board"



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-
4. Adoption of a Resolution Authorizing the City Manager to Execute Professional Services Agreements with Koff & Associates to Provide Human Resources and Compensation Review Services in an Amount Not to Exceed One Hundred Thousand Dollars (\$100,000) **CONS 19-390**

Staff report submitted by Human Resources Director Collins, dated May 28, 2019, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Mendall, and carried unanimously, to approve the resolution:

Resolution 19-110, "Resolution Authorizing the City Manager or Her Designee to Execute Professional Services Agreements with Koff & Associates to Provide Human Resources and Recruitment Services in a Total Amount Not to Exceed One Hundred Thousand Dollars (\$100,000)"

5. Adoption of a Resolution Authorizing the City Manager to Execute a Lease Agreement with the Federal Aviation Administration for Operational and Administrative Space at Hayward Executive Airport **CONS 19-391**

Staff report submitted by Public Works Director Ameri, dated May 28, 2019, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Mendall, and carried unanimously, to approve the resolution:

Resolution 19-111, "Resolution Authorizing the City Manager to Execute a Lease Agreement with the Federal Aviation Administration for the Lease of Airport Property"

6. Professional Services Agreement with St. Francis Electric, Inc.: Approval of Amendment No. 2 to Increase the Agreement by \$200,000 for a Total Not-to-Exceed Amount of \$475,000 **CONS 19-389**

Staff report submitted by Public Works Director Ameri, dated May 28, 2019, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Mendall, and carried unanimously, to approve the resolution:

Resolution 19-112, "Resolution Authorizing the City Manager to Execute Amendment No. 2 to the Professional Services Agreement with St. Francis Electric, Inc. for On-Call Streetlight and Traffic Signal Maintenance Services"

Resolution 19-113, "Resolution Authorizing the Appropriation of \$200,000 from Various Capital Improvement Projects in Fund 210-Gas Tax to Support On-Call Streetlight and Traffic Signal Maintenance Services"

7. Adoption of a Resolution Authorizing the City Manager to Execute an Amendment to the Professional Services Agreement with Black & Veatch Corporation to Increase the Contract Amount by \$98,600 for Additional Engineering Services **CONS 19-399**

Staff report submitted by Public Works Director Ameri, dated May 28, 2019, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Mendall, and carried unanimously, to approve the resolution:

Resolution 19-114, "Resolution Authorizing the City Manager to Amend the Agreement with Black & Veatch Corporation to Increase the Contract Amount for Additional Engineering Services for the Water Pollution Control Facility (WPCF) Phase II Facilities Plan Project No. 07708 by \$98,600, to a Not to Exceed Amount of \$948,600"

8. Adoption of a Resolution Authorizing the City Manager to Execute a New First Responder Advanced Life Support (FRALS) Agreement with Alameda County **CONS 19-384**

Staff report submitted by Fire Chief Contreras, dated May 28, 2019, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Mendall, and carried unanimously, to approve the resolution:

Resolution 19-115, "Resolution Authorizing the City Manager to Negotiate and Execute a New First Responder Advanced Life Support Provider Agreement with the County of Alameda, Effective Through June 30, 2019"

Related to Consent No. 3, Council Member Lamnin commended the service of the members of the Downtown Business Improvement Area Advisory Board.



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777 B Street, Hayward, CA 94541
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PUBLIC HEARING

9. Application to Amend Chapter 10, Article 1 (Zoning Ordinance) and Article 2 (Off-Street Parking Regulations) related to the creation of new Industrial District Regulations within the Hayward Municipal Code and the Adoption of Industrial District Design Guidelines (Report from Development Services Director Simpson) **PH 19-054**

Staff report submitted by Development Services Director Simpson, dated May 28, 2019, was filed.

Development Services Director Simpson announced the report and introduced Senior Planner Schmidt who noted the item was a continued public hearing from May 14, 2019, and provided a synopsis of the staff report which included information subsequent to May 14, 2019.

Mayor Halliday reopened the public hearing at 7:16 p.m.

Mr. George Clever, owner at the former Gillig's company, requested the height limit be removed from the new regulations to retain flexibility.

Mayor Halliday closed the public hearing at 7:18 p.m.

Discussion ensued among Council Members and City staff regarding height restrictions and flexibility through a Variance process, Planned Development PD process, or Major Site Plan Review process.

Council Member Salinas offered a motion per staff's recommendation and Council Member Mendall seconded the motion.

Council Member Lamnin offered a friendly amendment to allow for a height increase in the IP (Industrial Park) and IG (General Industrial) Districts through a Major Site Plan Review process which would require Planning Commission and City Council approval.

Council Member Mendall and Council Member Salinas were amenable to the friendly amendment.

It was moved by Council Member Salinas, seconded by Council Member Mendall, and carried with the following vote to approve the resolution and introduce the ordinance with a friendly amendment to allow for a height increase in the IP (Industrial Park) and IG (General Industrial) Districts through a Major Site Plan Review process which would require Planning Commission and City Council approval:

AYES: COUNCIL MEMBERS Zermeño, Mendall, Lamnin, Wahab, Salinas
MAYOR Halliday
NOES: NONE
ABSENT: COUNCIL MEMBER Márquez
ABSTAIN: NONE

Resolution 19-107, “Resolution to Adopt Amendments to the Zoning Map and Text Amendments to Chapter 10, Article 1 (Zoning Ordinance) and Article 2 (Parking Regulations) of the Hayward Municipal Code and Adoption of Industrial District Design Guidelines Related to a Comprehensive Update of the Industrial District Regulations”

Introduction of Ordinance 19-_, “An Ordinance Amending the Zoning Map and Chapter 10, Article 1 (Zoning Ordinance and Article 2 (Parking Regulations) of the Hayward Municipal Code Related to a Comprehensive Update of the Industrial District Regulations”

PUBLIC COMMENTS

Council Member Wahab commented she had asked for an independent investigation of use of deadly force which would be added to the following City Council agenda.

Ms. Wynn Grich, Hayward resident, spoke about schools without alarms, the proposed fireworks and parade request that was turned down, and a bill to permit composting human bodies.

Mr. Charlie Peters, Hayward resident, spoke about the Eden I&R 2-1-1 Program and his experience with a long wait time.

Mr. Jim Drake, Hayward resident, spoke about Conditions of Approval for Taqueria El Mezcal and the time modification for deliveries and trees that were replaced.

The following speakers spoke about discrepancies in District Attorney O’Malley’s investigation report which found insufficient evidence to prosecute Hayward police officers Phillip Woolley and Michael Clark for the death of Agustin Gonzalez; and requested an independent investigation, transparency and accountability.

Ms. Cynthia Nunes, cousin of Agustin Gonzalez

Mayor Halliday called for a recess at 7:47 p.m. and reconvened the meeting at 7:49 p.m.

Mr. Gerald Smith

Ms. Karla Gonzalez, mother of Agustin Gonzalez

Mr. Augie Gonzalez, father of Agustin Gonzalez

Mr. Gilbert Espinoza, Hayward resident



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Ms. Samantha Watts, cousin of Agustin Gonzalez
Mr. Steve Jacobson
Ms. Maria Nunes, aunt of Agustin Gonzalez
Ms. Tracy Rosenberg, Media Alliance and Oakland Privacy Public Safety Committee Alliance
Ms. Lindsay Williams
Ms. Jessica Hernandez

Mr. Thomas Birt, Hayward resident, spoke about the current request for proposal for Caltrans Parcel Group 5 and recommended that caution be exercised when developing the area.

Ms. Bernadette Chan, Hayward resident, requested that a nighttime security company be engaged to patrol the area of Bunker Hill Boulevard, Bunker Hill Court and Maitland Drive to address security concerns.

Mayor Halliday called for a recess at 8:28 p.m. and reconvened the meeting at approximately 8:35 p.m.

PUBLIC HEARING (Continued)

10. Proposal to Subdivide an Existing 8.88 Acre Parcel into 22 Parcels to Allow the Construction of 19 Single-Family Residences with Common Open Space Areas and Related Site Improvements at 29080 Fairview Avenue (APN 085A-6428-002-00) by Erik Hayden of Hayden Land Company, LLC (Applicant) on Behalf of Carrie Aitken (Owner) Requiring a Tentative Tract Map, Planned Development (PD) Rezone, and Mitigated Negative Declaration with Mitigation Monitoring and Reporting Program (MMRP) Application No. 201603891 (Report from Development Services Director Simpson) **PH 19-050**

Staff report submitted by Development Services Director Simpson, dated May 28, 2019, was filed.

Development Services Director Simpson announced the report and introduced Senior Planner Golubics who provided a synopsis of the staff report. Senior Planner Golubics added that staff was proposing to amend Condition of Approval No. 14 by adding the language, "currently in effect" after the beginning of the condition, "Affordable housing in-lieu fees..."

Discussion ensued among Council Members and City staff regarding: the trees that were scheduled to be removed; making electric homes with no natural gas; affordable housing funds from in-lieu fees; requirement for parking cars in garages; additional traffic generated from the proposed project; and overall parking for the project.

Mayor Halliday opened the public hearing at 8:52 p.m.

Ms. Carrie Aitken, property owner and developer, spoke about the proposed development.

Mr. Erik Hayden, consultant and project partner, and Mr. Brian Glick, landscape architect, answered questions posed by members of the City Council.

The following speakers expressed support for the proposed project noting it would be an appropriate addition to the area and complementary to Stonebrae and Bailey Ranch developments.

Mr. Paris and Ms. Maria Greenwood, Hayward residents
Mr. Julio Romero, Hayward resident, Hayward business owner, Downtown Hayward Improvement Association member and Hayward Business Association vice president
Mr. James Cochrane, Hayward resident

Mayor Halliday closed the public hearing at 9:06 p.m.

Council Member Zermeño offered a motion per staff's recommendation with a friendly amendment to increase the number of trees planned to be removed from 73 to 78.

Council Member Salinas seconded the motion.

Council Member Lamnin offered three friendly amendments: evaluate adding five additional trees, evaluate making homes all electric, and evaluate adding affordable units onsite.

Council Member Zermeño and Council Member Salinas were amenable to the friendly amendments to evaluate adding five additional trees and evaluate making homes all electric homes and preferred to retain affordable housing in-lieu fees.

Council Member Mendall was supportive of the two friendly amendments and encouraged the applicant to look into making the homes all electric and for staff to communicate with applicants early in the process.

Council Member Lamnin noted there were typographical errors in Conditions of Approval 50(H), 60 and 61 that staff was agreeable to correcting. Council Member Lamnin offered a further amendment to add a condition of approval requiring garages to be used for parking cars. Council Member Zermeño and Council Member Salinas were amenable to the additional condition.

It was moved by Council Member Zermeño, seconded by Council Member Salinas, and carried with the following vote to approve the resolution and introduce the ordinance with three friendly amendments: evaluate adding five additional trees scheduled for removal, evaluate the possibility of making each new residence an all-electric home, and add a Condition of Approval requiring garages to be used for parking cars.

AYES:	COUNCIL MEMBERS Zermeño, Mendall, Lamnin, Wahab, Salinas MAYOR Halliday
NOES:	NONE
ABSENT:	COUNCIL MEMBER Márquez
ABSTAIN:	NONE



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Resolution 19-116, "Resolution to Adopting the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program and Approving the Planned Development Rezone with a Vesting Tentative Tract Map Pertaining to Construction of 19 New Single-Family Residences at a Site Located at 29080 Fairview Avenue"

Introduction of Ordinance 19-_, "An Ordinance Amending Chapter 10, Article 1 (Zoning Ordinance) of the Hayward Municipal Code by Rezoning Certain Property to Planned Development District in Connection with Zone Change and Vesting Tentative Map Application No. 201603891 to Accommodate 19 Single-Family Homes at 29080 Fairview Avenue"

11. Proposed Cannabis Retail Dispensary at 1004 B Street (Assessor Parcel No. 428-0061-056-00) by Siavash Afshar on Behalf of Hayward Station (Applicant); Alfred J Antonini (Property Owner), Requiring Approval of Conditional Use Permit - Application No. 201806005 (Report from Development Services Director Simpson) **PH 19-051**

Staff report submitted by Development Services Director Simpson, dated May 28, 2019, was filed.

Development Services Director Simpson announced the report and introduced Senior Planner Schmidt who provided a synopsis of the staff report.

Discussion ensued among Council Members and City staff regarding: standardizing the Community Benefit condition to apply to all businesses equally; Condition of Approval No. 14 regarding transfer of ownership; and adding language to Condition of Approval No. 23 to indicate that cannabis taxes should be remitted to the City of Hayward on a quarterly or semi-annually basis.

Mayor Halliday opened the public hearing at 9:46 p.m.

Mr. Robert Lopez, Hayward resident, expressed concern that the proposed site for the cannabis retail dispensary is a thoroughfare for students and an area already impacted by traffic.

Mayor Halliday closed the public hearing at 9:50 p.m.

Council Member Mendall offered a motion per staff's recommendation with two modifications: 1) modify Condition of Approval No. 9 by standardizing it at one percent (1%) of revenue to be

remitted to the Hayward Community Foundation on a quarterly basis; and 2) add language to Condition of Approval No. 23 to indicate that all cannabis taxes would be remitted to the City of Hayward on a quarterly basis. Council Member Mendall spoke about the location of the proposed establishment.

Council Member Zermeño seconded the motion echoing Council Member Mendall's comments.

Council Member Salinas expressed opposition to the proposal noting the City of Hayward did not need the type of industry. Council Member Salinas noted the statement at the beginning of page seven of Attachment IV (Community Outreach Overview) was not accurate and he had expressed that the proposed retailer was the wrong one for the building in Downtown, and added there were current spaces in Downton serving kids.

Mayor Halliday reopened the public hearing at 10:07 p.m.

Mr. Siavash Afshar, Hayward Station Applicant, sought clarification about the amendments to the two conditions of approval and responded to questions posed by members of the City Council.

Mayor Halliday closed the public hearing at 10:19 p.m.

Council Member Lamnin asked that staff review the Social Host Accountability Ordinance to ensure compliance with marijuana use.

Mayor Halliday noted she could not support the use permit because it could not meet the findings for approval, the Community Benefit component was vague, the entrance to the proposed establishment was on a main street, the proposal was in proximity to sensitive receptors in the area and to the library, and was not in harmony with applicable City policies under the current ordinance.

Discussion ensued about the expectations for cannabis dispensaries and buffer zones in the zoning districts.

It was moved by Council Member Mendall, seconded by Council Member Zermeño, and failed with the following vote, to approve staff's recommendation with two friendly amendments: 1) modify Condition of Approval No. 9 by standardizing it at one percent (1%) of revenue to be remitted to the Hayward Community Foundation on a quarterly basis; and 2) add language to Condition of Approval No. 23 to indicate that all cannabis taxes should be remitted to the City on a quarterly basis.

AYES:	COUNCIL MEMBERS Mendall, Lamnin
NOES:	COUNCIL MEMBERS Zermeño, Wahab, Salinas MAYOR Halliday
ABSENT:	COUNCIL MEMBER Márquez
ABSTAIN:	NONE



MINUTES OF THE CITY COUNCIL MEETING
Council Chambers
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Tuesday, May 28, 2019, 7:00 p.m.

It was moved by Mayor Halliday, seconded by Council Member Salinas, and approved with the following vote, to direct staff to return on June 18, 2019, with findings for denial.

AYES: COUNCIL MEMBERS Zermeño, Wahab, Salinas
MAYOR Halliday
NOES: COUNCIL MEMBERS Mendall, Lamnin
ABSENT: COUNCIL MEMBER Márquez
ABSTAIN: NONE

CITY MANAGER'S COMMENTS

There were none.

COUNCIL REPORTS AND ANNOUNCEMENTS

There were none.

COUNCIL REFERRALS

12. Request to Fly the Rainbow Pride Flag on One of the Flagpoles in City Hall Plaza from June 1 to June 30, 2019 **RPT 19-299**

Memorandum submitted by Council Member Lamnin, Council Member Márquez, and Mayor Halliday, dated May 28, 2019, was filed.

Mayor Halliday spoke about the referral and City Manager McAdoo responded to questions posed by members of the City Council.

City Manager Zermeño requested that the flag fly on the City of Hayward pole.

Council Member Lamnin offered two clarifications: the intent of the request was for every year in June, and the City had accepted the Commitment to an Inclusive, Equitable, and Compassionate Community.

Mayor Halliday opened the public comments section at 10:39 p.m.

Ms. Rochelle Collins, Project Eden Program Director, thanked the City for the consideration of flying the flag.

Mr. Robert Lopez expressed support for the referral.

Mayor Halliday closed the public comments section at 10:41 p.m.

It was moved by Council Member Mendall, seconded by Council Member Wahab, and approved by the following vote, to accept the request with clarifications: 1) fly the flag on the City of Hayward flag pole, 2) consider the request for June of every year, and 3) the City accepted the Commitment to an Inclusive, Equitable, and Compassionate Community:

AYES: COUNCIL MEMBERS Zermeño, Mendall, Lamnin, Wahab, Salinas
MAYOR Halliday
NOES: NONE
ABSENT: COUNCIL MEMBER Márquez
ABSAINT: NONE

ADJOURNMENT

Mayor Halliday adjourned the meeting at 10:49 p.m., in memory of David “Dave” Tuck in recognition for his seventeen years of service to the City Hayward. Dave Tuck joined the City of Hayward on February 25, 2002 as a temporary laborer in the Water Distribution Division, was hired as a full-time employee on August 12, 2002, was promoted to a Utility Worker on June 16, 2003, and had the primary responsibility for all of the Water Distribution’s Underground Service Alert (USA) water main markings. Mayor Halliday asked City staff to work with the family and plant a tree in memory of David Tuck.

APPROVED

Barbara Halliday
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: CONS 19-398

DATE: June 18, 2019

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT

Adopt Resolutions Authorizing Sole Source Purchase of a John Deere 245G Excavator from PAPÉ Machinery and Transfer and Appropriation of Funds from the Water Replacement Fund to the Fleet Capital Management Fund

RECOMMENDATION

That Council adopts the attached resolution authorizing the sole source purchase of a John Deere 245G Excavator from PAPÉ Machinery, in an amount not to exceed \$245,770 (Attachment II), and transfer of funds from the Water Replacement Fund to the Fleet Capital Management Fund for appropriation and purchase of the excavator (Attachment III).

SUMMARY

The City's Utilities Division operates and maintains all water and wastewater collection system facilities, including water distribution system repairs. Division staff frequently uses a rented excavator to perform this work, which often includes hauling of spoils (asphalt, dirt, and debris) from pipeline maintenance and replacement work, and transporting heavy water pipe fittings over rough terrain. Based on past rental expenses and frequency of use, staff has determined that it would be more cost-effective and efficient to purchase an excavator to perform future work. Utilities staff is trained to operate the John Deere 245G excavator, which possesses the features and capabilities best suited for the type of work the Utilizes Division performs. PAPÉ Machinery is the only authorized John Deere dealer in Hayward; therefore, staff recommends authorization for a sole source purchase agreement with PAPÉ Machinery, in an amount not to exceed \$245,770, for the purchase of a John Deere 245G excavator.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution Authorizing Sole Source Purchase
Attachment III	Resolution Authorizing Transfer and Appropriation



DATE: June 18, 2019

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Adopt Resolutions Authorizing Sole Source Purchase of a John Deere 245G Excavator from PAPÉ Machinery and Transfer and Appropriation of Funds from the Water Replacement Fund to the Fleet Capital Management Fund

RECOMMENDATION

That Council adopts the attached resolution authorizing the sole source purchase of a John Deere 245G Excavator from PAPÉ Machinery, in an amount not to exceed \$245,770 (Attachment II), and transfer of funds from the Water Replacement Fund to the Fleet Capital Management Fund for appropriation and purchase of the excavator (Attachment III).

SUMMARY

The City's Utilities Division operates and maintains all water and wastewater collection system facilities, including water distribution system repairs. Division staff frequently uses a rented excavator to perform this work, which often includes hauling of spoils (asphalt, dirt, and debris) from pipeline maintenance and replacement work, and transporting heavy water pipe fittings over rough terrain. Based on past rental expenses and frequency of use, staff has determined that it would be more cost-effective and efficient to purchase an excavator to perform future work. Utilities staff is trained to operate the John Deere 245G excavator, which possesses the features and capabilities best suited for the type of work the Utilizes Division performs. PAPÉ Machinery is the only authorized John Deere dealer in Hayward; therefore, staff recommends authorization for a sole source purchase agreement with PAPÉ Machinery, in an amount not to exceed \$245,770, for the purchase of a John Deere 245G excavator.

BACKGROUND

An excavator is a piece of heavy construction equipment that is used for digging, creating trenches, demolition, moving, and hauling materials. Various excavator models have different power requirements, weights, and bucket sizes, all of which determine the amount of material that can be moved at one time and how long it will take to complete a job. Since 2014, the Utilities Division has rented excavators, including a John Deere 245G, to perform pipeline maintenance and replacement work, such as trenching, hauling of pipe and spoils, and transporting heavy water fittings over rough terrain. Staff also uses excavators to assist with other tasks, such as clearing storm drains and creek cleaning in preparation of wet weather. The use of an excavator has become an essential part of Utilities operations.



A rented excavator being used to repair a utility pipeline.

Prior to 2014, Utilities staff used a backhoe and wheel loader, instead of an excavator, to perform work. Although these types of equipment are similar to an excavator, there are distinct differences as they are designed for different uses. Compared to an excavator, the backhoe and wheel loader have lower reach and lifting capacity, insufficient power to break thick, hard, and reinforced concrete, and are unstable in rough terrain. These limitations result in inefficiencies and greater risk of damage to equipment.



Backhoe



Wheel Loader

DISCUSSION

John Deere excavators are widely used in the industry, and commonly available from heavy equipment rental companies. Based on staff's experience over the last five years, the John Deere 245G excavator has the precision, stability, size, and strength required for the type of work the Utilities Division routinely performs and has reliably met the Division's needs. Staff is well trained to operate this model in a safe and efficient manner.

The rental costs for the John Deere 245G excavator have steadily increased from approximately \$6,000 per month in 2014 to a current range of \$8,000 to \$9,500 per month, depending on the length of the rental and availability. Staff typically has need of an excavator for between three to six months per year for various projects. However, with recent natural disasters, the demand for excavators has increased over the years and availability is more limited. Purchasing an excavator will provide cost certainty and ensure that the City has immediate access to this equipment during an emergency.

The procurement of John Deere excavators is territory driven and PAPÉ Machinery is the only authorized vendor in the Hayward area. PAPÉ Machinery currently has a new excavator in stock that meets the City's specifications. To ensure the City can proceed with ongoing maintenance projects without delay, staff procured a two-month rent-to-own agreement for a new excavator at a cost of \$9,500 per month, with an option, but no obligation, to purchase the unit at the end of the two-month rental period. If Council approves staff's request to purchase the new excavator, ninety percent of the rental cost would be credited towards the purchase price. The final price, with a credit of rental fees, would be \$245,770.

Staff compared quotes for new excavators of different makes and models and found that prices were comparable to the purchase price for a new John Deere 245G. Staff also explored options to purchase a used John Deere 245G. However, staff is not recommending the purchase of used heavy equipment given that the extent of wear and tear and performed maintenance are all largely unknown.

ECONOMIC AND FISCAL IMPACT

Staff recommends that the proposed purchase of an excavator be funded from the Water System Replacement Fund, and that ongoing maintenance cost also be funded in the Water System Replacement Fund. Sufficient funding is available in the Water System Replacement Fund for the purchase without impacting customer water rates. Annual maintenance costs are not expected to materially affect future water rates.

There is sufficient fund balance in the Water System Replacement Fund to cover the costs associated with the purchase of the excavator. The City's Maintenance Services Department Fleet Division will purchase and maintain this piece of equipment. Staff is requesting that Council authorize a transfer of \$245,770 from the Water System Replacement Fund (Fund 603) to the Fleet Capital Fund (Fund 737) and appropriate the same amount to cover the cost of purchasing the excavator. Future maintenance costs will be budgeted and funded from the

Water System Replacement Fund. There is no impact on the General Fund associated with this purchase.

STRATEGIC INITIATIVES

This agenda item does not directly relate to one of the Council's three Strategic Initiatives.

SUSTAINABILITY FEATURES

John Deere utilizes technology and materials to reduce the environmental impact of using its equipment. The company sets and pursues annual Eco-Efficiency Goals for sustainable energy use, water efficiency, minimizing waste, and reducing greenhouse gas emissions.

PUBLIC CONTACT

This agenda item does not require public contact.

NEXT STEPS

If Council approves the attached resolutions, staff will take the necessary steps to execute an agreement with PAPÉ Machinery for purchase of a John Deere 245G Excavator.

Prepared by: Elli Lo, Management Analyst I
 Jan Lee, Water Resources Manager

Recommended by: Alex Ameri, Director of Public Works

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-_____

Introduced by Council Member _____

**RESOLUTION AUTHORIZING A SOLE SOURCE PURCHASE OF A JOHN DEERE
245G EXCAVATOR FROM PAPÉ MACHINERY, IN AN AMOUNT NOT TO EXCEED
\$245,770**

WHEREAS, the City's Utilities Division uses heavy equipment excavators to perform pipeline maintenance and replacement work; and

WHEREAS, Utilities staff rented excavators in the past years and the performance of the John Deere 245G excavator has reliably met the needs of the Division; and

WHEREAS, given the increasing rental costs, scarce availability and staff's ongoing use of excavators to perform maintenance operations, it would be more cost-effective and efficient for the City of Hayward to purchase an excavator for long-term work and to have available on-site in the event of an emergency; and

WHEREAS, the procurement of John Deere excavators is territory driven and PAPÉ Machinery is the only authorized vendor in the Hayward area.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to proceed with a sole source purchase of a John Deere 245G excavator from PAPÉ Machinery, in an amount not to exceed \$245,770.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE TRANSFER OF \$245,770 FROM THE WATER REPLACEMENT FUND TO THE FLEET MANAGEMENT CAPITAL FUND AMENDING RESOLUTION 18-091 TO AUTHORIZE THE APPROPRIATION OF \$245,770 FROM THE FLEET MANAGEMENT CAPITAL FUND – ENTERPRISE FUND (FUND 737) TO WATER VEHICLE REPLACEMENT PROJECT NO. 07353

WHEREAS, on May 22, 2018, via Resolution 18-091, the budget resolution adopting the Capital Improvement Program for Fiscal Year 2019, the City Council of the City of Hayward appropriated \$610,000 for the Fleet Management Capital Fund - Enterprise Fund (Fund 737), of which \$180,000 is included for Water Vehicle Replacement needs, Project No. 07353; and

WHEREAS, additional funding is needed in the Fleet Management Capital Fund - Enterprise Fund (Fund 737) for the purchase of an excavator for the Utilities Division of the Public Works & Utilities Department; and

WHEREAS, there are sufficient funds in the Water Replacement Fund (Fund 603) for the purchase of an excavator, in the amount of \$245,770.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that \$245,770 be transferred from the Water Replacement Fund to the Fleet Management Capital Fund – Enterprise Fund.

NOW, THEREFORE, BE IT FURTHER RESOLVED by the City Council of the City of Hayward that \$245,770 be appropriated from the Fleet Management Capital Fund – Enterprise Fund to Water Vehicle Replacement Project No. 07353 for the purchase of a John Deere 245G Excavator.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: CONS 19-429

DATE: June 18, 2019

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT

Approval of a Resolution Amending the Fiscal Year 2019 Operating Budget and Authorization to Transfer and Appropriate Water Operating Fund in the amount of \$45,400 for the Car Sharing Pilot Program

RECOMMENDATION

That the Council adopts the attached resolution (Attachment II) amending the Fiscal Year 2019 Operating Budget and authorizes the transfer and appropriation of \$45,400 from the water operating fund for the Car Sharing Pilot Program, Project E0001.

SUMMARY

The City is preparing to implement a Car Sharing Pilot Program with Zipcar funded by a \$200,480 reimbursement-based grant provided by the Metropolitan Transportation Commission (MTC). Staff seeks Council authorization to transfer and appropriate an additional \$45,400 to meet the local match requirement.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution



DATE: June 18, 2019

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Approval of a Resolution Amending the Fiscal Year 2019 Operating Budget and Authorization to Transfer and Appropriate Water Operating Fund in the amount of \$45,400 for the Car Sharing Pilot Program

RECOMMENDATION

That the Council adopts the attached resolution (Attachment II) amending the Fiscal Year 2019 Operating Budget and authorizes the transfer and appropriation of \$45,400 from the water operating fund for the Car Sharing Pilot Program, Project E0001.

SUMMARY

The City is preparing to implement a Car Sharing Pilot Program with Zipcar funded by a \$200,480 reimbursement-based grant provided by the Metropolitan Transportation Commission (MTC). Staff seeks Council authorization to transfer and appropriate an additional \$45,400 to meet the local match requirement.

BACKGROUND

On January 27, 2015, Council adopted Resolution 15-014 authorizing the receipt and appropriation of \$200,480 in reimbursement-based grant funds from the MTC to implement a Car Sharing Pilot Program.¹ Funding for the grant comes from Federal Congestion Mitigation and Air Quality Improvement (CMAQ) funds.

On August 9, 2018, the City issued a Request for Proposals to identify vendors to implement this Car Sharing Pilot Program, to which Zipcar, Inc. (Zipcar) was the sole responder. Based on their qualifications and experience, Council adopted Resolution 18-206 on October 2, 2018², authorizing the City Manager to negotiate and execute an agreement with Zipcar to implement the Pilot Program.

¹ January 27, 2015 City Council Agenda Packet:
<https://hayward.legistar.com/MeetingDetail.aspx?ID=454159&GUID=6980F6E4-B56F-4638-AFA1-548E73417972&Options=info&Search>

² October 2, 2018 City Council Staff Report:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=3690555&GUID=93385EB6-467C-42AD-931F-6050325B0CCB&Options=&Search=>

DISCUSSION

The City is currently negotiating an agreement with Zipcar to implement the Car Sharing Pilot Program in Hayward. The program is principally funded by a \$200,480 reimbursement-based grant provided by the MTC. Staff originally anticipated meeting the local match solely with in-kind staff time; however, the grant requires that a portion of the local match be applied to every expense covered by the grant. Staff seeks Council authorization to transfer and appropriate an additional \$45,400 to meet the local match requirement. This would bring total appropriations for this project to \$245,880.

Staff anticipates being reimbursed for nearly \$50,000 in project-related City staff salary expenses via the grant. Staff salaries are partially funded by the Water Operating Fund. As such, a convenient mechanism for receiving project-related salary reimbursements is to receive them in the Water Operating Fund. This means that the Water Operating Fund will fully recoup nearly \$50,000 in salary reimbursements over the course of the two-year project.

Staff recommends transferring the required \$45,400 match from the Water Operating Fund into the Federal Grants Fund, so that it can be appropriated for use in the project. The Water Operating Fund will be fully reimbursed for this transfer as City staff salary expenses are reimbursed.

ECONOMIC IMPACT

Car sharing can reduce the need for car ownership and/or the use of personal vehicles. This pilot program could potentially reduce consumer spending on automobile-related purchases and services. Any savings realized by Hayward households could lead to increased spending in non-automotive sectors.

FISCAL IMPACT

The proposed \$45,400 transfer and appropriation will result in no net impact to the Water Operating Fund. The \$45,400 local contribution would initially be transferred from this Fund into the Federal Grants Fund. Staff anticipates that the Water Operating Fund will be reimbursed by the grant as staff tracks and spends time on the project.

STRATEGIC INITIATIVES

This 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. Car sharing provides community members cost-effective and equitable access to transportation, and is therefore aligned with the following goal:

Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods.

SUSTAINABILITY FEATURES

Car sharing reduces the need for personal vehicle ownership by providing access to vehicles when needed but on a limited basis. As such, the car sharing model can also contribute to the use of public transportation, biking, and walking, which ultimately results in a healthier lifestyle and reduced greenhouse gas emissions. Car sharing can reduce car use and congestion, thereby reducing time spent on the road or idling in traffic, as well as associated emissions.

PUBLIC CONTACT

There is no public contact required for this item.

NEXT STEPS

Should Council adopt the attached resolution, staff will proceed with the transfer and appropriation. Staff will also finalize and execute a contract with Zipcar to implement the Pilot Program, as authorized via Resolution 18-206.

Prepared by: Kait Byrne, Management Analyst

Recommended by: Alex Ameri, Director of Public Works

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-_____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE AMENDMENT TO RESOLUTION 18-089, THE BUDGET RESOLUTION FOR THE CITY OF HAYWARD OPERATING BUDGET FOR FISCAL YEAR 2019, RELATING TO THE TRANSFER AND APPROPRIATION OF \$45,400 FROM THE WATER OPERATING FUND TO IMPLEMENT A CAR SHARING PILOT PROGRAM IN HAYWARD

WHEREAS, the City of Hayward (City) General Plan includes policies supporting car sharing and the availability of transportation alternatives; and

WHEREAS, on December 18, 2014, the Metropolitan Transportation Commission (MTC) awarded the City a grant in the amount of \$200,480, to be used to establish a Car Sharing Pilot Program (Program) in Hayward by identifying a car share vendor through a competitive Request for Proposals process and subsidizing the vendor's program marketing and implementation costs; and

WHEREAS, on January 17, 2015, the City Council accepted the \$200,480 grant and authorized an appropriation for use of the grant funds in the Program via Resolution 15-014; and

WHEREAS, the MTC grant also requires the provision of a local contribution of \$45,400; and

WHEREAS, the Water Operating Fund partially funds the salaries of the Project staff and will therefore receive all Project staff salary reimbursements; and

WHEREAS, reimbursements received by the Water Operating Fund will be roughly equivalent to the local match required by the grant and can therefore be recaptured to cover this \$45,400 contribution.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes the amendment to Resolution 18-089, the budget resolution for the City of Hayward Operating Budget for Fiscal Year 2019, relating to the transfer and appropriation of \$45,400 from the Water Operating Fund (Fund 605) into the Federal Grants Fund (Fund 220).

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: LB 19-029

DATE: June 18, 2019

TO: Mayor and City Council

FROM: City Manager

SUBJECT

Approval of Round 1, Tier 2 Commercial Cannabis Permit for Always on Time Consulting and Precision Apothecary

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment II) issuing a Commercial Cannabis Permit to the following cannabis companies: Always on Time Consulting (Microbusiness) Precision Apothecary (Microbusiness).

SUMMARY

Pursuant to HMC Section 6-14.12 (b), following the review and evaluation of commercial cannabis permit applications, the City Manager shall prepare a report to the City Council and provide a recommendation regarding selection of permittees. The City Council approved six of eight recommended companies for Commercial Cannabis Permits on May 7, 2019. The Council continued the item for the remaining two companies to allow for investigations into accusations against both company's CEO Doug Chloupek. Following these investigations, staff has cleared Mr. Chloupek of the accusations.

This report recommends two microbusiness companies for a Commercial Cannabis Permit (CCP) as described above. No additional retail dispensary uses are being recommended at this time.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	Summary Business Plans
Attachment IV	Email and Memo



DATE: June 18, 2019

TO: City Council

FROM: City Manager

SUBJECT: Approval of Round 1, Tier 2 Commercial Cannabis Permit for Always on Time Consulting and Precision Apothecary

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment II) issuing a Commercial Cannabis Permit to the following cannabis companies: Always on Time Consulting (Microbusiness) Precision Apothecary (Microbusiness).

SUMMARY

Pursuant to HMC Section 6-14.12 (b)¹, following the review and evaluation of commercial cannabis permit applications, the City Manager shall prepare a report to the City Council and provide a recommendation regarding selection of permittees. The City Council approved six of eight recommended companies for Commercial Cannabis Permits on May 7, 2019. The Council continued the item for the remaining two companies to allow for investigations into accusations against both company's CEO Doug Chloupek. Following these investigations, staff has cleared Mr. Chloupek of the accusations.

This report recommends two microbusiness companies for a Commercial Cannabis Permit (CCP) as described above. No additional retail dispensary uses are being recommended at this time.

BACKGROUND

On October 30, 2017, the City Council adopted Ordinance 17-13, adding Article 14 to Chapter 6 of the Hayward Municipal Code², which established the request for proposals process by which the City will select commercial cannabis businesses.

The first RFP for Commercial Cannabis Businesses was issued on December 8, 2017, with applications due on January 12, 2018. At that time, the City received 77 total applications for

¹ Review of Cannabis Applications:
https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH6BUPRTR_ART14COCABU_S6-14.12REAP

² Commercial Cannabis Businesses:
https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH6BUPRTR_ART14COCABU

commercial cannabis companies. Four of these applications did not meet the background check requirements of the City's commercial cannabis program. The remaining 73 applications were then sent to neutral, third-party review by City consultants HdL and ICF. Application review was completed in early May and the top scoring applicants were invited to participate in interviews with internal City staff. Those applicants that passed the interview panel were recommended for cannabis permits. In June and July of 2018, the City Council approved the first round of commercial cannabis permits for 15 businesses and allowed applicants six months to identify a proposed location and submit applications for land use entitlements.

Since Council approved the first-tier applicants in 2018, staff has received a significant volume of phone calls and emails from applicants and potential applicants for Commercial Cannabis Permits looking to reapply to establish a cannabis business in Hayward. Citing continued interest from commercial cannabis operators, in January 2019, the City Council directed staff to have an Interview Panel conduct interviews with a second tier of non-dispensary applicants from the first RFP process, as well as to initiate a second RFP process to solicit additional cannabis operators within 12 months.

In April 2019, the Interview Panel completed the interview process for the second-tier, non-retail applicants and forwarded that recommendation to the City Manager for review. The eight applicants currently being recommended for commercial cannabis permits represent delivery, distribution, cultivation, microbusiness and manufacturing activities. No testing laboratory applicants were included in Tier 2, as the only application received for that business type was already awarded a permit in 2018.

DISCUSSION

Applicant Selection: Applications were evaluated based on the Council approved criteria, which includes the following:

- Business Plan and Operations (250 points)
- Management Experience (150 points)
- Safety and Security Plan (150 points)
- Community Benefits (150 points)
- Product Testing and Safety (100 points)
- Environmental Plan (100 points)
- Labor and Employment Practices (100 points)

Applications were scored and ranked out of 1,000 points. Based on the overall distribution of scores, the City Council established a minimum score of 500 for companies to advance to the Tier 2 interview process. Thirteen applicant teams qualified for the Tier 2 interview process, based on the numerical scores that they received during the written application review process. The number of applicants that advanced to Tier 2 interviews is listed in Table 1, broken down by business type.

TABLE 1: Score Ranges and Interview Thresholds

Business Type	Score Range	Score Threshold	Advancing Applicants
Cultivation	239-798	500	1
Manufacturing	385-798	500	4
Distribution	578.5-890	500	3
Microbusiness	170-755	500	4
Delivery	349-702	500	1

Interview Process: The mandate of the Interview Panel was to facilitate a discussion with the applicant teams that would clarify their proposed business activities and qualifications, and then provide recommendations to the City Council on which applicants were most qualified to successfully operate a cannabis business in the City of Hayward. Of the 13 Tier 2 applicants, 10 were interviewed and three voluntarily withdrew from consideration.

The Interview Panel held one-hour interviews with each of the ten applicant teams over a three-day period on March 25 and 26 and April 2, 2019. Each interview was structured around a series of questions to gather information about any changes to the applicant’s management team or updates to their business plan, and to solicit additional details about key aspects of the applicant’s proposed cannabis operations. The questions related to three critical sections of their applications: (1) Team and Experience; (2) Business Plan and Operations; and (3) Safety and Security Plan.

Upon completion of each interview, the Panel discussed the adequacy of the applicant’s responses in each of the three domains and jointly determined whether the applicant should be recommended for award of a commercial cannabis permit in the City of Hayward.

Panel Recommendation: Based on the selection criteria articulated by the Hayward City Council, the Interview Panel unanimously recommended awarding commercial cannabis permits to 8 of the 10 applicants that were interviewed during the Tier 2 application process. On May 7, 2019 the City Council approved 6 of 8 recommended Round 1, Tier 2 companies for Commercial Cannabis Permits. The approval of the remaining two businesses was continued to allow for staff to investigate allegations against those businesses. A brief summary of these two businesses, including their proposed business plans, community benefits, and labor and employment practices are included as Attachment III.

TABLE 2: Round 1, Tier 2 Commercial Cannabis Permits

Applicant Name	Type	Interview	Recommendation
Baldwin Partners LLC	Distribution	No Interview	Withdrew
Hayward Industrial Operations	Distribution	No Interview	Withdrew
Doja Dash	Microbusiness	No Interview	Withdrew
BAS Research	Manufacturing	03/25/2019	Awarded
Empress Extracts	Manufacturing	03/25/2019	Awarded
Gupreet Singh	Manufacturing	03/25/2019	Awarded
CBRA, Inc.	Delivery	03/26/2019	Awarded

Meristematic, Inc.	Cultivation	03/26/2019	Awarded
Mijosa, LLC	Distribution	03/26/2019	Awarded
Always on Time Consulting	Microbusiness	04/02/2019	Award Permit
Precision Apothecary	Microbusiness	04/02/2019	Award Permit
Cypress Ventures	Manufacturing	03/25/2019	No Permit
MDLM Consulting	Microbusiness	04/02/2019	No Permit

Allegations against Doug Chloupek

On the night of May 6, 2019, the City Council and staff received an email and memo from TransparentCannabis@gmail.com³ regarding Doug Chloupek, CEO of Precision Apothecary and Always on Time Consulting (Attachment IV) that included screenshots from Mr. Chloupek’s personal, public Facebook profile. The screenshots included several posts from 2016 through 2018 referencing cannabis cultivation operations in Hayward. Given the contents of this email, staff recommended the City Council table the approvals for Precision Apothecary and Always on Time Consulting to allow for the City to investigate and interview Mr. Chloupek.

On May 16, 2019 the Hayward Police Department met and interviewed Mr. Chloupek at his building in Hayward. The Police Department concluded that the building did not have the appearance of any recent cannabis related activity. In their interview, Mr. Chloupek explained that he is involved with legal cannabis operations through his business in other cities and is not currently involved in any cannabis operations in the City.

Regarding the Facebook posts, Mr. Chloupek claimed he was a consultant assisting a client with the posts. Mr. Chloupek also indicated that his prior cannabis experience was through medical cannabis as allowed through Prop. 215. Mr. Chloupek has no record of prior investigations related to drug activity.

Following this investigation, the City Manager’s Office, City Attorney’s Office, and Hayward Police Department concluded that there is not enough evidence to substantiate the claims made against Mr. Chloupek in the email and memo. Therefore, staff is recommending the City Council issue a Commercial Cannabis Permit to both of Chloupek’s companies Precision Apothecary and Always on Time Consulting.

FISCAL IMPACT

The businesses approved through the Commercial Cannabis Permit Program will provide significant investments in existing industrial and commercial spaces that will generate revenues related to provision of building permits for tenant improvements, annual renewal of the cannabis permit, and sales tax revenues.

³ Staff is unable to verify the author of the email and memo. The email lists the name Ash Cole, while the attached memo references Hector Villasenor as the word file author. Villasenor was denied a first round Retail Dispensary Commercial Cannabis Permit for his company Calgreen Farms.

Cannabis businesses are required to pay a local six percent tax rate on gross receipts. Staff is unable to provide a realistic estimate of these revenues as local, reliable financial data for this new industry is currently unavailable. Staff will be able to better forecast this revenue as cannabis businesses in the City open and begin to remit taxes.

In January 2019, City Council authorized a one-time General Fund appropriation of \$70,000 to fund ICF to conduct interviews and other related program costs. The City will require applicants who went through the interview process to resubmit their \$5,000 deposits, which will reimburse the General Fund for these application processing expenses.

ECONOMIC IMPACT

Each of the applicants being recommended for approval have articulated the desire to hire local Hayward residents and to pay them a livable wage. From the information provided in each application and through the interview process, these eight companies plan to hire an estimated sixty (60) to 120 new jobs. These jobs will impact the City as these employees pursue their lives in the Hayward community and therefore contribute to the local economy while also remitting City sales, property, utility user, and other City levied taxes and fees.

STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Initiatives.

NEXT STEPS

Following approval of the attached resolution, staff will process these applications and confirm to the State Bureau of Cannabis Control that each has been approved to operate a cannabis business within the City.

Prepared by: John Stefanski, Management Analyst II
 Jeremy Lochirco, Principal Planner
 Jubran Kanaan, Senior Consultant, ICF

Recommended by: Laura Simpson, Development Services Director

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-___

Introduced by Council Member _____

RESOLUTION AWARDING MICROBUSINESS COMMERCIAL CANNABIS
PERMITS FOR PRECISION APOTHECARY AND ALWAYS ON TIME
CONSULTING

WHEREAS, on October 30, 2017, the City Council adopted Ordinance 17-13 adding Article 14 to Chapter 6 of the Hayward Municipal Code which established the Commercial Cannabis Permit Program and other regulations pertaining to commercial cannabis businesses; and,

WHEREAS, on December 5, 2017, the City Council adopted Resolution 17-182, which initiated the City's first Request for Proposals (RFP) to solicit applications for cannabis businesses pursuant to Article 14 of Chapter 6 of the Hayward Municipal Code; and,

WHEREAS, on January 15, 2019, the City Council adopted Resolution 19-009, which approved funding of consultant services to review and evaluate second tier applications from the first round of Commercial Cannabis applications; and,

WHEREAS, pursuant to Hayward Municipal Code SEC. 6-14.12 (b), following the review and evaluation of commercial cannabis permit applications, the City Manager shall prepare a report to the City Council and provide a recommendation regarding selection of permittees; and,

WHEREAS, the following applicants have met the requirements of the Commercial Cannabis Permit Program and the City Manager recommends the City Council issue Commercial Cannabis Permits for the following cannabis companies listed in Exhibit A to this resolution.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Hayward hereby directs the City Manager to issue a Commercial Cannabis Permits for cannabis cultivation, manufacturing, distribution, delivery, and microbusiness operations to the cannabis companies listed in Exhibit A to this resolution, and;

BE IT FURTHER RESOLVED, that pursuant to Hayward Municipal Code section 6-14.11 (d) the respective commercial cannabis operators identified in this resolution and accompanying staff report may not commence operation as a cannabis business in the City of Hayward until it has received all necessary land use approvals pursuant to the Hayward Zoning Ordinance.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Exhibit A: Recommended Commercial Cannabis Permit Recipients

Precision Apothecary (Microbusiness)
Always on Time Consulting (Microbusiness)

Summary of Recommended Commercial Cannabis Operators

Precision Apothecary (Microbusiness)

Note: Since its application was submitted, this business has been merged into a larger cannabis conglomerate company named Juva Life, whose CEO is Douglas Chloupek. Juva Life is also associated with applicant Always on Time Consulting (see below). Many of the same individuals occupy management team positions at both Precision Apothecary and Always on Time Consulting.

Precision Apothecary is now a wholly owned subsidiary of Juva Life, a vertically-integrated cannabis business whose CEO is Douglas Chloupek. Juva Life was established partly to enable fundraising, and this entity has thus far raised \$5.5 million to build out its component businesses. The applicant is currently raising another round of funding and hopes to conduct an IPO in Canada at a future date. The applicant owns other existing cannabis businesses in Stockton, CA—including 50,000 sq. ft. of cultivation, manufacturing, and delivery operations—and the applicant’s existing cultivation business has an expected production of over 9,000 pounds of cannabis per year. The applicant’s stated intention is to use Hayward as the location for its overall corporate headquarters for Juva Life.

Precision Apothecary (to be later branded as “Juva Labs”) is a sub-business of Juva Life which focuses on developing “precision cannabis”, which the applicant defines as “delivering the right medicine to the right patient at the right time.” The applicant will conduct multi-phase clinical investigations to test and refine the medical efficacy of various cannabis extractions and offer a range of pharmacy-grade cannabis products. They will seek to develop intellectual property rights and patents for their own products, as well as creating white-label products for other licensees. The applicant has identified a 20,000 sq. ft. facility for this business at 25571 Clawiter Rd.

The applicant’s management team includes: Douglas Chloupek (Founder & CEO), Dr. Rakesh Patel (Founder & Medical Director), Neil Ruditsky (COO), Tom Leschak (Cultivation Manager), Kari Gothie (VP of Finance), Daniel Hughes (Project Manager), and Cliff Nichols (Marketing and Administration Manager). Mr. Chloupek has been a successful cannabis entrepreneur for over 10 years, and has launched, owned, and sold multiple businesses across the cannabis industry supply chain including Valley Grown Enterprises, Lux Wellness, and Medmar Healing Center. He also co-founded (Hayward permit applicant) BAS Research but has since sold his stake in the company. Doug is also a founding member of the California Cannabis Industry Association. Dr. Patel is an oncologist and clinical researcher with over 250 lectures and 100 publications worldwide. Mr. Ruditsky has spent more than two decades in senior leadership positions in the hospitality and cannabis industries. Tom Leschak has served as the master grower for (Hayward applicant Always on Time Consulting, DBA Frosted Flower) and co-founded the CannAcademy, a trade school for cannabis horticulture.

The applicant plans to hire between 20-60 staff over its first three years of operation and has committed to both targeting Hayward residents and providing a living wage. The applicant's proposed community benefits activities include: participating in community cleanups, contributing to local food drives and blood drives, and providing support for Hayward organizations and charities recommended by the Community Service Commission.

Always On Time Consulting, DBA Frosted Flowers (Microbusiness)

Note: Since its application was submitted, this business has entered into a (pending) agreement to be acquired by the larger conglomerate company Juva Life (see above), whose CEO is Douglas Chloupek. Juva Life is also associated with applicant Precision Apothecary. Many of the same individuals occupy management team positions at both Precision Apothecary and Always on Time Consulting.

Always On Time Consulting (DBA Frosted Flowers) has entered into a (pending) agreement to be acquired by Juva Life, a vertically-integrated cannabis business whose CEO is Douglas Chloupek. Juva Life was established partly to enable fundraising, and this entity has thus far raised \$5.5 million to build out its component businesses. The applicant is currently raising another round of funding and hopes to conduct an IPO in Canada at a future date. The applicant owns other existing cannabis businesses in Stockton, CA—including 50,000 sq. ft. of cultivation, manufacturing, and delivery operations—and the applicant's existing cultivation business has an expected production of over 9,000 pounds of cannabis per year. The applicant's stated intention is to use Hayward as the location for its overall corporate headquarters for Juva Life.

Always On Time Consulting (currently DBA Frosted Flowers, but potentially to be later rebranded if the Juva Life acquisition is completed) focuses on cannabis cultivation, manufacturing, distribution, and retail operations. The applicant proposes to cultivate approximately ten varieties of cannabis flowers using semi-organic techniques; use CO2 extraction processes to produce oils; and produce a range of consumer products including "honey bud", pre-rolls, and "fusion rolls".

Applicant has identified a potential site at 3363 Enterprise Ave., adjacent to the proposed Precision Apothecary facility at 25571 Clawiter Rd. Depending on the outcome of the commercial cannabis and CUP permitting processes, planned acquisition/merger, and other business and legal factors, the applicant may decide to co-locate with Precision Apothecary at this location in a side-by-side "campus" model or seek a different location.

The applicant's management team includes: Douglas Chloupek (Founder & CEO), Neil Ruditsky (COO), Tom Leschak (Cultivation Manager), Kari Gothie (VP of Finance), Daniel Hughes (Project Manager), and Cliff Nichols (Marketing and Administration Manager). Mr. Chloupek has been a successful cannabis entrepreneur for over 10 years, and has launched, owned, and sold multiple businesses across the cannabis industry supply chain including

Valley Grown Enterprises, Lux Wellness, and Medmar Healing Center. He also co-founded (Hayward permit applicant) BAS Research but has since sold his stake in the company. Doug is also a founding member of the California Cannabis Industry Association. Mr. Ruditsky has spent more than two decades in senior leadership positions in the hospitality and cannabis industries. Tom Leschak has served as the master grower for (Hayward applicant Always on Time Consulting, DBA Frosted Flower) and co-founded the CannAcademy, a trade school for cannabis horticulture.

The applicant plans to hire between 20-60 staff over its first three years of operation and has committed to both targeting Hayward residents and providing a living wage. The applicant's proposed community benefits activities include: participating in community cleanups, contributing to local food drives and blood drives, and providing support for Hayward organizations and charities recommended by the Community Service Commission.

ATTACHMENT IV

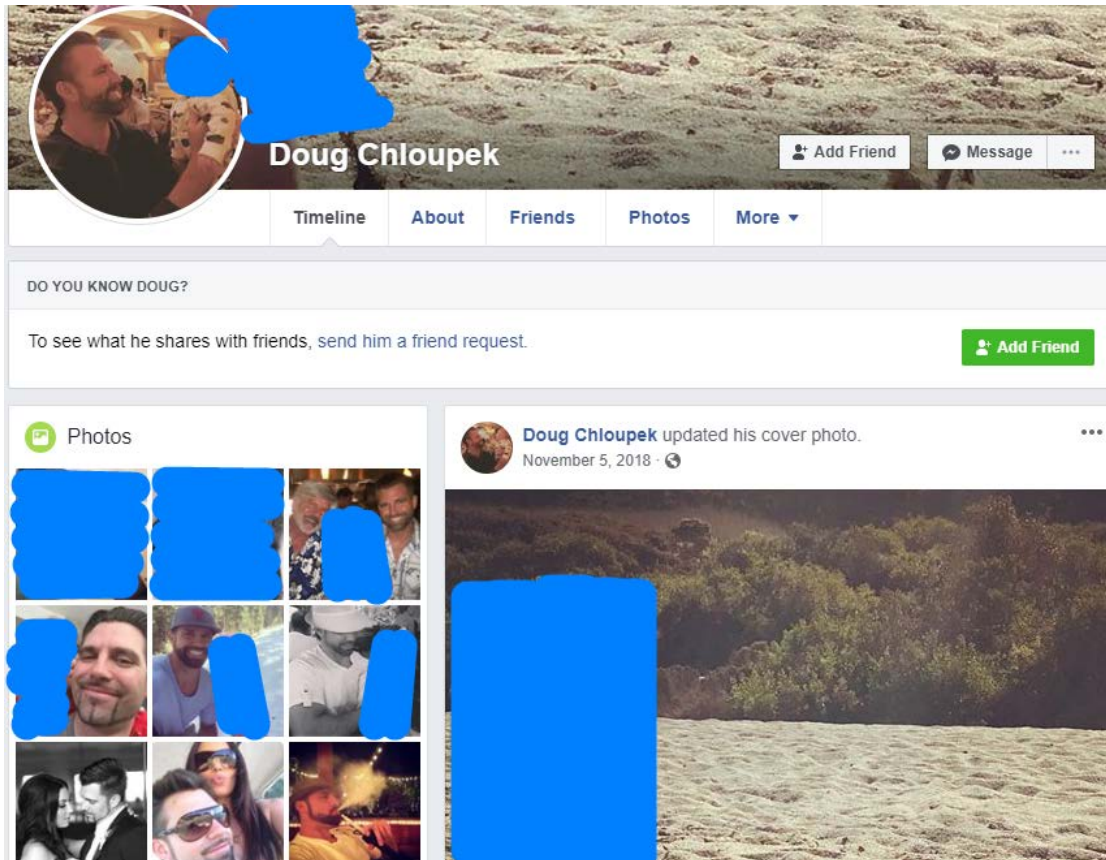
Hello Mayor, Council Members, City Manager, and City Attorney,

The purpose of this letter is to ask you to reconsider granting of Microbusiness licenses to both **Always on Time Consulting** and **Precision Apothecary (JUVA LIFE)**.

The city currently has two legislative business items on the May 07, 2019 Agenda regarding cannabis businesses LB 19-023 and LB 19-025 which although are separate items have overlapping similarities.

The approval of both JUVA LIFE facilities is particularly concerning given that under LB 19-025, staff is recommending rescinding approval of a commercial cannabis permit for Vista Development Enterprises indicating that Vista is associated with an individual who was recently arrested by Hayward Police Department for illegal cannabis cultivation. From the Summary Attachment 1 of the LB 19-025 Staff Report "Vista did not disclose this individual's involvement with Vista during the application review process. This was an omission of material information that affected the outcome of Vista's application and justifies the City Council rescinding the prior approval. While the staff's recommendation to rescind the permit of a bad faith actor in Hayward is welcome, this also applies to Mr. Chloupek and the 2 businesses he claims to be overseeing. Using the same standard of illegal cultivation in Hayward, please see corresponding evidence below. (Children's faces have been blurred to protect their privacy). These posts are from Mr. Chloupeks Facebook account.

Doug Chloupek Facebook Profile



ATTACHMENT IV

November 22, 2016: Post about Cannabis Nursery in Hayward

 **Doug Chloupek**
November 22, 2016 · 🌐

Good morning Facebook friends I have a job posting, so please share this...

I am looking to hire someone to work at our cannabis nursery in Hayward. This is a 30-40hour per week job. Days typically start between 6:30-7am and this is a hands on job. You will be assisting to our nursery manager in the day to day operation of a commercial cultivation site. Job entails changing pots, cleaning rooms, potting plants, assisting in the harvest and a multitude of other cultivation related tasks. The right person should have a willingness to learn about cannabis cultivation, be a hard worker, not afraid to get dirty, punctual, reliable and honest.

You must be able to pass a federal background screening and be ok driving to Hayward daily. Entry pay is \$12 per hour.


If you or anyone you know may be interested please email me at frosteddoug@gmail.com

Thank you,
Doug

👍 9 5 Comments 2 Shares

👍 Like 💬 Comment ➦ Share

August 29, 2017: Post about Hayward Medical Marijuana Cultivation Facility


 **Doug Chloupek**
August 29, 2017 · 🌐

I need to hire 2 new FULL time employees to work at my Hayward medical marijuana cultivation facility.

- 1 full time trimmer (trimming dried cannabis flowers)
- 1 full time cannabis packaging and assembly work

If you are interested or know anyone who is interested please send me a message and feel free to share this posting.

Thank you
Doug



👍❤️ 27 17 Comments 14 Shares

👍 Like 💬 Comment ➦ Share

ATTACHMENT IV

February 20, 2018: Post about Sale of Marijuana Grow Facility (Not as Owner but Broker)



Doug Chloupek

February 20, 2018 · 🌐



Marijuana Grow facility for sale in Hayward \$425,000 - fully operational in the green zone

ROOM 1: Back room with active grow.

- 34 Lights at 1,000watts
- 15 lights at 350 watts
- 18 wall fans
- 1 Quest D-Humidifier
- 18-slot, CO2 Burner
- 2 10 ton AC units
- 21 stands/Trays
- 1 control unit for temperature
- 2 max fax fans with filter
- 2 water barrels
- Miscellaneous hose
- 5 – 7 buckets

ROOM 2: first room, vacant to left, next to dry room

- 38 1,000 watt lights
- 26 350 watt lights
- 2 Quest D-humifiers- 215 model
- 3 10-ton AC units (30 Tons of AC total in this room)
- 13 wall fans
- 2 water barrels
- 3 charcoal filters - pro 150's
- 3 12 inch max fans
- 28 stands/trays

ROOM 3: MAIN AREA

- 1600 sf ROOM
- 4 camera alarm system
- 22 brand new trays
- tom tumbler
- 2 charcoal filters
- 7 boxed new fans
- 34 lights 350 watt
- 1 D-Humidifier
- 3 ac units 10 ton each- 30 tons total - 36B – 15 bulbs
- 11 1,000 watt bulbs
- 9 max filters TOTAL IN ALL SPACE
- 2 pumps 1/2 HP
- 6 - 50 gallon water barrels

ATTACHMENT IV

VEG ROOM: Small Room to right of entrance

- 22 - 600 - watt lights
- 8 wall fans
- 2 charcoal filters 12 inch -1 10 ton AC unit
- 12 trays/stands

UPSTAIRS:

- 3 TRAYS
- 6 Lights 315 watts
- 2/4 T5's
- 2 LEVEL, 2X4 SHELVING
- OPEN UNFINISHED AREA

DRY ROOM/DOCKING ROLL UP ROOM:

- all extra material and fixtures
- doors, security mechanisms shall be included in sale, including security gate/fencing

GENERAL AREA:

- Both bathrooms shall be delivered in working and operating conditions I.E. working order toilets, sink, etc
- hallway and office space- shall be delivered in open and vacant condition, no damage
- damaged doors are accepted as is to all rooms
- Building POWER 400 AMP 408v



9

6 Comments 2 Shares



Like



Comment



Share



Anthony Martinez Cool bro. Check inbox

Like · Reply · 1y



Damian Mejia woah.... did you guys upgrade?

Like · Reply · 1y



Doug Chloupek No this isn't my grow. I am helping broker the sale of another grow site in Hayward

Like · Reply · 1y



1



Write a reply...



Aaron Joshua Adams Heather Mata-Baldock

Like · Reply · 1y



1



Heather Mata-Baldock Thank you for thinking of me Aaron Joshua Adams ! 😊 ...if I can drum up the seed money to get my foot in the door, this would be THE dream realized! ...time to think of how to make it happen!...

Like · Reply · 1y · Edited



Doug Chloupek Hi All I wanted to let you know that this location has been sold. I will post again when the next one becomes available.

Like · Reply · 1y



1

ATTACHMENT IV

To verify these posts, you can scroll down to the respective dates listed above from the link below:

<https://www.facebook.com/doug.chloupek>

We ask that the City of Hayward be consistent in enforcing its policies and deny the JUVA LIFE applications until it can verify that Mr. Chloupeks operations were compliant with local and state law, otherwise they should be disqualified and removed from consideration. We also recommend grabbing applicable screenshots before applicant removes them when confronted about it. Removing of posts does not clear them from the Facebook servers and may be retrieved if warranted.

We urge staff to consider this extra due diligence provided to them and that they take appropriate actions to ensure the integrity of the Hayward cannabis licensing process.



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: LB 19-031

DATE: June 18, 2019

TO: Mayor and City Council

FROM: City Manager

SUBJECT

Introduction of an Ordinance adding Chapter [X] of the Hayward Municipal Code to Adopt a New Residential Rent Stabilization and Tenant Protection Ordinance to Mitigate Displacement of Hayward Residents, including an Associated Budget Allocation and Updated Rent Review Fee to Administer the Program, and to Repeal the Existing Residential Rent Stabilization Ordinance No. 83-023 and the Emergency Ordinance Requiring Just Cause for Eviction Ordinance No. 19-04

RECOMMENDATION

That the City Council:

1. Adopt a new Residential Rent Stabilization and Tenant Protection Ordinance (RRSO) to establish a comprehensive set of rental housing policies to mitigate displacement of Hayward residents and to repeal the existing Residential Rent Stabilization Ordinance No. 83-023 and the Emergency Ordinance Requiring Just Cause for Eviction No. 19-04 (Attachment II); and
2. Adopts a Resolution Authorizing the Amendment to Resolution 19-103, the Budget Resolution for the City of Hayward Operating Budget for Fiscal Year 2020, Relating to the Transfer of the Rent Review Budget Allocation in the amount of Two Hundred and Seventy-Four Thousand Six Hundred Sixty-Eight Dollars (\$274,668) from the General Fund to the Rental Housing Program Fund; and Appropriating Three Hundred and Fifty-Nine Thousand Dollars (\$359,000) to the Rental Housing Program Fund to Cover the Cost of Administering the Residential Rent Stabilization and Tenant Protection Ordinance and the Mobilehome Space Rent Stabilization Ordinance (Attachment III); and
3. Adopts a Resolution Authorizing the Amendment to Resolution 19-059, the Resolution for the City of Hayward Fiscal Year 2020 Master Fee Schedule Associated with the Administration of the New Residential Rent Stabilization and Tenant Protection Ordinance and the Mobilehome Space Rent Stabilization Ordinance. (Attachment IV)

SUMMARY

Based on the comprehensive and community inclusive process conducted by the City of Hayward, including specific direction provided by the City Council on February 19, 2019, a community workshop on April 6, 2019, and numerous subsequent Housing-Homelessness Task Force (HHTF) meetings, the proposed new Residential Rent Stabilization and Tenant Protection ordinance (RRSO) will repeal and replace the existing ordinance and consist of a new comprehensive set of housing policies aimed at stabilizing rents, protecting tenants, and preventing displacement and homelessness for the City's tenant population. The key components of the RRSO include:

- 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;
- Provisions to protect Section 8 voucher holders from discrimination;
- Requirements that landlords file rent increase notices and eviction notices with the City to obtain accurate data about rental housing activity;
- Tenant retaliation protection provisions; and
- Reincorporation of the Just Cause for Tenant Evictions into the ordinance.

The two provisions previously under consideration that were excluded from the proposed RRSO based on recommendations from the HHTF include:

- Permanent (improvement) vacancy decontrol provisions; and
- Tenant relocation assistance provisions.

Staff has created a marketing plan and will begin immediate implementation that will include the development of plain language information for both tenants and landlords that can be available in print and electronically and that will be accessible in multiple languages. Additionally, staff is in the development phase of an education program to provide tenants and landlords with information regarding the new legislation and basic information regarding tenant and landlord rights. Lastly, staff will work cooperatively to foster compliance with the City's updated RRSO.

If the proposed legislation is approved, it will replace the current RRSO and the Just Cause for Eviction Ordinance; and will terminate the moratorium on permanent vacancy decontrol as the provisions will no longer apply.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Residential Rent Stabilization and Tenant Protection Ordinance
Attachment III	Resolution Appropriating Funds to Rental Housing Program Fund
Attachment IV	Resolution Amending the Master Fee Schedule

File #: LB 19-031

Attachment V	Open House Materials
Attachment VI	Public Comments from Open House
Attachment VII	Management Partner's Hayward Vacancy Decontrol Review Final Project Report
Attachment VIII	More Detailed Summary of Proposed Mediation and Binding Arbitration



DATE: June 18, 2019

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Introduction of an Ordinance adding Chapter [X] of the Hayward Municipal Code to Adopt a New Residential Rent Stabilization and Tenant Protection Ordinance to Mitigate Displacement of Hayward Residents, including an Associated Budget Allocation and Updated Rent Review Fee to Administer the Program, and to Repeal the Existing Residential Rent Stabilization Ordinance No. 83-023 and the Emergency Ordinance Requiring Just Cause for Eviction Ordinance No. 19-04

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If the proposed legislation is approved, it will replace the current RRSO and the Just Cause for Eviction Ordinance; and will terminate the moratorium on permanent vacancy decontrol as the provisions will no longer apply.

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. Per the most recent point-in-time count, the number of people who experience homelessness increased by 43% from 2017 to 2019.¹ Additionally, renter-occupied units are disproportionately comprised of African-American and Latino 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, 2017², 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, 2018³ and March 27, 2018⁴; and legislation was enacted on May 29, 2018⁵ to place a moratorium on vacancy decontrol provisions of the existing RRSO to allow staff time to evaluate the ordinance without losing additional units to decontrol. On February 19, 2019⁶, the City Council convened a work session that defined the parameters for an approach to updating the City's RRSO, which included 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;

¹2019 EveryOne Counts! Homeless Point-in-Time Count

<http://everyonehome.org/wp-content/uploads/2019/05/FAQ-2019-EveryOne-Counts-County-Numbers-Release.pdf>

² January 31, 2017 Staff Report and Attachments:

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

³ February 6, 2018 Staff Report and Attachments:

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

⁴ March 27, 2018 Staff Report and Attachments:

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

⁵ May 29, 2018 Staff Report and Attachments:

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

⁶ February 19, 2019 Staff Report and Attachments:

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

- Consider elimination of the vacancy decontrol provisions (Section 8) of the existing RRSO, after considering recommendations from a pending report from the City's consultant, 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 HHTF retaliation provisions and a tenant relocation assistance program; and
- Extend eviction for cause protections to all residential rental properties, including single family homes and condominiums, which was enacted by emergency Council action on March 5, 2019.

On April 6, 2019, staff hosted a Community Open House at Glad Tidings International Church on W. Tennyson Road and disseminated a related online survey for people who could not attend. The purpose of this event was to: 1) solicit public feedback on the specific proposed policy changes; and 2) provide an opportunity for the public to have an open dialogue with staff to ask questions or obtain more information on the proposed policies. Attachment V includes the presentation materials used at the Community Open House. Community members and industry professionals provided their feedback at the event by completing comment cards or communicating comments to staff who documented their point of view. Additionally, staff collected responses via email, by phone, and through an online survey. Attachment VI provides comments received from community members and industry professionals related to the Community Open House.

On April 18, 2019, the HHTF provided direction on recommended amendments to the RRSO after evaluating feedback from stakeholders. There was consensus in support of the proposed mediation with binding arbitration program; however, one Council member expressed support for rent control with a lower rent increase threshold relative to increases in the consumer price index. There was also consensus in support for the proposed provisions to identify rental subsidies as a source of income to provide protection to recipients of rental assistance such as Section 8 Housing Choice Vouchers. Additionally, there was consensus in support of the proposed provisions to require landlords to file rent increase notices and notices of eviction with the City. Lastly, there was consensus in support of the addition of tenant retaliation protection measures, including higher penalties for at-risk populations, such as seniors and individuals with special needs. Lastly, there was consensus by the HHTF to postpone any action regarding a tenant relocation assistance program until a future HHTF meeting. There was substantial opposition by landlords to any tenant relocation assistance program.

On May 2, 2019, Management Partners concluded its report regarding the permanent vacancy decontrol provisions of the current RRSO, which is included as Attachment VII. 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 existing 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 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 landlords because the permanent decontrol provisions may no longer be relevant.

On May 9, 2019, the HHTF reviewed the Management Partners study regarding the permanent vacancy decontrol provision within the existing RRSO and unanimously supported elimination of the provisions of the RRSO that permanently decontrol units in favor of a more comprehensive rent stabilization policy. 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.

DISCUSSION

Based on direction from the City Council, the HHTF, stakeholder feedback, and the Management Partners study, staff has developed a comprehensive set of housing policies to stabilize rent increases, mitigate displacement of Hayward residents and prevent homelessness. Purposes of the proposed ordinance include providing relief to residential tenants in the City by stabilizing rent increases for tenants in covered units (approximately 9,500 units) via a mediation and arbitration program; increasing tenant protections to alleviate the hardship and displacement caused by a serious housing shortage; encouraging investment in new residential rental property in the City; and assuring landlords both a fair return on their property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation.

The proposed measures are aligned with other Bay Area plans to address housing affordability and prevent homelessness. These plans propose multi-faceted approaches that include not only the development of housing, but also development of legislation that stabilizes rental housing. The CASA Compact 15-Year Emergency Policy Package to Confront the Housing Crisis in the San Francisco Bay Area⁷ proposes just cause for eviction policies as provisions to protect tenants from arbitrary evictions, as studies regarding eviction show

⁷ CASA Compact:
https://mtc.ca.gov/sites/default/files/CASA_Compact.pdf

that evictions have a multitude of impacts such as health issues, emotional trauma, school disruption for children, longer and costly commutes, and reduced wage earnings for adults. The CASA Compact also recommends policies that cap rent increases to prevent extreme increases in rent on a year-to-year basis, thereby decreasing the number of households who are at risk of displacement and homelessness, decreasing the number of households who are rent burdened, and promoting tenant and community stability. The Everyone Home Plan to End Homelessness⁸ also promotes similar policy measures as provisions to prevent homelessness. The proposed new RRSO furthers the City's efforts to contribute to local and regional affordable housing solutions.

Overview of Proposed Legislation

The proposed new RRSO will repeal and replace the existing ordinance and will consist of a new comprehensive set of housing policies aimed at stabilizing rents, protecting tenants, and preventing displacement and homelessness for the City of Hayward's tenant population. The key components of the new RRSO include:

- 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;
- Provisions to protect Section 8 voucher holders from discrimination;
- Requirements that landlords file rent increase notices and eviction notices with the City to obtain accurate data about rental housing activity;
- Tenant retaliation protection provisions; and
- Reincorporation of the Just Cause for Tenant Evictions into the ordinance.

The two provisions previously under consideration that were excluded from the proposed RRSO based on recommendations from the HHTF include:

- Permanent (improvement) vacancy decontrol provisions included in current RRSO; and
- Tenant relocation assistance provisions.

If the proposed legislation is approved, it will replace the current RRSO and the Just Cause for Eviction Ordinance; and will terminate the moratorium on permanent vacancy decontrol as the provisions will no longer apply. Staff will create plain language information for both tenants and landlords that will be available in multiple languages in print and electronically. Additionally, staff will develop an education program to provide tenants and landlords

⁸ Everyone Home Plan to End Homelessness
<http://everyonehome.org/wp-content/uploads/2018/12/EveryOne-Home-Strategic-Update-Report-Final.pdf>

information regarding the new legislation and basic information regarding tenant and landlord rights. The implementation process is described further under Next Steps below.

Components of the Proposed Legislation

A. Mandatory Mediation with Binding Arbitration

Descriptions. The proposed new RRSO creates a mandatory mediation program with binding arbitration to improve communication between tenants and landlords. The mediation program with binding arbitration would be available to tenants upon rent increases greater than five percent including all charges except utilities that have been passed through to the tenant per the terms of their lease. The new RRSO will provide protection to approximately 9,500 units from large rent increases that could cause displacement or increase overcrowding in rental housing. Attachment VIII provides a more detailed summary description of the program created under the proposed legislation.

Applicability. The provision would be applicable to all pre-1979 units except single family homes and condominiums consistent with State law. An alternative would be to also exclude duplexes from these provisions of the new RRSO per comments from landlords.

B. Provisions to Protect Section 8 Voucher Holders from Discrimination

Description. The proposed new RRSO prevents discrimination based on source of income, which has been defined to include rental assistance such as Section 8 Housing Choice Vouchers. This will prevent recipients of rental housing assistance from being denied the opportunity to apply for housing and ensure that the rental assistance be included as income when a landlord determines a tenant's capacity to pay rent. These provisions would not impact landlords' ability to charge market rent for their units or prevent a landlord from rejecting an applicant based on other factors such as rental or credit history. It would, however, prevent a landlord from rejecting an applicant merely because of the housing choice voucher or from stating in advertisements that a tenant who receives assistance is not welcome to apply for the housing unit.

Applicability. The provision would be applicable to all rental housing units.

C. Filing Rent Increase Notices and Notices of Termination of Tenancy.

Description. The proposed new RRSO requires landlords of all rental property to file rent increase notices and notices of termination of tenancy with the City. Collection of this information will allow the City to collect data related to rent increases and reasons for potential evictions. More data will help the City identify and address rental housing issues more effectively, as well as propose potential solutions to address these issues. Data derived from the notices may result in the City adopting new or updated policies and/or investing funds in programs to help address rental housing issues in the City that become more evident as the result of data collection and analysis. Staff are also exploring ways to make it as easy as

possible for landlords to submit the notices and possibly even allow landlords to upload notices directly to the City's database.

Applicability. The provision would be applicable to all rental housing units in the City.

D. Tenant Retaliation Protections

Description. The proposed new RRSO includes tenant retaliation protection provisions to provide tenants with legal rights if they are harassed or retaliated against by landlords and provides civil remedies to tenants, if the policy is violated. While California Law protects a tenant from retaliation by a landlord if the tenant has lawfully exercised their rights and makes it unlawful for landlords to attempt to influence a tenant to move, the proposed tenant retaliation protections in the new RRSO in Section 12(b) of the proposed ordinance provide more specificity regarding the types of bad business practices that are considered harassment. Additionally, the tenant retaliation protection provisions set a minimum civil penalty amount of \$1,000 and establish increased penalties of \$5,000 for vulnerable populations, including seniors and persons who are disabled.

Applicability. These provisions would be applicable to all rental housing units in the City.

E. Reincorporation of the Just Cause for Tenant Evictions

Description. The Just Cause for Tenant Evictions was extended to all residential rental property on March 5, 2019 as a separate ordinance. The proposed new RRSO reincorporates the Just Cause for Tenant Evictions that prevents no cause evictions to create a comprehensive set of rental housing policies in a single ordinance with the objective of stabilizing rent increases, providing tenant protections, and preventing displacement and homelessness.

Applicability. The provision would be applicable to all rental housing units in the City.

Rental Housing Program Fees

Staff is proposing updating the rental housing program fee to be charged to all rental units in the City. This fee will vary based on the type of unit as defined under the new RRSO due to the fact that the effort and services provided to administer the program for each unit type (Covered Rental Unit, Rental Unit) differ drastically. More specifically, the fee for a unit that will have access to mediation and binding arbitration services (Covered Rental Unit), as proposed in the new RRSO, will be higher than a unit that does not. The additional mediation and binding arbitration service results in higher administration costs, including staff time, professional services, and supplies. The remaining rental units, including single-family homes and condominium rentals, as well as all other rental units built after 1979 (Rental Unit), would have access to all services except mediation and binding arbitration, and therefore the cost for administering the RRSO for these units is significantly lower.

As provided for in the existing and new RRSO, the fee is paid by the landlord and half of the fee can be passed through to the tenant.

Table 1 below summarizes the fee per unit for FY 2020 prior to a new RRSO and provides a comparison to the proposed updated fees staff calculates will be necessary to recover expected expenses for the updated Rent Review Program and to ensure that there is no adverse fiscal impact to the General Fund.

Table 1. Rent Review Administration Fee Comparison

FEE	MOBILE HOME	RENTAL UNIT	COVERED RENTAL UNIT
Current	\$3.08	\$0.00	\$3.55
Proposed	\$5.00	\$19.00	\$40.00

For context, the following are examples of rent review fees charged in neighboring jurisdictions:

- City of Richmond⁹: Charges a tiered rental housing fee. The fee for FY 18-19 was \$207 for Fully Covered Rental Units, \$100 for Partially Covered Rental Units (such as single-family homes, condominiums, and new construction), and \$50 for Governmentally Subsidized Rental Units (including units in the Section 8 Housing Choice Voucher Program).
- City of Berkeley¹⁰: The fee for FY 18-19 was \$250 per unit and applies to all units subject to the City’s Rent Stabilization Ordinance.
- City of Oakland¹¹: The fee for FY18-19 was \$68 per unit and applies to all units subject to the City’s Rent Adjustment Program.
- City of San Jose¹²: The fee for units covered under the Apartment Rent Ordinance (ARO) is \$77.30 per unit and \$6.20 per unit for units not covered under the ARO.
- City of Fremont¹³: The Rent Review Program Annual Fee is \$24 per unit and applies to all non-owner occupied residential rental properties in the City of Fremont¹⁴.

The fee increases proposed are based on staff estimates and will be reassessed after the City has data on actual fee revenues and program expenditures.

⁹ City of Richmond Residential Rental Housing Fee: <https://www.ci.richmond.ca.us/3679/Fees>

¹⁰ City of Berkeley Rent Stabilization Board Registration Information: https://www.cityofberkeley.info/Rent_Stabilization_Board/Home/FY_2018-2019_Registration_Information.aspx

¹¹ City of Oakland Rent Adjustment Program Fee: <https://www.oaklandca.gov/services/rent-adjustment-program-fee>

¹² City of San Jose Rent Stabilization Program: fee information provided by San Jose City staff

¹³ City of Fremont Master Fee Resolution No. 8672 (Fees as amended through March 20, 2019): <https://www.fremont.gov/DocumentCenter/View/25240/MASTER-FEE-SCHEDULE-effective-03202019?bidId=>

¹⁴ City of Fremont Rent Review Program Annual Fee – Frequently Asked Questions: <https://fremont.gov/DocumentCenter/View/37993/Landlord-Letter---FAQ>

Lastly, the new RRSO recommended by staff proposes that the administration of the Rent Review Administration Fee should be updated to invoice in advance to recover the current fiscal year budgeted expenses. Historically, the Rent Review Administration Fee was billed and collected two years in arrears (i.e. invoices sent out in November 2018 were to recover costs from calendar year 2017). Staff anticipates that revenue generated from the proposed fee for FY 2020 will fully offset the costs to administer the program.

Program Administration

Based on the proposed changes in the administration of the Residential Rent Review program, staff is anticipating an increased workload that current staffing levels cannot support. Staff anticipates an increase in public questions and inquiries related to the Rent Review Program, as well as mediation and binding-arbitration petitions. Additionally, the implementation of the requirement that landlords file notices of all rent increases and evictions with the City and the maintenance of the City's Rental Housing Database will require significant additional effort. To administer the program, staff is proposing the following items to augment the program's FY 2020 operating budget:

- Staffing - Addition of one Program Specialist (+ 1.0 FTE) at a cost of \$154,394. This position will work solely on the Rent Review Program and ensure that the community's needs are addressed in a timely, responsive, and thorough manner.
- Consultant services – Increase of \$159,000 to previously budgeted amounts to cover the costs of additional professional services for increased tenant/landlord mediation and arbitration services, educational seminars, webinars and workshops on relevant housing topics, and translation services.
- Overhead Expenses - Increase of \$45,606 for expenses, such as supplies, printing and postage costs for mailers, public notices, correspondence, billing, etc.

Provisions Excluded from the New RRSO per HHTF Direction

Tenant Relocation Assistance

Based on substantial opposition, concerns, and questions regarding the tenant relocation assistance program, the HHTF decided to continue evaluating these provisions at a future time. Under a tenant relocation assistance program, tenants would be eligible for and entitled to relocation assistance for permanent relocation due to evictions that are due to no fault of the tenant, such as removing a unit from the rental housing market, owner move-in, or displacement caused by code enforcement order that determine a unit to be substandard, and temporary relocations due to unit improvements.

Permanent (Improvement) Vacancy Decontrol

On February 19, 2019, the City Council demonstrated support for eliminating permanent vacancy decontrol (under Section 8) of the existing RRSO; however, there was also support for

waiting for the findings from the consultant, Management Partners, hired to evaluate the vacancy decontrol process. As described in the background section, the Management Partner's study verified that the permanent (improvement) vacancy decontrol provisions may no longer be appropriate to address the current housing concerns and recommended establishing a comprehensive set of housing policies that equitably address affordability and the needs of tenants and landlords (similar to what is being presented this evening for approval) because the permanent decontrol provisions may no longer be relevant. The HHTF unanimously supported the elimination of the permanent vacancy decontrol provisions from the existing RRSO; therefore, the proposed new RRSO does not include provisions to permanently decontrol a rental unit based on improvements made to the unit. 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.

Recommendation

Staff recommends approval of the proposed new RRSO and related fees to create a comprehensive set of housing policies and fees with the objective of stabilizing rent increases, providing tenant protections, and preventing displacement and homelessness.

FISCAL IMPACT

In the City's FY 2020 Adopted Operating Budget, the Residential Rent Stabilization Program is budgeted for in the Housing Division of the City Manager's Office in the General Fund and includes budgeted expenses of \$274,668. Staff is recommending moving this budget allocation for the program from the General Fund to the Rental Housing Program Fund, a new special revenue fund, which will minimize potential current and future fiscal impacts to the General Fund. The resolution proposed this evening will also appropriate an additional \$359,000 to the Rental Housing Program Fund for a total program budget of \$633,668 in FY 2020. Staff anticipates that revenue generated from proposed fee changes included in this staff report along with the changes to the new RRSO will fully offset the costs of administering 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, 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 updates to the existing 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 existing 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. The materials presented, and the results of this open house are summarized in Attachments V and VI.

There was one major theme that was supported by various stakeholders. Collectively, both landlords and tenants expressed the need for more information on tenant and landlord rights and responsibilities and further education on the proposed policies. Specific suggestions include:

1. Provide more information on the City's website;
2. Provide educational trainings and workshops; and
3. Provide information in various language to reach a wider range of tenants and landlords.

If the proposed new RRSO is adopted by City Council, staff has created plain language information for both tenants and landlords that will be made available in multiple languages in print and electronically. Additionally, staff is developing an education program for tenants and landlords regarding the new legislation and tenant/landlord rights and responsibilities.

NEXT STEPS

If the proposed legislation is adopted, staff will be ready to implement the program by the effective date of July 25, 2019 per the implementation schedule in Table 2.

Table 2. Implementation Schedule

Proposal of New RRSO	June 18, 2019
Second Reading of the New RRSO	June 25, 2019
Effective date of the New RRSO	July 25, 2019
<ul style="list-style-type: none"> • Develop executive summary and marketing plan • Develop collateral marketing materials • Update website • Develop education plan • Develop forms and notices to facilitate compliance with the ordinance • Identify all rental housing units and units covered by the mediation program • Update contract with consultant that provides mediation services. 	June 25 – July 25, 2019
Start staff recruitment for Program Specialist	July 1, 2019
Notify landlords regarding the new RRSO	By July 15
<ul style="list-style-type: none"> • Begin implementation of marketing and education plan • Implementation of the first phase of the database: <ul style="list-style-type: none"> ○ Identify all rental housing units and associated policies applicable to each unit. 	July 25, 2019

Included in the implementation schedule is the development of collateral marketing materials, updating the City’s website to provide plan language information regarding the new legislation, and development of a marketing plan to make landlords and tenants aware of the new legislation. At a minimum, marketing will include the following:

- Direct mailer to landlords
- Landlords notify tenants as required by the new RRSO
- Disseminate information to community-based organizations
- Provide marketing materials to community centers, the library, and Hayward Unified School District family resource center
- Disseminate information at community events
- City’s website
- Send information to people who participated in the community open house and the HHTF meetings
- Social media
- Press releases

Also included in program implementation will be the development of an education plan to provide more in-depth information about the new RRSO and tenant/landlord rights and responsibilities. Workshops will likely be designed to meet the needs of the intended audience, such as landlord, tenant, or real estate professional.

Concurrent with the implementation of the new RRSO will be the development of a database to administer the RRSO under the new terms of the program. The database will be developed in phases. The first phase will identify all rental housing units and the associated policies applicable to each unit (mediation, just cause, tenant protection). The second phase will include tracking tenant petitions, outcomes and reasons for withdrawal, and create a repository for rental housing complaints including units not covered by the mediation program. The third phase will incorporate elements from the new RRSO, such as a system to file rent increase notices or notices of termination of tenancy. The fourth phase will explore suggestions from HHTF members, such as automated noticing. Staff will roll out the database and its features gradually over the next year.

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', is written over a horizontal line.

Kelly McAdoo, City Manager

CITY OF HAYWARD HOUSING DIVISION
RESIDENTIAL RENT REVIEW PROGRAM

*RESIDENTIAL RENT
STABILIZATION
AND
TENANT PROTECTION
ORDINANCE*

City of Hayward Ordinance No

**RESIDENTIAL RENT STABILIZATION AND TENANT PROTECTION ORDINANCE
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ORDINANCE NO. _

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA ADDING CHAPTER []
OF THE HAYWARD MUNICIPAL CODE REGARDING THE RESIDENTIAL RENT
STABILIZATION AND TENANT PROTECTION ORDINANCE

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

SECTION 1.

The City of Hayward Municipal Code is hereby amended by the addition of Chapter __ to be entitled “Residential Rent Stabilization and Tenant Protection Ordinance.”

SECTION 2.

The Rent Stabilization Ordinance, previously introduced on September 6, 1983 and adopted by the City Council on September 13, 1983 and the Emergency Just Cause for Protection Ordinance, adopted by the City on March 5, 2019, are hereby repealed and replaced with this newly adopted Residential Rent Stabilization and Tenant Protection Ordinance, attached hereto as Exhibit “A” and incorporated herein by reference.

EXHIBIT “A” RESIDENTIAL RENT STABILIZATION AND TENANT PROTECTION
ORDINANCE

SECTION 3. FINDINGS AND PURPOSE.

The City Council finds that a shortage of safe, stable, and affordable residential rental housing continues to exist in the City of Hayward which is evidenced by a low vacancy rate among such units throughout the City; that in order to retain or find adequate rental housing, many residents of the City of Hayward pay a substantial amount of their monthly income for Rent; that the present shortage of residential Rental Units and the prevailing Rent levels have a detrimental effect on the health, safety, and welfare of a substantial number of Hayward residents, particularly those senior citizens, persons in low and moderate income households, and persons on fixed incomes who reside in the City; that residential Tenants constitute approximately forty-nine percent (49%) of the residents in Hayward; that residential Tenants suffer great and serious hardship when forced to move from their homes; that the community is impacted by overcrowding and housing instability when rent increases outpace incomes; and that the welfare of all persons who live, work, or own Property

in the City of Hayward depends in part on attracting and retaining persons who are willing to invest in residential rental Property in the City and ensuring that Hayward residents have access to affordable housing.

Among the purposes of this ordinance are therefore: preserving the approximately 1,000-1,600 Rental Units covered under the City's 1983 Residential Rent Stabilization Ordinance; providing relief to residential Tenants in the City by stabilizing Rent Increases as allowed by State law; to alleviate the hardship and displacement caused by serious housing shortages by establishing a mediation and arbitration program and by increasing Tenant protections; encouraging investment in new residential rental Property in the City; and assuring efficient Landlords both a Fair Return on their Property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation while the provisions of this ordinance are in effect.

SECTION 4. DEFINITIONS.

(a) "Arbitrator." A person who is neither a Tenant as that term is defined in this ordinance nor who has an interest in residential rental Property that would require disqualification under the provisions of the Political Reform Act if such person were an elected state official and a person whom the Rent Review Officer determines meets one of the following criteria:

- (1) Completion of a Juris Doctor or equivalent degree from a school of law and completion of a formal course of training in arbitration which, in the sole judgment of the Rent Review Officer, provides that person with the knowledge and skills to conduct a rental dispute arbitration in a professional and successful manner; or
- (2) Completion of at least three arbitration proceedings for a Superior Court or other public entity that involved issues the Rent Review Officer considers similar to those raised in Rent dispute arbitrations.

(b) "Banking" or "Banked Increase" Any Rent Increase the Landlord chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in this ordinance.

(c) "Business Tax Declaration." The annual declaration required to be filed in connection with a Landlord's obtaining or renewing a city business license for Rental Units. Any failure by a Landlord to file such a declaration, whether pursuant to

an exemption or otherwise, shall not relieve a Rental Unit from being subject to the provisions of this ordinance.

(d) "Capital Improvements." Those improvements that materially add to the value of the Property and appreciably prolong its useful life or adapt it to new uses, benefit the Tenant, and which may be amortized over the useful remaining life of the improvement to the Property, including but not limited to improvements to, the seismic safety of the rental Property or increase the energy efficiency of the rental Property (including any improvement to allow a significantly more accurate allocation of utility costs), provided that in determining the cost of a capital improvement no consideration shall be given to any additional cost incurred for increased Property damage or improvements for ordinary repairs, replacements, and maintenance, and/or deterioration resulting from an unreasonable delay in the undertaking of completion or after a Notice of Violation by a government agency ordering repairs that has remained unabated for 90 or more days of any repair or improvement.

(e) "Covered Rental Unit." Any residential Rental Unit, other than a mobile home unit, and all Housing Services provided with such unit that is located in the City of Hayward and used or occupied by the payment of Rent.

Notwithstanding the foregoing, the following residential Rental Units are not deemed Covered Rental Units for the purpose of this ordinance:

- (1) Accommodations in any hospital, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by either an educational institution or a private organization which offers spaces in rooms for Rent in conjunction with the providing of services such as meals, cleaning services, and social programs.
- (2) Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses; provided that such accommodations are not occupied by the same Tenant for thirty (30) or more continuous days.
- (3) Rental Units in a nonprofit cooperative that are owned, occupied, and controlled by a majority of the residents.
- (4) Rental Units whose Rents are controlled, regulated (other than by this ordinance), or subsidized by any governmental unit, agency or authority for term specified in written agreement with governmental unit, agency or authority. Upon termination of regulatory covenants or contracts that control, regulate, or subsidize the Rents of a Rental Unit, the Rental Units shall be subject to this ordinance.

- (5) Rental Units that are lawful and in compliance with the Hayward Municipal Code section 10-1.2740, et seq. (Accessory Dwelling Units), if the primary residence is occupied by the Property owner.
- (6) Rental Units located in a structure for which a certificate of occupancy is first issued after July 1, 1979.
- (7) Any residential real Property that is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b), (d) or (f) of Section 11004.5 of the California Business and Professions Code.
- (8) A condominium unit that has been sold separately by the subdivider to a bona fide purchaser for value. However, this ordinance shall apply to pre-1979 condominium units that remain unsold by the subdivider, unless and to the extent the Property has become owner-occupied for a period of at least a year. A subdivider who continues to Rent out the units and allows a public report for sale of subdivision interests to lapse may be regulated by this ordinance because they are no longer “alienable” for purposes of the statute preempting local regulation.
- (9) Rental Units exempt from Rent control pursuant to the Costa-Hawkins Rental Housing Act (California Civil Code § 1954.52).
- (f) “Fair Return” as defined in section 9(a)(6)
- (g) “Governmental-Utility Services.” Services provided by a public agency, public utility, or quasi-public or utility, including but not limited to water, sewer, gas, electric, and rubbish removal.
- (h) “Gross Income.” The annual Rents collected from all occupied Rental Units as well as income from any other source related to the use or occupancy of the Rental Units, including income from facilities, garage or parking fees or other services if not included in Rent; utility costs paid directly to the Landlord by the Tenant if not included in the Rent.
- (i) “Harassment.” A knowing and willful act or course of conduct directed at a specific Tenant or Tenants which:
 - (1) Would cause a reasonable person to fear the loss of use or occupancy of a Rental Unit or part thereof, or of any service, privilege or facility connected with such use or occupancy, without legitimate reason or legal justification; or

(2) Materially interferes with a Tenant's peaceful enjoyment of the use and/or occupancy of a Rental Unit; or

(3) A single act may constitute Harassment for purposes of determining whether a vacancy was voluntary. A course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

- (j) "Health Facility." means any facility, place or building that is organized, maintained, and operated for the diagnosis, care, and treatment of human illness, physical or mental, including convalescence and rehabilitation, and including care during and after pregnancy, or for any one or more of these purposes.
- (k) "Housing Service." A service provided by the Landlord related to the use or occupancy of a Rental Unit, including but not limited to, insurance, repairs, replacement, maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.
- (l) "Initial Rent." The Rent in effect on July 25, 2019 is the Initial Rent. If there was no Rent in effect on that date, the Initial Rent is the Rent charged on the first date that Rent was charged after that date. For tenancies that commenced after July 25, 2019, the Initial Rent is the rate of Rent charged on the date the tenancy begins.
- (m) "Landlord." Any owner, lessor, or sublessor of real Property who receives or is entitled to receive Rent for the use or occupancy of any Rental Unit or portion thereof in the City of Hayward, and the designated representative, agent, or successor of such owner, lessor, or sublessor.
- (n) "Mediator." A person whom the Rent Review Officer determines meets all of the following criteria:
 - (1) Has received at least 24 hours of formal training in mediation;
 - (2) Has mediated Rent disputes or has had other experience or training showing a capability to mediate the issues which arise in such disputes; and
 - (3) Who is neither a Tenant as that term is defined in this ordinance nor has an interest in residential rental Property that would require

disqualification under the provisions of the Political Reform Act if such person were an elected state official.

(o) "Net Operating Income." The revenue available to the Landlord after paying the normal Operating Expenses.

(p) "Operating Expenses." The costs of normal operations, including management, taxes and insurance, maintenance and other recurring costs.

(q) "Property." means a parcel of real Property, located in the City of Hayward, that is assessed and taxed as an undivided whole.

(r) "Rent." The total consideration, including any bonus, benefit, gratuity, demanded or received by a Landlord for or in connection with the use or occupancy of a Rental Unit, or the assignment of a lease for such a unit, including Housing Services or subletting, but excluding any amount demanded or received by a Landlord as a Security Deposit.

(s) "Rental Agreement." means an agreement, oral, written, or implied, between a Landlord and a Tenant for the use and/or occupancy of a Rental Unit.

(t) "Rent Increase." Any additional Rent demanded of or paid by a Tenant for a Rental Unit, including any reduction in Housing Services without a corresponding reduction in the amount demanded or paid for Rent; or a pro rata increase in costs of Housing Services apportioned to a Covered Rental Unit.

(u) "Rent Review Officer." The person or persons and/or entity designated by the City Manager to administer and enforce the provisions of this ordinance.

(v) "Rental Unit." Any building, structure, or part thereof, or appurtenant thereto, or any other rental Property Rented or offered for Rent for living or dwelling purposes, including houses, apartments, rooming or boarding house units, and other real properties used for living or dwelling purposes, together with all Housing Services connected with the use or occupancy of such Property. For purposes of this ordinance a Rental Unit shall not include a mobile home or mobile home space.

(w) "Security Deposit." Any payment, fee, deposit or charge, including but not limited to an advance payment of Rent, used or to be used for any purpose, including but not limited to any of the following:

- (1) Compensation of a Landlord for a Tenant's default in the payment of Rent;
- (2) The repair of damages to the premises caused by the Tenant beyond ordinary wear and tear;

- (3) The cleaning of the Rental Unit, if necessary, upon termination of tenancy; provided, however, that the term Security Deposit shall not include any fee or charge pursuant to any mutual agreement for the Landlord at the request of the Tenant to make any structural, decorative, furnishing, or other similar alterations as long as such alterations are other than that cleaning or repairing for which the Landlord may charge the previous Tenant under California law.

(x) "Skilled Nursing Facility." A Health Facility or a distinct part of a hospital that provides, at a minimum, skilled nursing care and supportive care to patients whose primary medical need is the availability of skilled nursing care on an extended basis. Such facility must provide 24-hour inpatient care, an activity program, and medical, nursing, dietary, pharmaceutical services. Additionally, the facility must provide effective arrangements, confirmed in writing, through which services required by the patients but not regularly provided within the facility can be obtained promptly when needed.

(y) "Source of Income." All lawful, verifiable sources of income, or rental assistance from any federal, state, local, or nonprofit-administered benefit or subsidy program, or any financial aid from any rental assistance program, homeless assistance program, Security Deposit assistance program, or housing subsidy program, whether paid directly to the program participant, Landlord, or representative of either.

(z) "Tenant." A Tenant, subtenant, lessee, or sublessee, or any other person entitled by written or oral agreement to the use or occupancy of any Rental Unit or Covered Rental Unit.

(aa) "Voluntarily Vacated." Shall mean a vacancy that results from the independent choice of the Tenant, without intimidation, pressure, or Harassment, but does not include tenant vacancy due to severe habitability issues as defined in Civil Code Sections 1941.1 et seq. and Health and Safety Code Sec 17920.3 and 17920.10. For purposes of this section "abandonment" is defined as the Tenant's independent choice, without intimidation, pressure, or Harassment to relinquish all right and possession of the premises, with the intention of not reclaiming or resuming its possession or enjoyment, and the Landlord terminates the tenancy pursuant to Civil Code Section 1951.3. Abandonment is considered voluntary.

SECTION 5. RESIDENTIAL RENT INCREASE THRESHOLD.

(a) From and after July 25, 2019 (the effective date of this Ordinance), a Rent Increase, including any increase of Housing Services, for use or occupancy of a Covered Rental Unit may be imposed once every twelve (12) months for an amount equal to or less than five percent (5%) of the existing total monthly Rent. Such an increase shall be

known as the, "Rent Increase Threshold" and shall not be subject to Section 7 of this Ordinance.

- (1) A Rent Increase, including any increase of Housing Services, for any Covered Rental Unit that exceeds the five percent (5%) Rent Increase Threshold within a twelve (12) month period, shall be subject to Section 7 of this ordinance and a Tenant may file a petition for review of the Rent Increase in accordance with Section 7(c).
- (2) If a Landlord has imposed a Rent Increase during any twelve (12) month period between July 25, 2018 and July 25, 2019, the Landlord may increase no earlier than the anniversary date of the last Rent Increase.

(b) Exemptions to the Rent Increase Threshold:

- (1) A Rent Increase after the Covered Rental Unit has been Voluntarily Vacated;
- (2) A Rent Increase after lawful eviction;
- (3) The Rent Increase Threshold shall not apply if doing so would violate the terms of a written lease entered into on or before July 25, 2019. Otherwise, any provision, whether oral or written, in or pertaining to a Rental Agreement whereby any provision of Section 5 is waived or modified, is against public policy and void.
- (4) An increase for Governmental-Utility Service costs in accordance with Section 5(d).
- (5) An increase for Capital Improvement costs in accordance with Section 5(e).
- (6) An increase based on Banking in accordance with Section 5(f).

(c) Limitations on Fees. The following fees may not be charged to Tenants except as provided:

- (1) Excess Replacement Fees. No Landlord shall charge a Tenant a replacement fee for a key or security card that exceeds the actual replacement cost plus ten dollars (\$10.00) unless approved by Tenant petition.
- (2) Excess Bounced Check Service Fees. No Landlord shall charge a Tenant a service charge for a dishonored ("bounced") check that exceeds the amount

allowed under California Civil Code Section 1719(a) (1), as amended. Landlord need not provide Tenant with a third-party invoice for this service charge.

- (3) Late Payment Fees. No Landlord shall charge a Tenant a fee for late payment of Rent exceeding a total of five percent (5%) of the monthly Rent for each payment of Rent that is three (3) or more days late.
- (4) Application Screening Fees. No Landlord shall charge a Tenant an application screening fee in excess of the amount allowed under California Civil Code Section 1950.6(b), as amended.

(d) Governmental-Utility Service Pass Through. A Landlord may only pass through costs of Governmental-Utility Services through a ratio utility billing system (RUBS) or similar unmetered allocation arrangement, pursuant to the terms of a written lease. However, costs for Governmental-Utility Service pursuant to this Section shall not be considered Rent, and shall not be increased when Rent Increases, nor shall they be considered Rent for purposes of calculating an increase under the Rent Increase Threshold in accordance with Section 5(a).

- (1) Within two (2) months receipt of a utility rate cost increase and/or any increase in utility services costs above one percent (1%) of the Tenant's existing Rent, upon request by a Tenant, the Landlord shall provide the Tenant(s) documentation supporting the level of increase, including at a minimum:
 - (i) Proof of the Governmental-Utility Service cost for the entire building showing the amount paid by the Landlord for each billing period for a twelve (12) month period prior to the increase in the Governmental-Utility Service;
 - (ii) Proof of the Governmental-Utility Service cost by month or billing period apportioned to each unit for a twelve (12) month period prior to the increase in the Governmental-Utility Service.
 - (iii) Billing notices or other equivalent documents from the agency imposing the increase reflecting the amount of increase in the Governmental-Utility Service cost for the entire building; and
 - (iv) The RUBS or unmetered allocation arrangement calculations used by Landlord or third-party agency on behalf of the Landlord to apportion the increased costs among the Tenants.

- (2) In accordance with Section 7 of this ordinance, the Tenant may file a petition to initiate review of a Governmental-Utility Service upon the Landlord's failure to provide the Tenant with the documentation required in Section 5(d)(1) and when the Government-Utility Service increase in cost exceeds one percent (1%) of the Tenant's existing Rent.
- (3) Failure of the Landlord to follow the procedure set forth in this subsection shall be a defense in any action brought to recover possession of a Covered Rental Unit or to collect the disputed Governmental-Utility Service Pass Through costs.

(e) Capital Improvements. A Landlord may impose a pass-through cost, in addition to a Rent Increase, to the extent authorized in a final decision by an Arbitrator on a Landlord capital improvement petition filed in accordance with this Section. Costs for Capital Improvements shall not be considered Rent and shall not be increased when Rent Increases, nor shall they be considered Rent for purposes of calculating an increase under the Rent Increase Threshold in accordance with Section 5(a).

(1) Limitations on Pass-through for Capital Improvements.

- (i) Must be a Capital Improvement as defined in Section 4(d).
- (ii) The Capital Improvement must have been completed and paid for prior to the filing of the petition for a final decision by an Arbitrator.
- (iii) A petition to impose a Capital Improvement pass-through of costs must be initiated by the Landlord within two (2) years of completion of the capital improvement work.
- (iv) The total costs passed through by the Landlord may not exceed fifty percent (50%) of the total amount paid by the Landlord; and
- (v) No Landlord may require a Tenant to pay any amount of any cost that is attributable to any period of time that the Tenant was not entitled to use and occupy the Covered Rental Unit; and
- (vi) No Landlord may require a Tenant to pay more than its share of the cost attributable to that Tenant's Covered Rental Unit that is permitted to be passed through to Tenant.

- (vii) Equipment otherwise eligible as a Capital Improvement will not be considered if a “use fee” is charged (i.e. coin-operated washer and dryers).

(2) Calculating Capital Improvements.

- (i) Capital Improvement costs must be amortized over the useful life of the improvement.
- (ii) Capital Improvements shall be given a useful life period of five (5) years or sixty (60) months and the total costs shall be amortized over that time period, unless the Rent Increase coupled with the Capital Improvement cost would exceed ten percent (10%) of the existing Rent for a Covered Rental Unit.
- (iii) When a capital improvement cost standing alone or a capital improvement cost coupled with a Rent Increase and Banking Increase would exceed ten percent (10%) or thirty percent (30%) in five years, the excess can only be recovered by extending the Capital Improvements amortization period in yearly increments sufficient to cover the excess. In addition, the Landlord must comply with the requirements to notice the Tenant of the extended amortization period with the initial Capital Improvement cost.
- (iv) For mixed-use structures, only the percent of residential square footage will be applied in the calculations. The same principle shall apply to Landlord-occupied Rental Units (i.e., exclusion of Landlord’s unit).
- (v) If a unit is occupied by an agent of the Landlord, this unit must be included when determining the average costs per unit. For example, if a building has ten (10) units, and one is occupied by a nonpaying manager, any Capital Improvement would have to be divided by (10), not nine (9), in determining the average Capital Improvement increase.)
- (vi) Where a Landlord is reimbursed for Capital Improvements (i.e. insurance, court-awarded damages, subsidies, etc.), this reimbursement must be deducted from such Capital Improvements before costs are amortized and allocated among the units.

- (vii) The dollar amount of the Capital Improvement charge shall be removed from the allowable Rent in the sixty-first month or at the end of an extended amortization period.
- (2) Landlord Petition for Capital Improvements.
 - (i) A Landlord must file a petition with the Rent Review Officer to schedule an arbitration for review of Capital Improvement costs in accordance with this Section and Section 7.
 - (ii) The Landlord must provide documentation of its costs in support of the petition for Capital Improvement. Undocumented labor costs provided by the Landlord cannot exceed 25% of the costs of materials.
- (3) Landlord Petition of Capital Improvements for Provisional Decision by Arbitrator.
 - (i) A Landlord may file a petition of Capital Improvement costs in accordance with this Section and Section 7 with the Rent Review Officer to schedule an arbitration for a provisional decision prior to performing the Capital Improvement, which shall include a written proposal, cost estimates and other supporting documentation. A final decision by an Arbitrator shall not be considered until the Capital Improvement has been completed and the necessary documentation submitted.
- (4) Failure of Landlord to Remove Capital Improvement Costs from Rent
 - (i) If an owner fails to reduce a Capital Improvement costs from Rent in the month following the end of the amortization period for such improvement and the Tenant pays any portion of such Capital Improvement costs after the end of the amortization period, the Tenant may recover interest on the amount overpaid.
 - (ii) The applicable rate of interest for overpaid Capital Improvements shall be the rate specified by law for judgements pursuant to California Constitution, Article XV and any legislation adopted thereto, and shall be calculated at simple interest.
- (f) Landlord "Banked Increase".

- (1) A Landlord may bank all or part of its annual permissible Rent Increase up to five percent (5%) in accordance with the Rent Increase Threshold and use the Banked Increase at a later time. The Landlord may apply the unused Rent Increase to its current year in accordance with this Section.
 - (2) Limitations on Banking.
 - (i) Any Banked Increase that has not been imposed shall expire after 10 years.
 - (ii) A Landlord shall add no more than a five (5) percent Banked Increase to the total of any current year Rent Increase not to exceed a total annual Rent Increase of ten (10) percent.
 - (3) Notice. The Landlord shall notice a Banked Increase concurrent with a Rent Increase pursuant to Section 15.
 - (4) A Tenant may file a petition for review of a Banked Increase in accordance with Section 5(g) and Section 7 of this ordinance. If a Tenant contests a Banked Increase in accordance with Section 5(g) and Section 7, the Landlord shall provide evidence of the rental history of the subject Covered Rental Unit.
- (g) Petition Process
- (1) Tenant Petitions. A Tenant may submit a petition to the Rent Review Officer in accordance with Section 7 on any one (1) or more of the following grounds:
 - (i) The Landlord failed to provide notice of the Rent Increase, Banked Increase, or Governmental-Utility Services in accordance with Section 15.
 - (ii) To request review of a Rent Increase in excess of the five percent (5%) Rent Increase Threshold in Section 5(a);
 - (iii) To contest the Banked Increase calculations or a Banked Increase coupled with a Rent Increase in excess of ten (10%) percent;
 - (iv) To request review of an increase in Governmental-Utility Services which exceeds one percent (1%) of the Tenant's existing Rent;

- (v) To request a reduction in Rent based on decreased Housing Services;
- (vi) To contest a Capital Improvement cost not subject to a final decision of an Arbitrator per section 5(e)(2) as an unauthorized or excessive pass through;
- (vii) To request review of a Rent Increase when the Covered Rental Unit has uncured health, safety, fire, or building violations.

(2) Landlord Petitions. There is hereby established a Landlord petition process. In accordance with Section 7 of this ordinance, a Landlord may submit a petition to the Rent Review Officer on any one (1) or more of the following grounds: (i) to request a Rent Increase in excess of the Rent Increase Threshold or in excess of a ten percent (10%) Rent Increase, inclusive of Banking and/or Capital Improvement costs to obtain a Fair Return; or (ii) to request a pass through of Capital Improvement costs. The Landlord must provide notice to the Tenant(s) of the petition in accordance with Section 15.

SECTION 6. VACANCY RENT INCREASE

(a) Vacancy Rent Levels. Commencing July 25, 2019, a Landlord may establish the Initial Rent rate for all new tenancies consistent with Civil Code Section 1954.50, et seq. as amended, and any ordinance enacted by the City Council consistent therewith, except where any of the following applies:

- (1) The previous tenancy has been terminated by the Landlord pursuant to Civil Code Section 1946, or; the previous tenancy has been terminated upon a change in terms of tenancy noticed pursuant to Civil Code Section 827, except a change permitted by law in the amount of Rent or fees or resulting from the owner's termination of or failure to renew a contract or recorded agreement with a Housing Authority or any other governmental agency that provided for a Rent limitation to a qualified Tenant of the unit. A tenancy shall be presumed to have terminated upon a change in terms of tenancy if the Tenant(s) vacate(s) the Rental Unit within twelve months of the Landlord's unilateral change in the terms of the Rental Agreement. Absent a showing by the Landlord that the Tenant(s) vacated for reasons other than the change in the terms of the Rental Agreement, the Initial Rental rate for the new tenancy shall be no greater than the most recent Rent (prior to the new tenancy).

- (2) A new tenancy begun within three years of the date that the owner terminated or failed to renew a contract or recorded agreement with a Housing Authority or any other governmental agency that provided for a Rent limitation to a qualified Tenant of the unit unless the new tenancy is exempted from this limitation pursuant to Civil Code Section 1954.53(a) (l) (B). During the three-year period, the rental rate for any new tenancy established in that vacated unit shall be at the same rate as under the terminated or nonrenewed contract or recorded agreement, increased by any subsequently authorized annual Rent Increases.

The Landlord has otherwise agreed by contract with a public entity to limit or otherwise restrict Rent levels in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of title 7 of the Government Code.

- (3) The Covered Rental Unit has been cited in an inspection report by the appropriate government agency as containing serious health, safety, fire or building code violations as defined by Civil Code Sections 1941.1 et seq. and Health and Safety Code Section 17920.3 and 17920.10 excluding those caused by disasters or damages incurred by the Tenant or associated occupants, guests, or pets, the citation was issued at least sixty (60) calendar days prior to the date of the vacancy, and the cited violation had not been abated when the prior Tenant vacated and has remained unabated for at least sixty (60) calendar days, unless the time for correction was extended by the agency that issued the citation.
- (4) The prior Tenant vacated the Property as a proximate result of the conduct by the Landlord such that the vacancy is non-voluntary, except for evictions for just cause as provided under Section 13 of this ordinance.

(b) Re-Renting Following Voluntary Vacancy. This ordinance does not impose limitations on the amount of Initial Rent a Landlord can charge upon the re-renting of a Covered Rental Unit that has been Voluntarily Vacated by the previous Tenant or terminated after a lawful eviction. However, all subsequent Rent Increases for a covered Rental unit shall be subject to the Rent Increase Threshold contained in Section 5(a) for the remainder of the new tenancy.

(c) Re-Renting Following Nonvoluntary Vacancy. Upon re-renting of a Covered Rental Unit which has not been Voluntarily Vacated, the Landlord may raise the Rent up to five (5%) regardless of the date of the last Rent Increase. A Rent Increase imposed pursuant to the provisions of this subsection shall establish a new

anniversary date for the purpose of applying the provisions of Section 5 of this ordinance to the Covered Rental Unit. Except for the establishment of a new anniversary date, all provisions of this ordinance shall apply to a Covered Rental Unit re-rented pursuant to the provisions of this subsection.

SECTION 7. THE RENT DISPUTE RESOLUTION PROCESS.

(a) **Tenant and Landlord Right to Contact Rent Review Officer.** A Tenant or Landlord may contact the Rent Review Officer for an explanation of the provisions of this ordinance.

(b) **Tenant Right to File a Petition.** A Tenant may file a petition to initiate review of a Rent Increase, including 1) the Landlord's failure to provide notice of the Rent Increase, Banked Increase, or increase in Government-Utility Service cost in accordance with Section 5(d) and Section 15; 2) to request review of a Rent Increase in excess of the five percent 5% Rent Increase Threshold; 3) to contest the Banking calculations or a Banked Increase coupled with a Rent Increase in excess of ten percent (10%); 4) to request review of an increase in costs of Governmental-Utility Services which exceeds one percent (1%) of the Tenant's existing Rent; 5) to request a reduction in Rent based on decreased Housing Services; 6) to contest a Capital Improvement cost as an unauthorized or excessive pass through; and 7) to request review of a Rent Increase when the Covered Rental Unit has uncured health, safety, fire, or building violations.

Upon the filing of a petition under Section 5(b)(2) or 5(b)(3), the Tenant will pay a Rent Increase equaling the Rent Increase Threshold. For all other petitions, the Rent Increase, Government-Utility Costs, or that portion of the demanded Rent or increase in Housing Services that is in dispute, is not effective and may not be collected until and to the extent a settlement is reached during mediation, or if appealed in a timely fashion, awarded by an Arbitrator pursuant to the provisions of the ordinance, or until the petition is abandoned.

(c) **Tenant's Time to File a Petition.** Where applicable a Tenant filing a petition under this section shall do so within the following time limits:

- (1) Tenant receiving a notice of Rent Increase or Banking Increase and the accompanying notice required by Section 15 shall have thirty (30) days after service of such notices to file a petition for review of Rent;
- (2) Tenant receiving a notice of increase of Governmental-Utility Services as required by Section 5(d) and Section 15 shall have thirty (30) days after service of such notices to file a petition for review of the utility service.

- (3) Tenant receiving any information, documentation or notice in accord with Section 15 shall have thirty (30) days after the service of such information, documentation, or notice to file for a petition for review of Rent.
- (4) In instances where notice is not provided as required under Section 15 of the ordinance the Tenant shall file a petition for review of Rent within thirty (30) days after he or she knew of the alleged failure to comply with the requirements of the ordinance.

(d) Meet and Confer. Within ten (10) days after filing a petition to initiate review of a Rent Increase, the Tenant shall make a good faith attempt to contact the Landlord or the person designated by the Landlord at the time and place shown on the notice provided by the Landlord to discuss the Rent Increase. The Rent Review Officer will hold the petition for the ten (10) day meet and confer period. Unless the petition is withdrawn, the Rent Review Officer will accept the petition at the end of the ten (10) day period.

(e) Landlord Right to File a Petition: Landlord may submit a petition to the Rent Review Officer on any one or more of the following grounds:

- (1) To request a Rent Increase in excess of the Rent Increase Threshold or in excess of a ten percent (10%) Rent Increase, inclusive of Banking and/or Capital Improvement costs in order to obtain a Fair Return.
- (2) To request a pass through of Capital Improvement costs.

(f) Landlord's Time for Filing a Petition: A Landlord's petition for an increase in Rent to obtain a Fair Return may be filed at any time. A Landlord must submit a petition to request a pass through of Capital Improvement costs within two (2) years of completion of the capital improvement work.

(g) Rent Review Officer Authority to Refuse to Accept Petitions. The Rent Review Officer shall refuse to accept a petition of a Tenant or Landlord in the following instances:

- (1) Where the petition is not completely filled out;
- (2) Where from the face of the petition it is determined that the petition has not been filed in accord with Sections 7(b) and (c) for Tenant petitions;
or

- (3) Where from the fact of the petition it is determined that the petition has not been filed in accord with Section 7(e) and (f) for Landlord petitions.

To the extent that a petition is not accepted, Tenant or Landlord will be provided a notice of refusal to accept a petition by the Rent Review Officer. Upon receiving a notice of refusal, Tenant or Landlord has seven days (7) to amend and resubmit petition to comply with the ordinance, which shall not count toward the thirty (30) day time limit for filing a petition.

(h) Rent Review Officer Authority to Consolidate Petitions. As soon as possible after a petition has been accepted, the Rent Review Officer shall, to the extent possible and consistent with the time limitations provided herein, consolidate similar petitions from Tenants at the same complex.

(i) Mediation. Upon, the Rent Review Officer's acceptance of a petition, mediations under this ordinance shall be conducted consistent with the following rules and procedures.

- (1) The Rent Review Officer shall provide the Tenant and Landlord a notice of receipt and acceptance of the petition, and this notice shall be served either in person, ordinary mail, or electronic correspondence.
- (2) The Rent Review Officer shall assign a Mediator and set a date for a mediation no later than thirty (30) days after the acceptance of the petition, unless the Rent Review Officer determines that additional time is required under the circumstances. The Rent Review Officer shall notify the Landlord and Tenant(s) in writing of the date, time, and place of the mediation hearing at least fourteen (14) days prior to the mediation hearing and this notice shall be served either in person, ordinary mail, or electronic correspondence. To the extent possible, the Rent Review Officer shall consider the work schedules of the Tenant(s) and Landlord when selecting a date and time for the mediation.
- (3) The parties may agree to waive mediation and proceed directly to arbitration. Written notice of the intent to waive mediation must be filed at least seven (7) days before the mediation hearing. Upon receipt of a waiver, the Rent Review Officer shall assign an Arbitrator and schedule the arbitration hearing in accordance with Section 7(j).
- (4) For Landlord petitions, the Landlord may unilaterally waive mediation and proceed to arbitration. Written notice of the intent to waive

mediation must be filed at least (7) days before the mediation hearing. Upon receipt of a waiver, the Rent Review Officer shall assign an Arbitrator and schedule the arbitration hearing in accordance Section 7(j).

- (5) Rent Review Officer may grant postponements of the mediation hearing of up to twenty-one (21) days for good cause. The parties, with concurrence of the Mediator and Rent Review Officer, may agree in writing to additional continuances.
 - (6) With input from stakeholders and community members, the Rent Review Officer may adopt procedures for the conduct of mediation hearings.
 - (7) Mediation is a voluntary collaborative process where in the Landlord and Tenant(s) who have a disagreement regarding the Rent Increase, can develop options, consider alternatives, and develop a consensual agreement. The role of the Mediator is to facilitate open communication to resolve dispute in a non-adversarial and confidential manner.
 - (8) The Landlord shall submit a written response to the Tenant's petition, including documentary evidence to the Rent Review Officer at least five (5) days prior to the scheduled mediation hearing. The Landlord and Tenant(s) must appear at the mediation and offer oral and documentary evidence. Both the Landlord and the Tenant(s) may designate a representative or representatives with decision making authority to appear on their behalf at the hearing. Requests for translation services during the mediation shall be submitted to the Rent Review Officer at least five (5) days prior to the scheduled mediation hearing.
 - (9) If the Landlord and Tenant(s) agree to a level of Rent Increase, the Mediator shall prepare a memorandum of agreement for the signature of the Landlord and the Tenant(s). This agreement shall constitute a legally enforceable contract.
 - (10) Should the parties fail to agree to a level of Rent Increase, or the Mediator determines that the parties have reached an impasse, the Mediator may refer the cases to the Rent Review Officer for arbitration.
- (j) Arbitration Hearing. Arbitrations under this ordinance shall be conducted consistent with the following rules and procedures:

- (1) Within twenty-one (21) days of receipt of a landlord petition, mediation waiver or the date the mediation hearing was held, the Rent Review Officer shall appoint an Arbitrator to hear the dispute. If possible, the Rent Review Officer shall not select the same person to arbitrate the dispute as mediated the dispute. The arbitration hearing shall be held no more than thirty (30) days after the Arbitrator is assigned. The Landlord and Tenant(s) shall be notified immediately in writing by the Rent Review Officer of the date, time, and place of the arbitration hearing and this notice shall be served either in person, ordinary mail, or electronic correspondence. To the extent possible, the Rent Review Officer shall consider the work schedules of the Tenant(s) and Landlord when selecting a date and time for the arbitration.
- (2) The Arbitrator may grant postponements of the arbitration hearing one time from the initial arbitration hearing date for not more than twenty-one (21) days for good cause.
- (3) The Arbitrator may adopt procedures for the conduct of arbitration hearings. Both the Landlord and the Tenant(s) may designate a representative to appear for them at the hearing. Such designation shall be in writing.
- (4) The Landlord and Tenant may submit a written statement and documentary evidence in preparation for the arbitration to the Rent Review Officer at least seven (7) days prior to the arbitration hearing. Requests for translation services during the mediation shall be submitted to the Rent Review Officer at least five (5) days prior to the scheduled mediation hearing.
- (5) The Arbitrator may require either party to a Petition to provide any books, records, and papers deemed pertinent. If the Arbitrator finds good cause to believe that a building or other inspection would assist in resolving the issues raised by the Petition, the Arbitrator may conduct an inspection and/or request the City to conduct an inspection. The Tenant may request the Arbitrator to order such an inspection prior to the date of the hearing. All documents required under this subsection shall be made available to the parties involved prior to the hearing.
- (6) The Arbitrator shall hold a hearing de novo at which both oral and documentary evidence may be presented. The parties to the arbitration shall have the right to examine documents and cross-examine witnesses. For Landlord petitions, the burden of proof that the amount of the Rent Increase is allowed by this ordinance or is necessary to provide the

Landlord a Fair Return shall be on the Landlord. For Tenant petitions, the burden of proof shall be on both Landlord and Tenant(s). The final decision shall be based on the preponderance of evidence provided.

- (7) The Arbitrator shall render his or her written decision within twenty (20) days of the close of the hearing by mail to the Rent Review Officer who shall forthwith distribute copies of the decision by mail to the Landlord and Tenant(s). The Arbitrator shall determine the amount of the Rent Increase if any, which is reasonable based upon all the provisions of this ordinance, the evidence presented by the parties, and any previous decisions which are found relevant and persuasive.
- (8) The Arbitrator may order relief in the form of a decrease in Rent for any period of time that the Tenant has endured a reduction in services without a corresponding reduction in Rent. The Arbitrator may additionally order that the rental rate may be restored to its former level if the Landlord fixes, repairs, or otherwise cures the reduction in services by a date to be determined by the Arbitrator.
- (9) In order to grant any party the time within which to obtain a stay or judicial review from a court of law, the decision of the Arbitrator shall not be final and binding upon the Landlord and all Tenant(s) until thirty (30) days after it has been mailed to the Landlord and Tenant(s). However, where a valid and timely application for correction has been filed pursuant to subsection (7), the Arbitrator's decision shall not be final or binding until thirty (30) days after the Arbitrator's denial of the application or correction of the award has been mailed to the Landlord and Tenant(s). Any sum of money determined by the decision of the Arbitrator to be due to Landlord by Tenant or to Tenant by Landlord shall constitute a debt and, subject to the provisions of Section 7(k) of this ordinance, may be collected in any manner provided by law for the collection of debts.
- (10) Not later than thirty (30) days after the date of the mailing of the decision, the Arbitrator, upon written application of a party or on his or her own motion, may correct the decision upon the grounds that it contains a misstatement or omission of a material fact or issue. Application for such correction shall be made not later than ten (10) days after the date of mailing of the decision. Upon receiving such application, the Rent Review Officer shall mail a copy of the application to all of the other parties to the arbitration. Any party to the arbitration may make a written objection to such application. The objection shall

be made not later than ten (10) days after the mailing of the copy of the application by the Rent Review Officer.

Upon receipt the Rent Review Officer shall mail a copy of the objection to all of the other parties to the arbitration. The Arbitrator shall either deny the application or correct the award. The denial or correction shall be in writing and shall be distributed by mail to the parties.

(k) Effect of Arbitration Decision.

- (1) If a final decision by an Arbitrator finds that a proposed increase or any portion thereof that was previously inoperative is justified, the Tenant shall pay the amount found justified to the Landlord within thirty (30) days after the decision is final. Tenant's failure to pay the full justified amount shall be deemed failure to pay rent under the existing Rental Agreement.
- (2) If a final decision by an Arbitrator finds that an increase or any portion thereof is not justified, the Landlord shall refund any amount found to be unjustified, but that had been paid, to the Tenant within thirty (30) days after the decision becomes final; if such refund is not made within thirty (30) days, the Tenant may withhold the amount from the next Rent(s) due until the full amount of the refund has been made; except that, in the event that the tenancy of Tenant is terminated for any reason prior to full credit to him against Rent, the balance of the credit due the Tenant shall be paid to him by the Landlord within thirty (30) days from the date of the termination of his tenancy.
- (3) Any sum of money that under the provisions of this section is the obligation of the Landlord or Tenant, as the case may be, shall constitute a debt and, subject to the foregoing provisions of this section, may be collected in any manner provided by law for the collection of debts.

SECTION 8. SUBPOENA POWER.

Subpoenas, including subpoenas duces tecum, requiring a person to attend a particular time and place to testify as a witness, may be issued in connection with any dispute pending before a Mediator or Arbitrator, and shall be issued at the request of the Rent Review Officer, a Mediator, Arbitrator, or a party. Subpoenas shall be issued and attested by the City Clerk in the name of the City. A subpoena duces tecum shall be issued only upon the filing with the City Clerk of an affidavit showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the proceeding, and stating that the witness has the desired matters or things in his or her possession or under his or her control, and a copy of such affidavit shall be served with the subpoena. However, Landlord shall provide the Rent Review Officer reasonable time, but not to exceed seven (7) days, to contact the Landlord and the individual required to attend before a subpoena or subpoena duces tecum is issued. Any subpoena or subpoena duces tecum issued pursuant to the provisions of this ordinance may be served in person or by certified mail, return receipt requested, and must be served at least five (5) days before the hearing for which the attendance is sought. Service by certified mail shall be complete on the date of receipt. Notwithstanding any other provision of this ordinance, any time limits set forth in this ordinance shall be extended for such time as is necessary, but not longer than five (5) days, if a subpoena has been served and five (5) days have not elapsed since the service.

Any subpoena or subpoena duces tecum issued pursuant to the provisions of this ordinance shall be deemed issued by and in the name of the City Council.

SECTION 9. STANDARDS OF REVIEW.

(a) The Arbitrator shall consider all relevant factors when evaluating Rent Increases above the 5% Rent Increase Threshold or a Landlord petition in compliance with Section 7(e), including following:

- (1) Unavoidable increases in maintenance and Operating Expenses, including the reasonable value of the Landlord's labor. Factors to be considered, include but are not limited to:
 - (i) Year to year comparison of annual operating budget and financial statements; and
 - (ii) Operating Expense documentation.
- (2) Application of Banking Rent Increases when owner chooses to delay imposing part or in full an annual Rent Increase not to exceed a total

Rent Increase of ten percent (10%). Factors to be considered, include but are not limited to:

- (i) The rental history of the unit or the complex of which it is a part;
 - (ii) The presence or absence of past increases; and
 - (iii) The frequency of past Rent Increases.
- (3) Verification of the Governmental-Utility Services cost increase. Factors to be considered, include but are not limited to:
- (i) The percentage of the utility rate costs increase above one percent (1%) of the Tenant's existing Rent.
 - (ii) The allocation of the increased Government-Utility Service costs among Tenants including any increase or decrease in the number of Tenants in the Covered Rental Unit.
 - (iii) Whether the cost increase is the result of irresponsible or wasteful use of utilities by the Tenant
 - (iv) Whether the Landlord provided the Tenant(s) documentation supporting the level of increase in accordance with Sections 5(d) and 15.
- (4) Capital Improvement of the Covered Rental Units, including the reasonable value of the Landlord's labor and financing costs. Factors to be considered, include but are not limited to:
- (i) Improvement completed;
 - (ii) Landlord's petition made within two (2) years of completion of Capital Improvement work;
 - (iii) No more than Fifty percent (50%) pass through costs requested;
 - (iv) Distinguished from ordinary repair or maintenance;
 - (v) For the primary benefit, use, and enjoyment of the Tenant;
 - (vi) Permanently fixed in place or relatively immobile and appropriated to the use of the Property;

(vii) Not coin-operated nor for which a “use fee” or other charge is imposed on Tenants for its use; and

(viii) Cost-factored and amortized in accordance with section 5(e).

(5) Other financial information which the Landlord is willing to provide.

(6) A Landlord’s fair rate of return on investment based on the following calculations:

(i) Fair Return Standard. A Fair Return is the Initial Year Net Operating Income adjusted by the percentage increase in the Consumer Price Index since the Initial Year. "Net Operating Income" is the Gross Income from a Covered Rental Unit net of Operating Expenses. Debt service and Capital Improvement costs are not included in calculating Net Operating Income.

Initial Year. The "Initial Year" is the 2018 calendar year, provided that where the Rent for Covered Rental Units has been set in a prior Fair Return decision regarding a petition pursuant to this Part, in which case the calendar year that was the Current Year in the prior determination may be used as the Initial Year for the purposes of reviewing a subsequent Fair Return petition.

Current Year. The Current Year is the most recent calendar year preceding the submission of a petition pursuant to Section 7.

Calculation of Consumer Price Index. The percentage increase in the CPI shall be determined by comparing the monthly CPI for All Urban Consumers for all items for the San Francisco-Oakland-Hayward metropolitan area as reported by the U.S. Bureau of Labor Statistics, for December of the comparison year to the monthly CPI for December 2018 (i.e., 285.550), or the monthly CPI for December of the Current Year in cases that the Initial Year was determined through a subsequent petition, whichever is later. In the event a successor index to the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-Hayward metropolitan area is established by the Bureau of Labor Statistics, this calculation method may be updated accordingly in the Regulations.

(b) Grounds for Denial. The Arbitrator shall consider all relevant factors when evaluating whether to deny a Rent Increase, including but not limited to the following:

(1) Landlord allows violations of the City of Hayward Housing Code or other applicable state and local statutes to persist. Landlord may remedy noncompliance by addressing any and all state and local code violations prior to the commencement of the arbitration proceedings.

- (2) Landlord failed to pay the Rent program service fee. Landlord may remedy such non-compliance by paying any and all outstanding fees prior to the commencement of the arbitration proceedings.
- (3) Landlord failed to provide Tenant notice of a Rent Increase, Banked Increase, or costs imposed for Government-Utility Services in accordance with Section 15.

(c) Grounds for a Reduction of Rent. The Arbitrator shall consider all relevant factors when evaluating whether to reduce Rent, including but not limited to the following:

- (1) Landlord allows violations of the City of Hayward Housing Code or other applicable state and local statutes to persist. Landlord may remedy noncompliance by addressing any and all state and local code violations prior to the commencement of the arbitration proceedings.
- (2) Any reduction of Housing Services since the last Rent Increase.

SECTION 10. TENANT'S RIGHT OF REFUSAL.

A Tenant may refuse to pay the portion of a Rent Increase in excess of the Rent Increase Threshold which is in violation of this ordinance, provided a petition has been filed under Section 5(b)(2) or 5(b)(3) and either no final decision has been reached by agreement, mediation, or arbitration or the increase has been determined to violate the provisions of this ordinance. A Tenant may refuse to pay any Rent Increase which is in violation of this ordinance, provided a petition has been filed under Section 5(b)(1), 5(b)(4), 5(b)(5), 5(b)(6), or 5(b)(7) and either no final decision has been reached by agreement, mediation, or arbitration, or the increase has been determined to violate the provisions of this ordinance. Such refusal to pay shall be a defense in any action brought to recover possession of a Rental Unit or to collect the Rent Increase.

SECTION 11. SECURITY DEPOSITS.

(a) Landlords shall pay annual interest in accordance with the provisions of this section on all Security Deposits of more than one year's duration with interest accruing from the first day a tenancy begins, and shall not impose or collect any handling, service, or other charges in connection therewith. The payment shall be prorated on a monthly basis upon termination of any tenancy of more than one year's duration. Otherwise, the payment shall be made on an annual basis beginning upon the first anniversary of the tenancy and may be made by direct payment to the Tenant within ten calendar days of each anniversary date or by crediting the same against the next month's Rent payment. A Landlord violating the provisions of this section shall be liable to the Tenant for three times the amount of interest wrongfully uncredited or

unpaid and a Tenant may bring an action in the appropriate court to collect such penalty.

(b) The interest rate to be paid on Security Deposits shall be set annually by the Rent Review Officer each November. Said interest rate shall be based upon the Federal Reserve Bank Monthly Survey of Selected Accounts and shall equal the latest September percentage for the average rate paid on personal savings accounts for Bank Insurance Fund (BIF) insured savings banks or any successor or alternate survey the Rent Review Officer determines is comparable to the Federal Reserve Bank Monthly Survey. Landlords and Tenants may obtain this rate by contacting the Rent Review Office after November 1st of each year. In cases where the year between anniversary dates of a tenancy spans periods in which more than one interest rate percentage applies, each rate shall be utilized to calculate the interest paid on the Security Deposit depending upon the number of months or, if less than a full month, days to which each rate applies.

SECTION 12. PROHIBITION AGAINST RETALIATORY EVICTION AND HARASSMENT AGAINST TENANTS

(a) Applicability and Exemptions. Section 12 of this Ordinance shall apply to all Rental Units, including all Covered Rental Units, in the City of Hayward. However, Section 12 shall not apply to the following types of Rental Units:

- (1) Accommodations in any hospital, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by either an educational institution or a private organization which offers spaces in rooms for Rent in conjunction with the providing of services such as meals, cleaning services, and social programs.
- (2) Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses; provided that such accommodations are not occupied by the same Tenant for thirty (30) or more continuous days.
- (3) Rental Units in a nonprofit cooperative that are owned, occupied, and controlled by a majority of the residents.
- (4) Rental Units in a residential Property where the owner of record occupies a unit in the same Property as his or her principal residence and regularly shares in the use of kitchen or bath facilities with the Tenants of such Rental Units. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's Property tax exemption on any other real Property in the State of California.

(b) Prohibition Against Retaliatory Evictions and Harassment. No Landlord or an agency acting on behalf of a Landlord, shall do any of the following, in bad faith:

- (1) Interrupt, terminate, or fail to provide Housing Services required by contract State, County or municipal housing, health or safety laws, or threaten to do so;
- (2) Fail to perform repairs and maintenance required by contract or by State, County, or municipal housing, health, or safety laws, or threaten to do so;
- (3) Failure to exercise due diligence in completing repairs and maintenance once undertaken or fail to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts;
- (4) Abuse the Landlord's right of access into a Rental Unit as that right is provided by law;
- (5) Influence or attempt to influence a Tenant to vacate a Rental Unit through fraud, intimidation or coercion, which shall include threatening to report a Tenant to U.S. Immigration and Customs Enforcement, though that prohibition shall not be construed as preventing communication with U.S. Immigration and Customs Enforcement if contacted by said agency;
- (6) Refuse to accept or acknowledge receipt of a Tenant's lawful Rent payment, except as such refusal may be permitted by state law after a notice to quit has been served on the Tenant and the time period for performance pursuant to the notice has expired;
- (7) Interfere with a Tenant's right of privacy, including but not limited to the Tenant's residence or citizenship status or social security number, except as required by law or, in the case of a social security number, for the purpose of obtaining information for the qualifications for a tenancy, and not release such information except as required or authorized by law;
- (8) Offer payments to a Tenant to vacate more than once in six (6) months, after the Tenant has notified the Landlord in writing the Tenant does not desire to receive further offers of payments to vacate;
- (9) Substantially and directly interfere with a Tenant's right to quiet and enjoyment of a Rental Unit as that right is defined by California law;

(10) A Tenant's exercise of their right to file a petition under this ordinance.

(11) Verbal or physical abuse or intimidation.

(c) Retaliation Prohibited. Retaliation against a Tenant because of the Tenant's exercise of right under the Ordinance is prohibited. Retaliation claims may only be brought in court and may not be addressed administratively. A court may consider the protections afforded by Section 12 in evaluating a claim of retaliation.

(d) Evictions. Nothing in this section shall be construed as to prevent a Landlord from lawfully evicting a Tenant pursuant to state law or Section 13 (Just Cause for Eviction) of this Ordinance.

(e) Rent Increases. Nothing in this section shall be construed as to prevent a Landlord from lawfully increasing a Tenant's Rent pursuant to state law or the City of Hayward's Residential Rent Stabilization and Tenant Protection Ordinance.

(f) Repairs and maintenance. Nothing in this section shall be construed as requiring different timeliness or standards for repairs or maintenance, as required by contract or State, County, or municipal housing, health, and safety laws, or according to appropriate industry protocols.

(g) Notice to Tenant. Notice must be provided by Landlords to all Tenants of Rental Units in accordance with Section 15 of this ordinance. If Rental Units subject to Section 12 of this ordinance are located in a building with an interior common area that all the building's Tenants have access to, the Landlord must post a notice in at least one such common area in the building via a form prescribed by the Rent Review Officer.

(h) General Remedies. Violations of Section 12 (Prohibition Against Retaliatory Eviction and Harassment Against Tenants) may be enforced by civil remedies as set forth in this section or as otherwise specifically set out in Section 18.

(1) Tenant's Notice Requirement. Before a Tenant may file a civil suit alleging a violation of Section 12(b)(1), (2), (3), (6), (9), or (13) of this ordinance, the Tenant must first notify the Landlord or his or her designated agent regarding the problem. If the allegation is a violation of Section 12(b)(1), (2), (3), (6), (9), or (13), the Tenant must allow 15 days for the Landlord to correct the problem, unless the Landlord notifies the Tenant that the repairs will take more than 15 days and provides a reasonable time period for completion. If the repair takes more than 15 days, the Tenant may file the civil suit if the Landlord does not take reasonable steps to commence addressing the problem or

the Landlord does not follow through to complete the repairs with reasonable diligence.

- (2) In addition to the remedies provided in the Section, a violator is liable for such costs, expenses, and disbursements paid or incurred by the City in abatement and prosecution of the violation.
- (3) This Section is not to be construed to limit an aggrieved person's right to bring legal action for a violation of any other laws concerning housing discrimination, or other standards or rights, nor is exhaustion of remedies under this Section a prerequisite to the assertion of any other such right.

(i) Civil Remedies.

- (1) Enforcement by a Tenant. An aggrieved Tenant may bring a civil action for injunctive relief or damages, or both, for any violation of Section 12(b) or (c).
- (2) Enforcement by City Attorney. The City Attorney may enforce Section 12(b) or (c) through civil action for injunctive relief or damages, or both, when a party against whom enforcement is sought has a pattern and practice of violating Section 12 (Prohibition Against Retaliatory Eviction and Harassment Against Tenants). The City Attorney may also request that an administrative citation or civil penalty be issued by the City. The City Attorney has the sole discretion to determine the cases appropriate for enforcement by the City Attorney's Office.

(j) Damages.

- (1) An award of actual damages may include an award for mental and/or emotional distress and/or suffering, or for minimum damages in the sum of one thousand (\$1,000) dollars, whichever is greater, and whichever other relief the court deems appropriate. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard of, the provision of this Section.
- (2) A defendant shall be liable for an additional civil penalty of up to five thousand (\$5,000) dollars for each violation of this Section committed against a person who is disabled within the meaning of California Government Code section 12926, et. Seq., or aged sixty-five or over.

(k) Injunctive Relief. Any person who commits an act, proposes to commit an act, or engages in any pattern and practice which violates Section 12 (b) or (c) may be enjoined therefrom by any court of competent

jurisdiction. An action for injunction under this subsection may be brought by any aggrieved Tenant, by the City Attorney (for pattern and practice), or by an aggrieved Tenant who will fairly and adequately represent the interest of the protected class.

(l) Attorney's Fees and Costs

(1) An Action by the City Attorney. In any administrative, civil, or special proceeding brought pursuant to Section 12, the City may, at the initiation of the proceeding, seek an award of attorney's fees. If the City seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided, however, that no award may be made to the prevailing party that exceeds the amount of reasonable attorney's fees incurred by the City in the action or proceeding. Court costs may be awarded to a prevailing party pursuant to state law.

(2) Action by Tenant. In any civil action brought pursuant to Section 12 (Prohibition Against Retaliatory Eviction and Harassment Against Tenants), the prevailing Tenant is entitled to recover the Tenant's reasonable attorney's fees. A defendant Landlord may recover reasonable attorney's fees if the complaint brought by the Tenant is determined by a Court to be wholly without merit or frivolous. Court costs may be awarded to the prevailing party pursuant to state law.

(3) Costs of Investigation. In the event the City Attorney brings an administrative, civil, or special proceeding pursuant to Section 12, the City Attorney may recover its costs of investigation.

(m) The Rent Review Officer shall develop the notice form to implement Section 12(g). Any changes to the initial notice form shall be effective thirty (30) days after they are made available to the public at the office of the City's Housing Division, unless the City Manager, or his or her designee, makes a determination that an earlier date is necessary. All notice forms required by Section 12 are vital communication documents and shall be translated and distributed.

(n) Non-waiverability. Any provision, whether oral or written, in or pertaining to a Rental Agreement whereby any provision of Section 12 is waived or modified, is against public policy and void.

SECTION 13. JUST CAUSE FOR EVICTION

(a) Applicability. Section 13 of this ordinance shall apply to all Rental Units, including where a notice to vacate/quit any such Rental Unit has been served as of the effective date of this Residential Rent Stabilization and Tenant Protection Ordinance but where any such

Rental Unit has not yet been vacated or an unlawful detainer judgment has not been issued as of the effective date of this ordinance. The application of Section 13 includes residential Rental Units that are not included within the definition of Covered Rental Units. However, Section 13 shall not apply to the following types of Rental Units:

- (1) Accommodations in any hospital, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by either an educational institution or a private organization which offers spaces in rooms for Rent in conjunction with the providing of services such as meals, cleaning services, and social programs.
- (2) Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses; provided that such accommodations are not occupied by the same Tenant for thirty (30) or more continuous days.
- (3) Rental Units in a nonprofit cooperative that are owned, occupied, and controlled by a majority of the residents.
- (4) Rental Units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance, or therapy for alcohol, drug, or other substance abuse and the housing is provided incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.
- (5) Rental Units in a nonprofit facility which provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is restricted to a limited and specific period of time of not more than 24 months and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.
- (6) Rental Units in a residential Property where the owner of record occupies a unit in the same Property as his or her principal residence and regularly shares in the use of kitchen or bath facilities with the Tenants of such Rental Units. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's Property tax exemption on any other real Property in the State of California.
- (7) Affordable housing acquisition and rehabilitation development projects that receive a subsidy or 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 subject to regulatory controls that impose Rent limitations, including but limited to low-income housing tax credits under

Section 42 of the Internal Revenue Code of 1986. 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.

(b) Just Cause for Evictions. No Landlord shall endeavor to recover possession, issue a notice terminating tenancy nor shall its renewal be refused, unless the Landlord is able to prove the existence of one of the following grounds:

- (1) The Tenant has failed to pay Rent to which the Landlord is legally entitled pursuant to the lease or Rental Agreement and under the provisions of state or local law, unless the Tenant has withheld Rent pursuant to applicable law.
- (2) The Tenant has continued, after written notice to cease, to substantially violate any of the material terms of the Rental Agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the Tenant or made part of the Rental Agreement.
- (3) The Tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.
- (4) The Tenant has refused to agree to a new Rental Agreement upon expiration of a prior Rental Agreement, but only where the new Rental Agreement contains provisions that are substantially identical to the prior Rental Agreement, and is not inconsistent with local, state, and federal laws.
- (5) The Tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other Tenants or occupants of the premises.
- (6) The Tenant has, after written notice to cease, refused the Landlord access to the unit as required by state or local law.
- (7) The Landlord, after having obtained all necessary permits from the City of Hayward, seeks in good faith to undertake substantial repairs which are necessary to bring the Property into compliance with applicable codes and laws affecting the health and safety of Tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of Tenants of the building, and where such repairs cannot be completed while the Tenant resides on the premises. Where the Landlord

recovers possession under this subsection, the Tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work.

- (8) The Landlord, after having obtained all necessary permits from the City of Hayward, seeks in good faith to recover possession of the Rental Units, in order to remove the Rental Unit from the market by demolition.
- (9) The Landlord seeks in good faith to recover possession for his or her own use or occupancy as his or her principal residence, or for the use and occupancy as a principal residential by the Landlord's spouse or domestic partner or by the Landlord's or the Landlord's spouse's child, parents, brother, sister, grandparents, or grandchildren. For the purposes of this subsection, the term Landlord shall be defined as the owner of record holding at least a fifty-one percent (51%) interest in the Property and shall not include a lessor, sublessor, or agent of the owner of record. The Landlord may not recover possession under this subsection if a comparable unit is already vacant and available in the Property.
- (10) A Landlord or lessor seeks in good faith to recover possession of the Rental Unit for his or her occupancy as a principal residence and has the right to recover possession of the unit for his or her occupancy as a principal residence under an existing Rental Agreement with the current Tenants.
- (11) The Tenant is convicted of using the Rental Unit for any illegal purpose.
- (12) The Tenant has used or allowed the use of the Rental Unit, or any other area owned or controlled by the Landlord, for the manufacture, sale, distribution, possession, or use of a controlled substance as defined in state law.
- (13) The Tenant has continued, after written notice to cease, to violate legal and reasonable written rules and regulations generally applicable to all tenancies within the premises provided that such terms have been accepted in writing by the Tenant.
- (14) The lawful termination of the Tenant's employment by the Landlord, where such employment was an express condition of, or consideration for, the tenancy under a written Rental Agreement, the notice of termination is given as provided in Section 1946 of the California Civil Code.
- (15) The Tenant has threatened, either verbally or in writing, to commit a crime which would result in death or great bodily harm to a Tenant, guest, manager,

owner, or other person on the premises, for which a report has been filed with the Hayward Police Department.

(c) Notice of Termination. The Landlord shall serve on the Tenant a written notice setting forth the reasons for the termination with specific facts to permit a determination of the date, place and circumstances concerning the reason. This notice shall be given in the manner prescribed by California Code of Civil Procedure Section 1162 and may be combined with a written notice of termination of tenancy or as a separate written notice.

A Landlord's failure to specify in the notice either one or more grounds for eviction authorized by state or federal law or good cause as listed above in subsections 1 through 15 in the written notice, notice of termination or the notice to quit, and in the complaint for possession shall be a defense of any action for possession of a Rental Unit covered by the terms of this Ordinance.

(d) Notice of Ordinance. Notice of the Just Cause for Eviction section, of the Residential Rent Stabilization and Tenant Protection Ordinance shall be given in accordance with Section 13. This notice shall be given in the manner prescribed by California Code of Civil Procedure Section 1162.

SECTION 14. PROHIBITION OF DISCRIMINATION RELATED TO SOURCE OF INCOME

- (a) Purpose and Intent. It is the purpose and intent of this Section to ensure that Landlords in the City of Hayward cannot discriminate against any person based on that person's Source of Income. The California Fair Employment and Housing Act (FEHA), as amended from time to time, makes it unlawful for the owner of any housing accommodation to discriminate against any person based on certain factors, including the person's Source of Income. FEHA defines Source of Income as "lawful, verifiable income paid directly to a Tenant or paid to a representative of a Tenant [excluding a Landlord]." This Section defines Source of Income more broadly to include Rent assistance from any federal, state, local, or nonprofit administered benefit or subsidy program, among other sources. Under this Section, Landlords retain their right to reject prospective Tenants for other lawful reasons consistent with federal, state, and local laws.
- (b) Applicability. Section 14 of this ordinance shall apply to all Rental Units, including Covered Rental Units. However, Section 14 shall not apply to any tenancy in which the owner or any member of his or her family resides within the same residential building as the Tenant and the owner or family member share a bathroom or a kitchen facility with the Tenant or prospective Tenant.
- (c) Prohibited Activity. It is unlawful for any person to do any of the following acts, wholly or in part, based on a person's Source of Income (except as may be necessary to comply with any program requirements related to Source of Income).

- (1) To refuse to enter into or renew an agreement for tenancy;
 - (2) To interrupt or terminate any tenancy;
 - (3) To falsely represent that a Rental Unit is not available for tenancy
 - (4) To require inclusion in the terms of an agreement for tenancy any clause, condition, or restriction; or restriction; or
 - (5) To restrict a Tenant's access to facilities or services on real Property associated with the tenancy or refuse repairs or improvements to real Property associated with the tenancy.
- (d) It is unlawful for any person to make, print, publish, advertise, or disseminate in any way, or cause to be made, printed, published, advertised, or disseminated in any way, any notice, statement, or advertisement with respect to a Rental Unit, or with respect to financing related to a Rental Unit, which indicates discrimination based on a person's Source of Income.
- (e) It is unlawful for any person to use a financial or income standard for entering into or renewing a tenancy that does either of the following:
- (1) Fails to account for any Tenant's or prospective Tenant's entire Source of Income'; or
 - (2) Fails to account for the aggregate Source of Income of Tenants residing together or proposing to reside together, or the aggregate Source of Income of Tenants or prospective Tenants and their cosigners or proposed cosigners, on the same basis as the aggregate Source of Income of married persons residing together or proposing to reside together.
- (f) Effect on Other Laws. Nothing in this Section shall be deemed to permit a transaction in real Property that is otherwise prohibited by any applicable law.
- (g) Enforcement and Remedies.
- (1) An aggrieved person claiming a violation of this section may file an action against a person in a court of competent jurisdiction for a violation(s) that is alleged to have occurred on or after July 25, 2019, within one year after discovery of the alleged violation. An aggrieved person may seek an injunction under this section.
 - (2) Enforcement by City Attorney. The City Attorney may enforce Section 14 through civil action for injunctive relieve or damages, or both, when a party against whom enforcement is sought has a pattern and practice of violating Section 14. The City Attorney may also request that an administrative citation or

civil penalty be issued by the City. The City Attorney has the sole discretion to determine the cases appropriate for enforcement by the City Attorney's Office

- (3) The court may award monetary damages to an aggrieved person who proves a violation of this Section. If the court determines that a violation occurred during a tenancy, then the court shall award to the individual whose rights are violated three (3) times the amount of one month's Rent that was being charged for the Rental Unit at the time of violation. If the court determines that a violation occurred prior to a tenancy, then the court shall award to the individual whose rights are violated three (3) times the amount of one month's Rent that the Landlord advertised for the Rental Unit at the time of the violation. The court may award punitive damages, as well as attorneys' fees and costs of action.
- (4) An Action by the City Attorney. In any administrative, civil, or special proceeding brought pursuant to Section 14, the City may, at the initiation of the proceeding, seek an award of attorney's fees. If the City seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided, however, that no award may be made to the prevailing party that exceeds the amount of reasonable attorney's fees incurred by the City in the action or proceeding. Court costs may be awarded to a prevailing party pursuant to state law.
- (5) This Section is not to be construed to limit an aggrieved person's right to bring legal action for a violation of any other laws concerning housing discrimination, or other standards or rights, nor is exhaustion of remedies under this Section a prerequisite to the assertion of any other such right.

SECTION 15. INFORMATION TO BE SUPPLIED TO TENANT.

- (a) Applicability: Section 15, shall apply to all Rental Units, including Covered Rental Units, unless otherwise specified.
- (b) The City Manager may adopt or amend regulations for the administration and implementation of the Residential Rent Stabilization and Tenant Protection Ordinance. The Rent Review Officer, with the approval of the City Attorney, may adopt forms and notices to facilitate the administration and implementation of the Residential Rent Stabilization and Tenant Protection Ordinance. All forms and notices called for in this Section shall be adopted by the Rent Review Officer unless otherwise indicated.
- (c) Notice of the Residential Rent Stabilization and Tenant Protection Ordinance to Tenant – Covered Rental Units Only.
 - (1) Within 30 days after the effective date of this ordinance, each Landlord shall post a written notice and maintain such posting, on a form approved by the

Rent Review Officer, of the applicability of Section 5 of the Residential Rent Stabilization and Tenant Protection Ordinance in a conspicuous location within each building containing one (1) or more Covered Rental Units. The Landlord shall have complied with this requirement by posting a Notice of the Residential Rent Ordinance in the same location as a notice to Tenants posted in accordance with subsections (1) or (2) of California Civil Code Section 1962.5(a).

- (2) Within 30 days after the effective date of this ordinance, each Landlord shall notify all current Tenant(s) of the applicability of Section 5 of the Residential Rent Stabilization and Tenant Protection Ordinance for a Covered Rental Unit. The Landlord shall have complied with the affirmative obligation to notify a Tenant under this Section by providing (1) written notice that the Covered Rental Unit is subject to this ordinance and, (2) a current copy of the Residential Rent Stabilization and Tenant Protection Ordinance or City informational notice or handbook for Tenants of Covered Rental Units ("Informational Notice"), if such notice is available from the City of Hayward.
- (3) Each Landlord shall notify the Tenant of the applicability of Section 5 of the Residential Rent Stabilization and Tenant Protection Ordinance prior to entering an oral or written Rental Agreement for a Covered Rental Unit. The Landlord shall have complied with the affirmative obligation to notify a Tenant under this Section by providing (1) written notice that the Covered Rental Unit is subject to this ordinance and, (2) a copy of the current City informational notice or handbook for Tenants of Covered Rental Units ("Informational Notice"), if such notice is available from the City of Hayward, to the Tenant upon entering an oral or written Rental Agreement for the Covered Rental Unit.

(d) Notice of a Rent Increase to Tenants – Covered Rental Units Only.

Whenever the Landlord serves a notice of Rent Increase, the Landlord shall at the same time and in the same manner serve the Tenant with a notice that sets forth all of the following information:

- (1) The amount of the current Rent and the Rent Increase both in dollars and as a percentage of existing Rent and a statement of the following:
 - (i) That the Landlord considers the Rent Increase consistent with the five percent (5%) Rent Increase Threshold set forth in Section 5(a) of this ordinance; or
 - (ii) The Landlord considers the Rent Increase coupled with a Banked Increase and/or any approved Capital Improvement costs not to exceed ten percent (10%) to be consistent with the permissible threshold under this ordinance; or

- (iii) Identify the reason for the increase above five percent (5%) or ten percent (10%), inclusive of Banking and/or any approved Capital Improvement costs; and documentation supporting the level of increase desired. Such documentation shall include at a minimum: the rental history of the unit if the Landlord considers Section 5(c) or (d) as providing authorization for the increase; a summary of the unavoidable increases in maintenance and Operating Expenses; or other relevant information that supports the level of Rent Increase desired.
 - (3) The address and telephone number of the Rent Review Officer and the fact that the Tenant is encouraged to contact the Officer for an explanation of the provisions of this ordinance;
 - (4) The name, address, and telephone number of the person whom the Tenant must attempt to contact within ten (10) days after filing a petition to satisfy the provisions of Section 7(d) of this ordinance and the best time(s) to attempt that contact; and
 - (5) A copy of the petition form prepared by the Rent Review Office which initiates the process established by this Ordinance.
- (e) Notice of Increase in Governmental Utility Costs – Covered Rental Units Only. Within two (2) months receipt of a utility rate cost increase and/or any increase in utility services costs above one percent (1%) of the Tenant's existing Rent, upon request by the Tenant, the Landlord shall provide the Tenant(s) documentation supporting the level of increase in accordance with Section 5(d). Failure of the Landlord to comply with Section 5(d) shall be a defense in any action brought to recover possession of a Covered Rental Unit or to collect the disputed Governmental-Utility Service pass through costs.
- (f) Notice of Just Cause Protections and the Prohibition of Retaliatory Evictions and Harassment Against Tenants- All Rental Units.

Within 30 days after the effective date of this ordinance, each Landlord shall notify all current Tenants of the applicability of Section 12 and Section 13 of the Residential Rent Stabilization and Tenant Protection Ordinance for all Rental Units, including Covered Rental Units. The Landlord shall have complied with the affirmative obligation to notify a Tenant under this Section by providing (1) written notice that the Rental Unit is subject to this ordinance and, (2) a current copy of the Residential Rent Stabilization and Tenant Protection Ordinance or City informational notice or handbook regarding the City's Prohibition of Retaliatory Evictions and Harassment Against Tenants, if such notice is available from the City of Hayward.

Each Landlord shall notify the Tenant of the applicability of Section 12 and Section 13 of this ordinance prior to re-renting a Rental Unit. The Landlord shall have complied with the affirmative obligation to notify a Tenant under this Section by providing (1) written notice that the Rental Unit is subject to this ordinance and, (2) a current copy of the Residential Rent Stabilization and Tenant Protection Ordinance or City informational notice or handbook regarding the City's Prohibition of Retaliatory Evictions and Harassment Against Tenants, if such notice is available from the City of Hayward.

(g) Acknowledgment of Receipt of Notice-All Rental Units.

The Landlord and Tenant shall execute a single document stating that the information, documents, or notices required by Section 15 have been received by the Tenant. The original of the document acknowledging receipt of information, documents, or notices required by this section shall be retained by the Landlord and a copy thereof provided to the Tenant. In the event a Tenant fails or refuses to execute the document required herein within ten (10) days after the Landlord's request that the Tenant do so, the Landlord shall prepare a declaration under penalty of perjury stating that the information, documents, or notices required by this section have been delivered to the Tenant, the date the Landlord requested the Tenant to sign the joint document acknowledging receipt, and the date the declaration was executed.

(h) Failure to Provide Notice of Rent Increase - Covered Rental Units Only.

A Landlord's failure to provide a Tenant the information, documents, or notices required by this section shall not be entitled to collect any Rent Increase otherwise authorized by this ordinance from that Tenant nor to any Rent Increase that might otherwise be awarded by an Arbitrator and such failure by the Landlord shall be a defense in any action brought by the Landlord to recover possession of a Covered Rental Unit or to collect any Rent Increase from the Tenant. A Landlord may cure the failure to serve any notice or the obligation to provide information to a Tenant which is required under this ordinance by giving such notice or information before initiating an action for possession of the unit or collecting any Rent Increase otherwise authorized hereunder.

SECTION 16. INFORMATION TO BE SUPPLIED TO THE CITY OF HAYWARD.

- (a) Applicability: Section 16, shall apply to all Rental Units, including Covered Rental Units.
- (b) The regulations adopted by the City Manager for the implementation and administration of Section 16 may address the contents and submissions regarding of Landlords, including the deadline for submissions.

(c) Copy of Notice of Termination and Rent Increase Notices to the City of Hayward. From the effective date of this ordinance, each Landlord shall provide the City with a true and correct copy of any and all Notices of Termination and/or Rent Increase notices within thirty (30) days after a Tenant of a Rental Unit or Covered Rental Unit has been served with the notice. Notices of Termination may be served on the City's Rent Review Office in person, by mail, or an electronic platform designated by the City's Rent Review Office.

(d) Failure to Serve Notice of Termination and/or Rent Increase Notices on City.

The City Manager or his or her designee, at his or her discretion, may immediately issue a citation for each violation of Section 16(c). There is no requirement for a first warning in order for the City Manager, or his or her designee, to issue this citation. The penalty for violations of Section 16(c) shall be issued in accordance with Section 18 of this Ordinance. The City Manager, or his or her designee, shall give notice of a violation of this section by issuing a citation to any Landlord identified by the City Manager, or his or her designee, within thirty (30) days of the violation. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing.

The request for the hearing shall be filed in accordance with the time frames set forth in Hayward Municipal Code Section 1-7.06 and 1-7.07 for appeals. The hearing shall be conducted in accordance with the provisions of Hayward Municipal Code Section 1-7.00, et seq.

SECTION 17. FEES.

(a) Applicability. This section shall apply to Landlords for all Rental Units, including Covered Rental Units, subject to this ordinance.

(b) The costs of administration of this ordinance shall be reimbursed in full to the Rental Housing Program Fund by imposition of a Rent stabilization administration fee chargeable against all Rental Units, including Covered Rental Units.

(c) The fees imposed by this section shall be paid annually. The time and manner of payment, delinquency status, and assessment and collection of penalties for delinquent payment of the fees imposed by this section shall be as provided in Article 1 of Chapter 8 of the Hayward Municipal Code. The City Manager and Rent Review Officer shall recommend to the City Council the amount of such fee and time for payment and the City Council shall adopt such fee by resolution.

(d) For Covered Rental Units, the Landlord who pays these fees may pass through to the Tenant up to 50 percent of those fees assessed against a Covered Rental Unit. The remaining 50 percent of the fees assessed against a Covered Rental Unit shall

not be passed on in any way to Tenants. A Landlord failing to pay fees required by this section shall not be entitled to collect any Rent Increase for a Covered Rental Unit otherwise authorized by this ordinance from the Tenant nor to any increase that might otherwise be awarded by an Arbitrator, and such failure by the Landlord shall be a defense in any action brought by the Landlord to recover possession of a Covered Rental Unit or to collect any Rent Increase from the Tenant. A Landlord may cure the failure to pay the fees required by this section by paying such fees before initiating an action for possession of a unit or collecting any Rent Increase otherwise authorized hereunder.

If the Landlord elects to pass on a percentage of the fee, the Landlord shall send a notice to the Tenant in substantially the following form:

NOTICE TO TENANTS

Pursuant to the provisions of Section 17 of the City of Hayward's Residential Rent Stabilization and Tenant Protection Ordinance No. __C.S., as amended, Landlords are required to pay an administration fee to the City on an annual basis to defray the costs of administering the ordinance. The fee is charged against each Rental Unit subject to the ordinance in the City. The ordinance further provides that Landlords may collect up to 50 percent of this fee from the Tenants of a Rental Unit by assessing the fee to the Tenants as a Governmental-Utility Services cost pursuant to Section 5(d) of the ordinance.

The Rent stabilization fee imposed for __ reflects costs incurred during the calendar year of _____. The fee for this year is _____ per Rental Unit. The Landlord has paid the full amount of the fee to the City and has decided to exercise the option to collect a portion of the fee from the Rental Unit Tenants. Your 50 percent share of this fee is _____. Please remit the full amount of _____ to _____ by an acceptable form of payment _____ with your next Rent payment.

SECTION 18. PENALTIES AND REMEDIES.

In addition to those penalties and remedies set forth elsewhere in this ordinance, the following penalties and remedies shall apply.

(a) Receipt of Rent to Which Landlord is Not Entitled. Any Landlord who demands, accepts, receives, or retains any money as Rent from a Tenant to which the Landlord is not entitled under the provisions of this ordinance shall be liable to the Tenant for any actual damages, attorneys' fees, and costs incurred by the Tenant as a consequence thereof. The Landlord shall also be liable in a civil action for a civil penalty of five hundred dollars (\$500.00) or, if greater, three (3) times the amount of money the Landlord

accepted, received, or retained in violation of the provisions of this ordinance, upon a showing that the Landlord has acted willfully or with oppression, fraud, or malice. In any civil action filed under the authority of this section, the court shall give the Arbitrator's findings the weight to which they are legally entitled.

(b) Failure to Provide Required Notices. Except as provided hereinafter, any Landlord who fails to provide a Tenant with any information, documentation, or notice required by the provisions of this ordinance shall be guilty of an infraction. The first conviction of a Landlord of any provision of this ordinance requiring giving information, documentation, or notice in a twelve (12) month period shall be punishable by a fine of not more than one hundred dollars (\$100.00), the second conviction by a fine of not more than two hundred dollars (\$200.00), and the third by a fine of not more than five hundred dollars (\$500.00). Any Landlord who has been convicted of three (3) or more infractions for violating any provision of this ordinance requiring giving information, documentation, or notice in a twelve (12) month period shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00) or by six (6) months imprisonment, or both for each additional such violation.

(c) Failure to Provide the City of Hayward Notices. Except as provided hereinafter, any Landlord who fails to provide the City with any information, documentation, or notice required by the provisions of this ordinance shall be guilty of an infraction. The first conviction of a Landlord of any provision of this ordinance requiring giving information, documentation, or notice in a twelve (12) month period shall be punishable by a fine of not more than one hundred dollars (\$100.00), the second conviction by a fine of not more than two hundred dollars (\$200.00), and the third by a fine of not more than five hundred dollars (\$500.00). Any Landlord who has been convicted of three (3) or more infractions for violating any provision of this ordinance requiring giving information, documentation, or notice in a twelve (12) month period shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00) or by six (6) months imprisonment, or both for each additional such violation.

SECTION 19. SEVERABILITY. This ordinance shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable and are intended to have independent validity.

To the extent that this ordinance presents an actual and impermissible conflict with state or federal law, the state or federal law will govern.

SECTION 20. NONWAIVERABILITY.

Any provision, whether oral or written, in or pertaining to a Rental Agreement whereby any provision of this ordinance is waived or modified, is against public policy and void.

SECTION 21. APPLICABILITY.

In accordance with the provisions of Section 620 of the City Charter, this Ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of ____, 2019, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ____ day of ____, 2019, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE AMENDMENT TO RESOLUTION 19-103, THE BUDGET RESOLUTION FOR THE CITY OF HAYWARD OPERATING BUDGET FOR FISCAL YEAR 2020, RELATING TO THE TRANSFER OF THE RENT REVIEW BUDGET ALLOCATION IN THE AMOUNT OF TWO HUNDRED AND SEVENTY-FOUR THOUSAND SIX HUNDRED SIXTY-EIGHT DOLLARS (\$274,668) FROM THE GENERAL FUND TO THE RENTAL HOUSING PROGRAM FUND; AND APPROPRIATING THREE HUNDRED AND FIFTY-NINE THOUSAND DOLLARS (\$359,000) TO THE RENTAL HOUSING PROGRAM FUND TO COVER THE COST OF ADMINISTERING THE RESIDENTIAL RENT STABILIZATION AND TENANT PROTECTION ORDINANCE AND THE MOBILEHOME SPACE RENT STABILIZATION ORDINANCE

WHEREAS, the Rent Stabilization Ordinance, previously introduced on September 6, 1983 and adopted by the City Council on September 13, 1983, is hereby repealed and replaced with this newly adopted Residential Rent Stabilization and Tenant Protection Ordinance; and

WHEREAS, the FY 2020 budget includes \$274,668 in the General Fund to Administer the Residential Rent Stabilization Ordinance and Mobilehome Space Rent Stabilization Ordinance; and

WHEREAS, an additional appropriation in an amount not to exceed \$359,000 is required to administer the newly adopted Residential Rent Stabilization and Tenant Protection Ordinance; and

WHEREAS, the Rental Housing Program Fund has been created for the purpose of administering funds related to Rental Housing; and

WHEREAS, the costs associated with the new Residential Rent Stabilization and Tenant Protection Ordinance and Mobilehome Space Rent Stabilization Ordinance will be recovered through the Rent Review Administration Fee; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Hayward, hereby authorizes the amendment to resolution 19-103, the budget resolution for the City of Hayward Operating Budget for Fiscal Year 2020, relating to the transfer of the rent review budget allocation in the amount of two hundred and seventy-four thousand six

hundred sixty-eight dollars (\$274,668) from the General Fund to the Rental Housing Program Fund; and appropriating three hundred and fifty-nine thousand dollars (\$359,000) to the Rental Housing Program Fund to cover the cost of administering the Residential Rent Stabilization and Tenant Protection Ordinance and the Mobilehome Space Rent Stabilization Ordinance.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE AMENDMENT TO RESOLUTION 19-059, THE RESOLUTION FOR THE CITY OF HAYWARD FISCAL YEAR 2020 MASTER FEE SCHEDULE ASSOCIATED WITH THE ADMINISTRATION OF THE NEW RESIDENTIAL RENT STABILIZATION AND TENANT PROTECTION ORDINANCE AND THE MOBILEHOME SPACE RENT STABILIZATION ORDINANCE

WHEREAS, Section 15273 of the California Environmental Quality Act (CEQA) Guidelines states that CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purposes of:

1. Meeting operating expenses, including employee wage rates and fringe benefits;
2. Purchasing or leasing supplies, equipment, or materials;
3. Meeting financial reserve needs and requirements;
4. Obtaining funds necessary for capital projects necessary to maintain service within existing services areas; or
5. Obtaining funds necessary to maintain intra-city transfers as are authorized by city Charter; and

WHEREAS, The City Council finds and determines that this action is exempt from CEQA based on the foregoing provisions; and

WHEREAS, In November 2010, California voters approved Proposition 26, which amended Article XIII C of the State constitution regarding the adoption of fees and taxes. Proposition 26 seeks to assure that taxes, which much be approved by the voters, are not disguised as fees, which can be approved by legislative bodies, such as a city council. The proposed amendment to the Master Fee Schedule (MFS) is compliant.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby adopts certain changes in the Master Fee Schedule relating to fees for administration of the Residential Rent Stabilization and Tenant Protection Ordinance and the Mobilehome Space Rent Stabilization Ordinance, as reflected in Exhibit A.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Exhibit A

RENT STABILIZATION ADMINISTRATION

1	Annual Fee per Rental Unit	\$	19.00
2	Annual Fee per Covered Rental Unit	\$	40.00
2	Annual Fee per Mobilehome Space	\$	5.00

The fees set forth herein shall be payable immediately and shall be delinquent if not received by the Housing Division on or before 5 p.m., August 31, 2019 for Residential and Mobilehome.

I. BACKGROUND

Jan 31, 2017: City Council Work Session to review housing affordability strategies and resources.

Jan 10, 2018: Tenant stakeholder meeting.

Jan 17, 2018: Landlord stakeholder meeting.

Feb 6, 2018: City Council Work Session to review policy options identified through stakeholder feedback.

Feb 26, 2018: Stakeholder meeting to seek additional feedback regarding policy options.

Mar 27, 2018: City Council Work Session to review affordable housing strategies and community proposed tenant protection measures.

May 29, 2018: City Council adoption of an emergency ordinance enacting a moratorium on decontrolling rental units and an amendment to the Residential Rent Stabilization Ordinance (RRSO) to clarify that eviction for cause provisions apply to units that are currently and were previously rent controlled.

Oct 5-6, 2018: Tenant focus group.

Oct 12-13, 2018: Tenant focus group (Spanish).

Feb 19, 2019: City Council Work Session to provide direction regarding potential amendments to the RRSO.

Mar 5, 2019: City Council adoption of emergency Just Cause Eviction ordinance for all rental units.

Mar 21, 2019: First Homelessness-Housing Task Force (HHTF) meeting to summarize City Council direction from February 19th regarding potential amendments to the RRSO and to describe timeline and process for moving the items forward.

II. TODAY

Apr 6, 2019: Community Open House to encourage public comment and feedback on potential amendments to the RRSO.

III. UPCOMING EVENTS

Apr 18, 2019: Second HHTF meeting to discuss proposed changes to the RRSO and public feedback received at the April 6, 2019 Community Open House.

May 21, 2019: City Council meeting to consider approval of proposed amendments to the RRSO.

MEDIATION & BINDING ARBITRATION PROGRAM

ISSUE

- Large rent increases causing instability, stress, and displacement of Hayward residents.

PROPOSED POLICY

- Policy would encourage communication between tenants and landlords for rent increases exceeding 5%.
- If tenants and landlords cannot resolve dispute, mediation would be available to both parties.
- If dispute cannot be resolved in mediation, arbitration would be made available.
- Arbitrator reviews documents and statements and evaluates the need for rent increases above 5%.
- The decision reached in arbitration is binding.

APPLIES TO

- Pre-1979 units except single family homes and condominiums.

INTENDED OUTCOMES

- Creates housing stability through predictable rent increases.

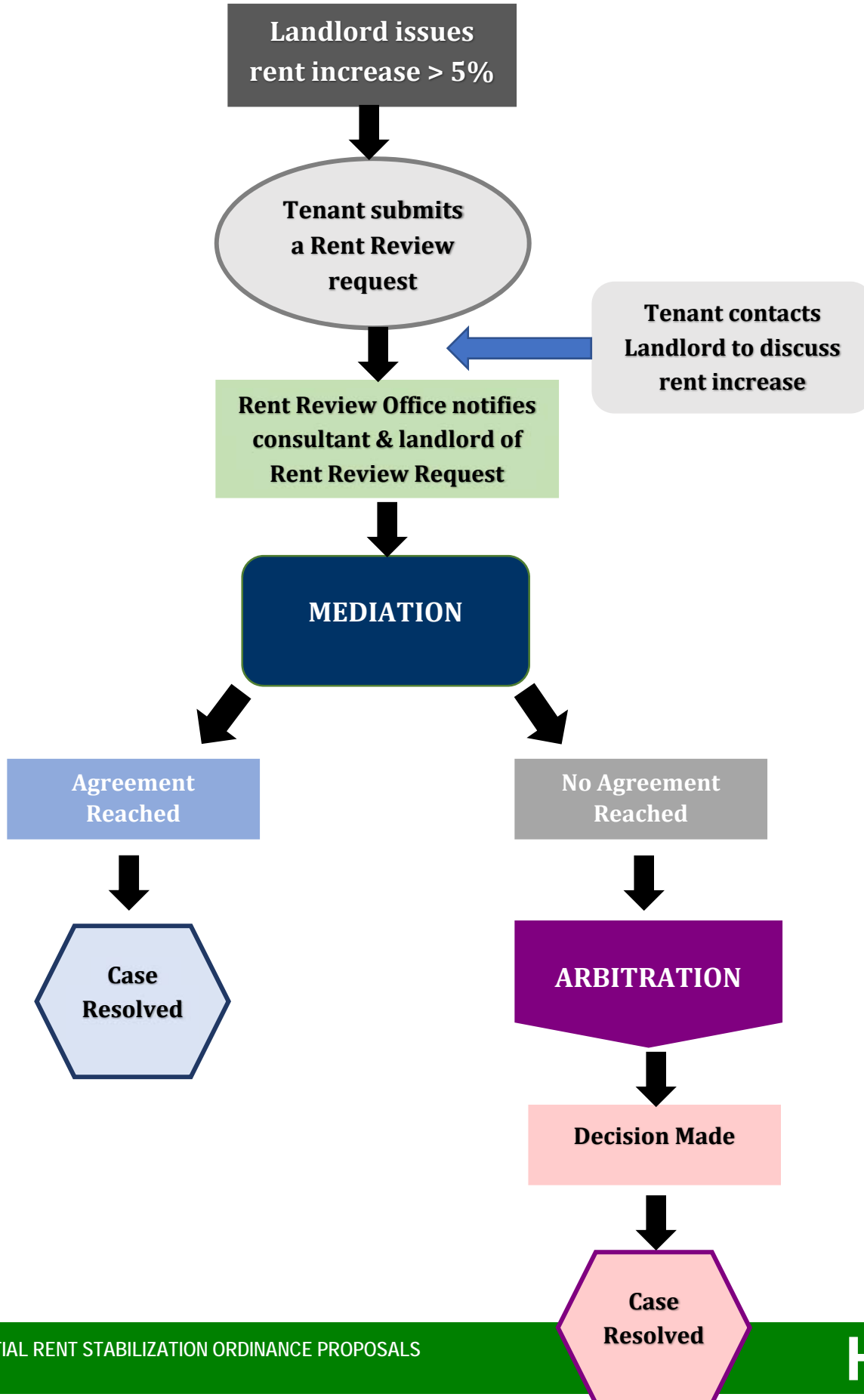
LET US KNOW WHAT YOU THINK

- What are your thoughts on the proposed policy?
- Are we missing anything?
- Please provide any additional comments on the proposed policy or any other rent issues in the City.

QUICK FACTS BOX

- 22,237 estimated rental units in City
- 48% of all housing units are rental units
- 14,941 estimated units covered by current policy
- 1979 – the year the current policy was adopted
- 7,931 decontrol applications received by the City
- 1,000 – 1,600 units estimated to be currently protected from large rent increases.

PROPOSED MEDIATION & BINDING ARBITRATION PROCESS



Elimination of Process for Decontrolling Rent-Controlled Units

ISSUE

- There are only 1,000-1,600 units in the City of Hayward protected from large rent increases.
- The current rent stabilization policy exempts landlords from rent control, if the landlord makes repairs costing more than \$1,500 - \$3,100 when the unit becomes vacant.

PROPOSED POLICY

- Eliminate process for decontrolling rent-controlled units.

APPLIES TO

- Approximately 1,000 to 1,600 remaining rent-controlled units.

INTENDED OUTCOMES

- Preserve remaining estimated 1,000 to 1,600 rent-controlled units within the City.

LET US KNOW WHAT YOU THINK

- What are your thoughts on the proposed policy?
- Are we missing anything?
- Please provide any additional comments on the proposed policy or any other rent issues in the City.

QUICK FACTS BOX

- 22,237 estimated rental units in City
- 48% of all housing units are rental units
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FILING RENT INCREASE & EVICTION NOTICES

ISSUE

- There is a lack of data about rent increases and termination of tenancy in the City, which makes it difficult to address concerns about housing affordability and stability effectively.

PROPOSED POLICY

- Require housing providers to file rent increase and termination of tenancy (eviction) notices with the City.

APPLIES TO

- All rental units.

INTENDED OUTCOMES

- The City will track information about rent increases and termination of tenancy including the reason for terminating tenancy.
- Enable the City to identify housing trends, address rental housing issues, and propose potential solutions based on data.

LET US KNOW WHAT YOU THINK

- What are your thoughts on the proposed policy?
- Are we missing anything?
- Please provide any additional comments on the proposed policy or any other rent issues in the City.

QUICK FACTS BOX

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Relocation Assistance Program for Evictions Where Tenant Not at Fault

ISSUE

- Some evictions are due to no fault of the tenant and the unexpected loss of housing makes it difficult for tenants to find new housing because they are unprepared to pay for a new deposit, first months and last months, and moving costs.

PROPOSED POLICY

- A relocation assistance program would require a landlord to pay a tenant for their relocation costs if the tenant is required to move due to a no-fault eviction (owner move-in, withdrawal of a unit from the rental market, or in compliance with a government requirements).
- The payment would be required for both permanent or temporary displacement.
- Landlords would need to pay three times the fair market rents for permanent relocation, or a daily rate based on hotel costs for temporary relocation.

APPLIES TO

- All rental units.

INTENDED OUTCOMES

- Reduce the risk that a tenant will experience extreme housing instability and/or become homeless due to the costs associated with the unexpected loss of housing.

LET US KNOW WHAT YOU THINK

- What are your thoughts on the proposed policy?
- Are we missing anything?
- Please provide any additional comments on the proposed policy or any other rent issues in the City.

QUICK FACTS BOX

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- 1,000 – 1,600 units estimated to be currently protected from large rent increases.

Supplemental Handout: FY 2019 HUD Fair Market Rent Rates

HUD Final FY 2019 Fair Market Rents by Unit Bedrooms				
Oakland-Fremont, CA Metro Area				
Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
\$1,409	\$1,706	\$2,126	\$2,925	\$3,587

- https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2019_code/2019summary.odn

TENANT RETALIATION PROTECTIONS

ISSUE

- Some tenants avoid communicating with landlords and/or raising concerns about their housing situation due to fear of retaliation from landlords.
- While State law protects a tenant from retaliation by a landlord, it does not provide detailed examples of retaliation nor does it establish specific monetary penalties for engaging in retaliatory behavior.

PROPOSED POLICY

- A local tenant protection policy provides tenants with legal rights if they are harassed or retaliated against by a landlord and establishes penalties paid to tenants, if the policy is violated.
- A local policy can provide detail about unacceptable landlord conduct that State law speaks to more generally (examples provided separately).

APPLIES TO

- All rental units.

INTENDED OUTCOMES

- Identify unacceptable landlord conduct that would be considered harassment.
- Establish minimum monetary penalties.
- Provide greater security to tenants, which could encourage better communicate with landlords and/or raise concerns about unacceptable conduct.

LET US KNOW WHAT YOU THINK

- What are your thoughts on the proposed policy?
- Are we missing anything?
- Please provide any additional comments on the proposed policy or any other rent issues in the City.

QUICK FACTS BOX

- 22,237 estimated rental units in City
- 48% of all housing units are rental units
- 14,941 estimated units covered by current policy
- 1979 – the year the current policy was adopted
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- 1,000 – 1,600 units estimated to be currently protected from large rent increases.

TENANT RETALIATION PROTECTIONS - PROPOSED POLICY

A tenant retaliation protection policy would specifically define harassment and provide tenants protection from bad faith business practices such as:

1. Disrupt, reduce, or withhold services to rental units.
2. Failure to perform repairs and maintenance required by contract or law.
3. Failure to perform and complete repairs in a timely and professional manner consistent with State law.
4. Abuse right of access to rental unit as limited by State law.
5. Use lies, threats, or violence to make a tenant vacate a rental unit, including threats regarding immigration status.
6. Failure to accept or acknowledge receipt of a tenant's rent.
7. Interfere with a tenant's right to privacy, including inquiries about immigration status.
8. Interfere with tenant's right to quiet use and enjoyment of rental unit as defined by State law.

MEDIACIÓN Y ARBITRAJE VINCULANTE

PROBLEMA

- Grandes aumentos de renta causan inestabilidad, estrés, y desalojamiento de residentes de la Ciudad de Hayward.

POLÍTICA PROPUESTA

- Esta política fomentaría comunicación entre arrendadores e inquilinos sobre aumentos de renta que exceden 5%.
- Si un inquilino y un arrendador no pueden resolver un conflicto sobre un aumento de renta, mediación estaría disponible para ambas partes.
- Si no se puede resolver el conflicto por medio de mediación, arbitraje se haría disponible.
- El árbitro repasaría documentos y evaluaría si un aumento de renta más de 5% sería justificado.
- La decisión lograda durante arbitraje será vinculante.

SE APLICA A

- Unidades de alquiler construidas antes de 1979 con excepción de residencias unifamiliares y condominios.

RESULTADOS PREVISTOS

- Crea estabilidad de vivienda a través de aumentos de renta predecibles.

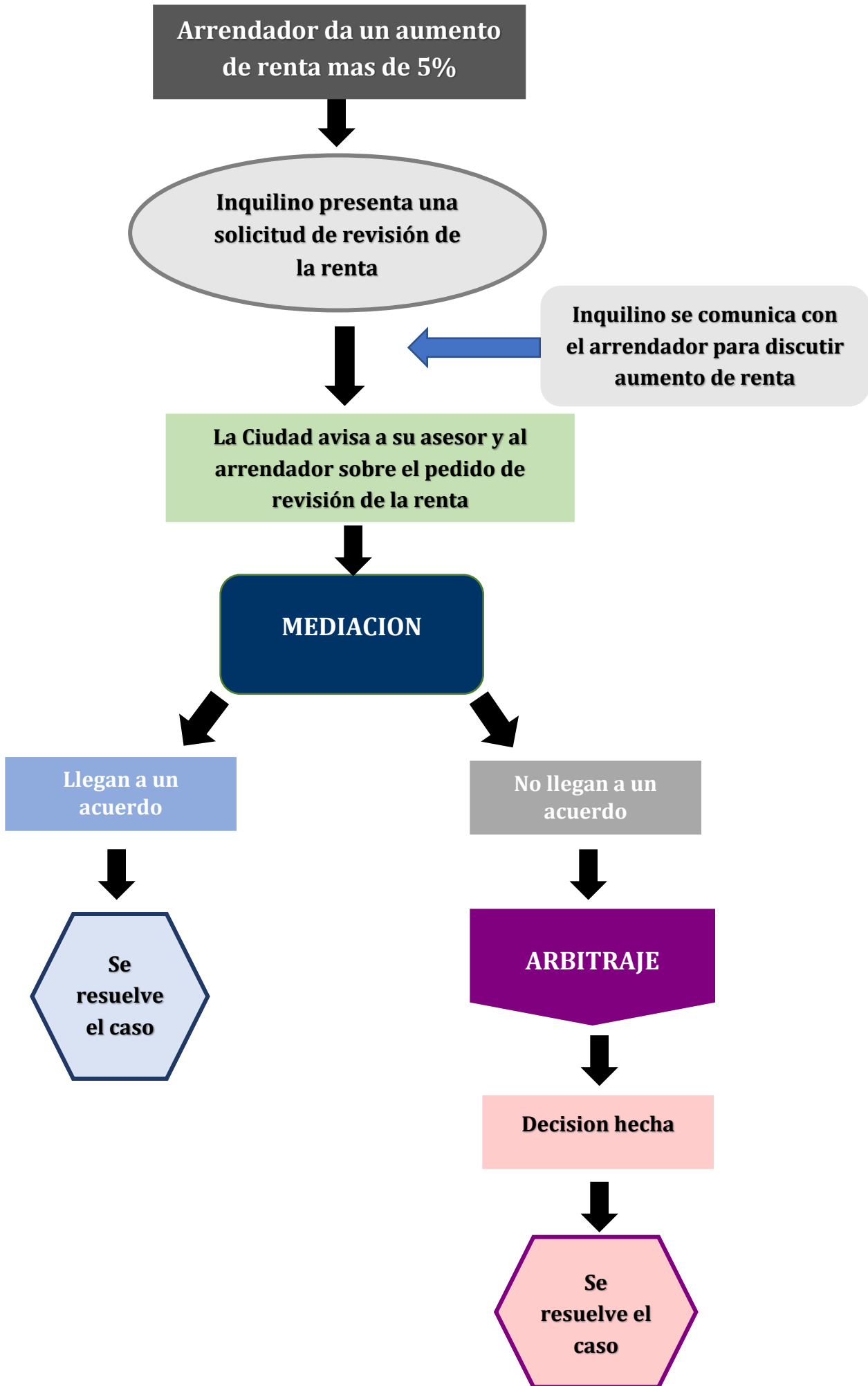
HÁGANOS SABER LO QUE PIENSA

- ¿Qué opinas sobre la política propuesta?
- ¿Nos faltó algún detalle?
- Proporcione cualquier comentario adicional sobre la política propuesta o cualquier otro problema de alquiler en la Ciudad.

CUADRO DE DATOS RÁPIDOS

- 22,237 unidades de alquiler estimadas en la ciudad
- El 48% de todas las unidades de vivienda son unidades de alquiler
- 14,941 unidades estimadas cubiertas por la política actual
- 1979 – el año en que se adoptó la política actual
- 7,931 las solicitudes de descontrol recibidas por la ciudad
- 1,000 – 1,600 unidades estimadas que son protegidas actualmente de grandes aumentos de renta

PROCESO PROPUESTO DE MEDIACION Y ARBITRAJE VINCULAR



ELIMINACIÓN DEL PROCESO DE DESCONTROL DE UNIDADES DE ALQUILER CONTROLADO

PROBLEMA

- Hay solo 1,000-1,600 unidades en la Ciudad de Hayward protegidas de aumentos de renta grandes.
- La política actual de estabilización de alquileres exime a los propietarios del control de alquileres, si el propietario realiza reparaciones que cuestan más de \$ 1,500 a \$ 3,100 cuando la unidad queda vacante.

POLÍTICA PROPUESTA

- Eliminación del proceso de descontrolamiento de unidades de renta controlada.

SE APLICA A

- Aproximadamente 1,000 a 1,600 unidades de renta controladas restantes.

LOS RESULTADOS ESPERADOS

- Preservar el estimado de 1,000 a 1,600 unidades de renta controlada dentro de la Ciudad.

HÁGANOS SABER LO QUE PIENSAS

- ¿Qué opinas sobre la política propuesta?
- ¿Nos faltó algún detalle?
- Proporcione cualquier comentario adicional sobre la política propuesta o cualquier otro problema de alquiler en la Ciudad.

CUADRO DE DATOS RÁPIDOS

- 22,237 unidades estimadas de alquiler en la ciudad
- El 48% de todas las viviendas son unidades de alquiler.
- 14,941 unidades estimadas cubiertas por la póliza actual.
- 1979 - el año en que se adoptó la política actual
- 7,931 solicitudes de descontrol recibidas por el Ayuntamiento.
- 1,000 - 1,600 unidades estimadas actualmente protegidas de grandes aumentos de alquileres.

ARCHIVAR AUMENTOS DE RENTA Y AVISOS DE EVICCIÓN

PROBLEMA

- Hay información limitada sobre aumentos de renta y terminaciones de tenencia con la ciudad lo cual es difícil responder sobre alojamiento de accesibilidad financiera y estabilidad.

POLITICA PROPUESTA

- Requerir propietarios archivar avisos con la ciudad sobre aumentos de renta y terminaciones de tenencia (desalojo).

ESTO APLICA A

- Todas las unidades de alquiler.

RESULTADOS ESPERADOS

- La ciudad coleccionará información sobre aumentos de renta y terminaciones de tenencia. Incluso la razón de terminar la tenencia.
- La ciudad podrá identificar tendencias de vivienda, resolver problemas de viviendas de renta, y propondrá soluciones potenciales basadas en los datos.

HÁGANOS SABER LO QUE PIENSA

- ¿Qué opinas sobre la política propuesta?
- ¿Nos faltó algún detalle?
- Favor de proveer cualquier otro comentario sobre este tema y propuesta, o cualquier otro problema referente a las viviendas de alquiler en la ciudad.

CUADRO DE DATOS RÁPIDOS

- 22,237 unidades de alquiler en la ciudad
- El 48% de todas las viviendas son unidades de alquiler
- 14,941 unidades estimadas cubiertas por la póliza actual
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- 7,931 solicitudes de descontrol recibidas por la ciudad
- 1,000 – 1,600 unidades estimadas actualmente protegidas de grandes aumentos de renta

PROGRAMA DE ASISTENCIA DE REUBICACIÓN PARA DESALOJOS DONDE EL INQUILINO NO TIENE LA CULPA

PROBLEMA

- Algunos desalojos en los cuales no hay culpa del inquilino y la pérdida inesperada de la vivienda hace que sea difícil para los inquilinos para encontrar nuevas viviendas porque no están preparados para pagar un nuevo depósito, los primeros meses y últimos meses, y los costos de mudanza.

POLÍTICA PROPUESTA

- Un programa de asistencia de reubicación requeriría que un arrendador pague a un inquilino por sus costos de reubicación si se requiere que el inquilino se mueva debido a un desalojo sin culpa (la mudanza del propietario, la retirada de una unidad del mercado de alquiler o el cumplimiento de los requisitos del gobierno).
- El pago sería necesario para el desplazamiento permanente o temporal.
- Los arrendadores tendrían que pagar tres veces los alquileres de mercado justos para la reubicación permanente, o una tarifa diaria basada en los costos del Hotel para la reubicación temporal.

SE APLICA A

- Todas las unidades de alquiler.

RESULTADOS PREVISTOS

- Reducir el riesgo de que un inquilino experimente una inestabilidad extrema en la vivienda y/o se convierta en un vagabundo debido a los costos asociados con la pérdida inesperada de vivienda.

HÁGANOS SABER LO QUE PIENSA

- ¿Qué opinas sobre la política propuesta?
- ¿Nos faltó algún detalle?
- Proporcione cualquier comentario adicional sobre la política propuesta o cualquier otro problema de alquiler en la Ciudad.

CUADRO DE DATOS RÁPIDOS

- 22,237 unidades de alquiler estimadas en la ciudad
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- 1,000 – 1,600 unidades estimadas que son protegidas actualmente de grandes aumentos de renta

PROTECCIONES CONTRA REPRESALIAS DE INQUILINOS

PROBLEMA

- Algunos de los inquilinos evitar comunicarse con los propietarios y/o plantear inquietudes acerca de su situación de alojamiento debido al temor de represalias de los propietarios.
- Si bien la ley estatal protege a un inquilino de represalias por parte de un arrendador, no proporciona ejemplos detallados de represalias ni establece sanciones monetarias específicas por participar en conductas de represalia.

POLÍTICA PROPUESTA

- Una política de protección de inquilino local proporciona A los inquilinos derechos legales si son acosados o contraen represalias por un arrendador y establece multas pagadas a los inquilinos, si se viola la póliza.
- Una política local puede proporcionar detalles sobre conducta inaceptable que la ley estatal habla más en general (ejemplos proporcionados por separado).

SE APLICA A

- Todas las unidades de alquiler.

RESULTADOS PREVISTOS

- Identifique la conducta inaceptable del arrendador que se consideraría acoso.
- Establecer sanciones monetarias mínimas.
- Proporcionar una mayor seguridad a los inquilinos, lo que podría alentar a comunicarse con los propietarios y/o plantear inquietudes acerca de conducta inaceptable.

HÁGANOS SABER LO QUE PIENSA

- ¿Qué piensa o cuál es su opinión sobre los requisitos y el proceso de la política propuesta?
- ¿Nos faltó algún detalle?
- Proporcione cualquier comentario adicional sobre la política propuesta o cualquier otro problema de alquiler en la Ciudad.

QUICK FACTS BOX

- 22,237 unidades de alquiler estimadas en la ciudad
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- 1.000 – 1.600 unidades estimadas para ser protegidas actualmente de grandes aumentos de renta.

PROTECCIONES CONTRA REPRESALIAS DE INQUILINOS - POLÍTICA PROPUESTA

Una política de protección contra represalias del inquilino definiría específicamente el acoso y brindaría protección a los inquilinos de las prácticas comerciales de mala fe, tales como:

1. Interrumpir, reducir, o retener servicios a unidades de alquiler.
2. No realizar reparaciones y mantenimientos requeridos por contrato o ley.
3. No realizar y completar las reparaciones de manera oportuna y profesional de acuerdo con las leyes estatales.
4. Abuso del derecho de acceso a la unidad de alquiler según lo limitado por la ley estatal.
5. Use mentiras, amenazas o violencia para hacer que un inquilino desocupe una unidad de alquiler, incluidas las amenazas relacionadas con el estatus migratorio.
6. No aceptar o acusar recibo del alquiler de un inquilino.
7. Interfiere con el derecho a la privacidad del inquilino, incluidas las consultas sobre el estado de inmigración.
8. Interfiere con el derecho del inquilino al uso silencioso y al disfrute de la unidad de alquiler según lo define la ley estatal.

Mediation & Binding Arbitration Program

- 5% seems reasonable because already receiving notices for 10%
- Are landlords responsible for fees to enter arbitration or mediation?
- Is there appeal process for arbitration determination?
- Do landlords hire lawyer or is representation provided?
- Is “banked money” justification to raise rents? Above 5%?
- Should place a time limit on landlords’ ability to recoup “banked money” and should be spelled out in ordinance.
- How is 5% established? Is this tied to property tax increases? Would like to see economic analysis
- There should be process for either party to identify? in mediator and arbitrator
- Who hires/selects arbitration company?
- Believes rent increase should go to City first instead of tenant because landlord could intimidate tenant into compliance and not initiating mediation/arbitration process out of fear
- Evaluation and communication about policy is essential to have people understand rights
- Good solution
- What qualifies as reasonable justification for 5% increase? New paint? How do you keep track of paying off improvements – needs a plan
- 5% increases year after year add up and is unsustainable for the tenant
- Is there a timeline involved in process?
- Who covers rent increase? Is decision retroactive? What rent in effect at ties of mediation/arbitration process?
- Supports this policy – getting rent increases in \$ not % and believes increases exceed 5%
- Supports this policy and needs retaliation and education of tenants
- Tenants are afraid to speak up
- Language barrier – need policies and programs to be available in various languages
- Would like to ensure and include landlord protection if tenant damages unit
- Is rental inspection program applicable to Section 8 properties?
- If rent increases above 5%, the landlord should submit request for City to review
- Tie into reporting program so when rent increase occurs, City would have in reports. Would require City to know rents for all units in the city.
- Concerned about power imbalance in mediation and arbitration process
- Is arbitration applicable – disadvantages tenants
- Consider having a rent board to review disputes
- How does a family make it through this process?
- What are landlord charges for utilities – would like to see an itemized breakdown of the cost for each utility type.
- Can landlord increase rent if complex is not completely occupied a lot of vacancy?
- Is there a limit to investor profit?

- Is there a timeline for initiating rent review?
- Landlords sometimes rely on ignorance of law to raise rents. Didn't even know laws changed- how do we let people know about their rights?
- Impedes free market
- Expenses for landlord is not predictable
- In economic downturn, landlords need to defer maintenance due to loss of margin. This causes property depreciation and determination for tenants
- What is an unjustified increase?
- Government should reduce regulations
- Impedes on free market
- Discourages people in investing in rental real estate in Hayward
- This policy would make it fair for both tenants and landlords, so long as landlord is not singled out or penalized
- SF has good example – this policy lead to too much of unintended consequences and will scare off people from being landlords.
- In favor of this proposed policy
- Consider using HACA standards?
- City should not be involved in landlord and tenant issues
- Proper education about landlord responsibilities needed
- Rent increase is necessary as property taxes – insurance city fees and maintenance cost will go up and the tenants unfortunately need to pay for it
- Landlords should be responsible to submit proposed increase to City and City should verify that increase is acceptable and complies with ordinance.
- This policy would be disadvantage to tenants throughout the entire process and includes several barriers including cost, administrative, and information burdens
- This policy should be changed to rent control cap with rent review for increases above cap. The burden should fall on landlord to request increases beyond cap threshold.
- The policy that creates database of all evictions and rent increases shouldn't be tied explicitly into a rent control and rent review program.
- Rent should be increased according to CPI not on landlord's likability or whim
- Rent prices should be universally averaged nationwide
- In favor of policy because it is a good way of keeping tenants and having fair amount of living for landlords and tenants
- Arbitration team – 5 landlords, 5 tenants to hear issues and help with process
- Rising utility costs to landlords and rising labor does not compensate the owner for increased costs of 5% increase limit
- There are no remedies for landlords whose tenants are in constant violation of their lease
- City should consider enacting a rent review and mediation process only for at least 12 months, collect data and determine if there is a need for binding arbitration element.
- Mediation works

- 5% barely accounts for inflation. If you want owners to make improvements and keep up their properties, owners have to be able to offset rising costs for public utilities and increased taxes.
- Recommends 5% plus CPI with a cap of 10%
- Who will facilitate mediation process?
- Recommends giving tenant sufficient notice of rent increase – 90 days – which would allow them to search other rents.
- Mediation would allow tenants and landlords a voice.
- Recommends Home Association with yearly fee so people can up keep their yards
- Operating expenses are high
- Landlords should be able to increase higher than 5% every year for improving property
- Believes that this policy would cause further deterioration to pre 1979 housing stock in Hayward
- This policy destroys what little good faith Hayward had with rental housing community and makes Hayward poor place to invest in
- Would like the City to use another jurisdiction's ordinance as a model so it would be easy to measure the effectiveness of policy
- Rents shouldn't be based on percentages of existing rent because it is not fair to landlords who have been keeping rent extremely low for the tenants
- There should be a base rent for 1,2, or 3-bedrooms. Only rents that are greater than the base rent should be addressed
- Instead of 5%, rents should be able to increase at least 7% yearly
- This policy is fair.
- I think your limiting the increases on rents is terrible, as an owner it limits us on improvements for our buildings, apts, and units houses or whatever, and you forget the existing tenants make most of the problems and don't care about our properties and how much they destroy them.
- Everything, as an owner you are forcing us to get out of the business, and giving control of our own investments to the city and county. We are taxed, we as owners have to clean up the messes the tenants make, they are not the owners and they don't care what it costs us.
- Leave us owners to manage and improve our own properties without your input and restraints on what we can do.
- There is already those things in place through the court and county. For older units we have a lot of maint. If it's not cost effective for the properties to cover that and taxes, mortgage, employee salaries, insurance, court costs and tenant issues we would not be able to do upgrades and would have defer a lot of maint. It will also cause owners to sell their properties to developers who buyout of affordable housing and put up condos.
- I think City Counsel should go to eviction court and see what the reality is.
- Seems reasonable instead hard-line limits.

- Limits on rent increase should not apply to vacant properties when tenant leave on their own or due to just cause eviction. I NEVER raise rent on good tenants so I need to adjust rent to market value when they finally leave.
- It needs to be more specific as to what property types. If it's more than 4 units, then this is considered commercial.
- Why is this 1979 age range relevant?
- I think the process looks good but in the meantime while the tenant and landlord goes through this lengthy process. Does the tenant remain living in the apartment or house and keep paying the same rent? If the tenant loses the arbitration, the increase is established so would the tenant have to pay retroactive pay or just the new increase amount?
- How is it justifiable that the tenant has to contribute to paying for the upkeep of the apartment or house twice. What I mean is the portion of the monthly payment should have went to the upkeep. Therefore, the tenant is paying for this lack of foresight by the landlord twice. This doesn't seem fair.
- There should be laws, regulations, and loans for landlords to keep their properties update, clean, and can pass safety standards/codes.
- Should be 10% increase.
- Is there control on tax increase, insurance increase, utility building materials cost too? Which is not accounted for?
- Control is ok, if increase on everything else is also controlled from increases.
- Excellent
- What Alameda has and it works.
- My rents are at least \$400 below market. We have purposely kept our rents low while continuing to make improvements to our property. This action will put a halt to any non-essential repairs to our property.
- If you want property owners like myself to continue to make upgrades to our property you should NOT impose this restriction on landlords who have purposely kept rents at an affordable level. I might suggest putting a 5% cap on those rents that are at it above the average rents in the city. Punish those who abuse. Not those of us who have always been mindful of our tenants.
- I have not raised rents every year, but with rent control I feel I would have to keep up with going rate!
- I don't like group punishment because of landlords that abuse tenants.
- We purposely keep our rents low to keep our tenants. If this policy is put in place we will be forced to raise rents every year to the max allowed. Currently our 2 single family homes are 30% below market.
- You don't need rent control in Hayward.
- I support the policy as it excludes single family homes and condominiums. We have tried to keep the rent reasonable on our SFR for the interest of our tenant. We do our best to work with the tenant.
- Five percent is high, most jobs do not provide a salary increase of 5% each year.
- Yes, after you live in an apartment for 5 plus years there should be automatic upgrade.

- If you are not investing in the upgrade of the units why should there be an increase?
- I think it is fair.
- Large corporations that own hundreds of apartment complexes are the ones that increase rents without consideration for their tenants. Landlords with 2 or 3 units, who manage their own units, and deal with their tenants on a personal basis are more caring and fair.
- As Owner's expenses increase and tenants don't take care of the property, they will not be able to charge enough rents to keep the properties in good condition.
- Free Market Rents have always worked better than government controls.
- Why would Rent Control only affect Pre-1979 property?? Why punish some Owners and not others who have spent their money to provide homes for others?
- Owners should have the right to set their property rental increases at whatever they choose. Why should the city of Hayward be involved in a personal business decision? The city certainly wasn't there to mediate a lower price on the purchase of my property!
- Will this also affect how much the rent can be raised between tenants?
- I don't understand why Hayward is suddenly being targeted as if their rents are so outrageously excessive. Rental rates in just about all neighboring communities (Castro Valley, Fremont, Dublin, Pleasanton, San Ramon, etc...) are much higher and there doesn't seem to be any concern about excessive rent increases in those cities?
- The city makes a rent control plan that encourages property owners to invest in Hayward properties by doing improvements that raise the value of the community and the quality of the rental unit then you are going to turn around and change the rent law that brought in responsible property owners losing the trust and the future investment.
- Don't kill the Goose who lays the golden egg or the renovated unit!
- Work with owners and stay true to your word.
- Have to see what market rents are. If tenant is paying say 20 or 30% lower than market then maybe a larger increase such as 10% should be allowed to catch back up a bit to market rates.
- Seems reasonable to not have price increases that are too dramatic.
- The property values would go down and market would crash. No owners are int'd in Gov't control. That is why you see a mass exodus of all those who are makers leaving their California investments and purchasing in other states.
- Not letting the free market exist, people live where they can afford it. If not Hayward, then move a bit farther out, that is what most people do.
- Maybe more time on Homelessness, cleaning up the cities, getting those in to drug rehab and in job training. Not putting the burden on those who work hard to own property, but help people become self-reliant.
- Policy appears to be ripe for legal opposition. Especially since all parties have not consented to either mediation or binding arbitration. Who is the mediator and arbitrator to be? Are these uninterested third parties?

- Consent from all parties (tenants and landlords). Binding arbitration is a reach and potentially unenforceable. Current policies and laws are in place and are actively enforced by the City and the Courts.
- Why not offer mediation in an effort to assist both tenants and landlords communicate in a constructive manner? This proposed policy will continue to remove units from the rental market as landlords will continue to leave the rental industry (at least in the City of Hayward) and potential new landlords will shy away from the City of Hayward as the environment will become too difficult/onerous to operate.
- I think the policy should be increased to rent increases exceeding 10%.
- Why does this only apply to “Pre-1979” units???
- This will negatively effect units/landlords that are renting for under the HUD Fair Housing Rents as my units are. This has to be more specific or you will push fair landlords out of the rental business. That’s how I’m feeling about my 10 units now.
- This is all focused on owners/landlords and no one else.
- Not only does rent control have an effect on the housing that would be developed, but the housing that currently exists is either reduced in quality or eliminated entirely. Because some owners no longer profit from their property, they are no longer able or willing to make necessary repairs.
- If the government imposes a price ceiling on the apartment the quantity and quality of available housing declines. Low prices increases the demand for housing, meaning that there are less housing options for those with limited incomes. Additionally, maintaining low prices in one section of housing typically means increased prices for housing in the surrounding or other areas. By lowering rents on some units or forcing landlords to maintain renting units a small or no profit, landlords will recoup profits on newly vacated units, charging more to new tenants.
- I hope the City realizes that onerous or overly restrictive rules will decrease the number of rental units making the rental market tighter. Such policies are counter productive.
- I think rental increases should be based on the market in the area and not be controlled by a rent board.
- Interferes in the free market pricing.
- Promote ownership instead.
- People will stop investing in Hayward.

Eliminating Vacancy Decontrol

- Rent stabilization is regional issue and applies differently in different places
- Rents change when property management change
- Concern that landlord has to sell property for less than market value because of existing tenant.
- Disconnect between landlord and tenant – tenants expect improvements done in timely manner and tenants think landlord make a lot of \$\$
- In favor of eliminating decontrol
- This policy is an incentive for landlords to make improvements
- Market-rate rents are decreasing so landlords need incentive to make physical improvements.
- Fear that what happened in Oakland will happen in Hayward
- Request to research if stricter policies discourage people from investing in rental properties.
- Need balance between tenants' and landlords' needs
- Seems fair as long as rents can be increased between tenants.
- New property owners should be required to have owned a property for x-amount of years before raising rents.
- Request for information as it relates to tenant rights – rent increases
- Eliminate decontrol
- ADUs – Get rid of owner-occupied rule. It is an issue of supply and demand. These units are valuable for elderly, teachers, etc.
- When landlord sells complex, new landlord might not be able to keep rents of existing tenants low. New landlord should be able to increase rents at new ownership.
- These policies create burden on tenant such as requiring the tenant to initiative the process. This should be changed.
- Decontrol shouldn't be allowed just for doing simple improvements.
- Reversing decontrol is unfair to future tenants and is a loss of affordable housing stock
- Do not completely remove elimination – raise the bar of value of improvements to qualify for decontrol.
- Discouraged people to invest and develop rental properties in Hayward.
- Let free market determine rent prices.
- Leave decontrol units alone
- Freeze the remaining 1,000-1,600 units and increase the dollar amount for improvements
- Do not consider re-control of previously decontrolled units
- Excessive rent increases such as 10% should be sent to mediation
- If Hayward is seeking a disincentive for financially motivated evictions, Alameda Ordinance 3148 is a good example of compromised between landlords and tenants
- This is unfairly working against owners of 1,000-1,600 units that are still under rent control

- If rental price controls are to be put back on previously de-controlled units, City should refund the costs plus interest to the impacted property owners
- Rent control will attract more people to Hayward
- Preserve remaining 1,000-1,600 rent controlled units.
- I don't understand it.
- Is the city prepared to refund the monies to owners who bought out of rent control with interest?
- Seems reasonable.
- Again, I would strongly object to any restrictions on rent when unit is vacant because I NEVER raise rent on existing tenants. If the law prevents me from renting a unit at market value when it goes vacant, that would be patently unfair for landlords like me who never raise rent, sometimes for years! Don't punish landlords like me who never raise rent until unit goes vacant!
- There still should be a process that landlords can't increase the rent above 5%. The fact that the corrects for a unit is above 1500 or 3000 has nothing to do solely by the tenant. It is because of our society, laws, and increase cost on everything which impacts both tenants and landlords. But, once the unit is rented out the landlord will start recouping his/her loss unlike the tenants.
- The increased cost should not totally fall on the tenants.
- Rent should remain at increasing no higher than 5% which is a lot for most tenants.
- Rent control should be 5-10% on all units.
- Consider maintenance cost too.
- Should be more than 5%.
- Good
- This is total BS. I have two rent controlled units. Those rents are almost \$900 below current market. If either of those tenants move (they have been their 40+ years) why should I be punished and FORCED to keep those rents where they are. They are great tenants and I have no intention of making them leave but if they move on their own accord I SHOULD NOT be punished.
- Not needed.
- It has its good points and its bad points.
- It always starts small and a couple years in, it is like Berkeley or SF.
- Do not know enough about rent controlled units.
- Do any of the people making these Rent Control provisions actually own Investment Property?
- [The City is missing] common sense.
- Will it make any difference to make comments as it appears you've already made up your minds? This is just a formality.
- The issue mentions "large rent increases" ...need more specific information on what is considered a "large rent increase".
- If you want to make more lower rent units find more housing assistance such as sec. 8 and let all of us contribute to making housing more affordable not just the property owners!

- Landlords will go somewhere else, another city, values drop, tax revenue drop. I would never own property in a rent control district, you are punishing the makers.
- Devaluing the property, landlords leaving, prices dropping. Owners selling and moving tax revenue out.
- Should be left in place to provide better housing stock for future tenants.
- The state of CA will bring new overlaying rent controls into being in the coming months that will alleviate the potential for large rent increases.
- City should wait to see what the state of CA will put in place to see if these new laws will have an impact on the City of Hayward and assist in capping large rental increases. Currently the State has a 10% overlay over the entire state (per the CA State Attorney General Office) which is being enforced statewide.
- This is not a good policy. Owners will not invest in property improvement if they cannot be assured a return on their investment.
- This is awful! With all the rental units in the City of Hayward you are going to eliminate the decontrolling process even though it ONLY effects 1,000 to 1,600 units??? That is outrageous that the City would try to push this through to adversely effect the owners of these few units.
- Big time [the City is missing something]! If you are going to implement your different types of rent control, it should include every rental in Hayward including these rent controlled units and all POST 1979 apartments or it should effect NONE OF THEM!!!!!!!!!!
- I, as a small apartment owner, am feeling victimized as this moment with the misguided attempts to solve this housing problem on the backs of apartment owners like me. I am truly considering selling them all.
- If the owner is willing to invest their money into improving their property, they should have the ability to increase the rates to regain their investment on the property.
- This policy is an ideal way to create “slumlords” which the COH does not need.
- Sounds reasonable and fair to landlords and tenants.
- Not sure. I don’t know enough to comment.
- That is outrageous as the turn over cost to an apartment home excluding the marketing and time spent is under \$1,000 in most cases.
- Build more BMR or low income housing in your city.
- Interferes in the free market pricing.
- Let investors invest, the market determines pricing.

Filing Rent Increase/Eviction Notice

- In favor of policy / Could potentially help develop more in city and protect landlord and tenant
- In favor of policy but not strong enough
- Landlord should submit to City first and not make burden on tenant to prove unfair
- Rent should not be increased and have a threshold
- People shouldn't be charged for rent
- Current rents are very high
- Rent prices should be controlled when new management buys units and increases rent prices
- Rents are above minimum wage
- Rent stabilization needed
- Stop landlord from retaliation and tenants being harassed
- How much of a rent increase would trigger this policy?
- Additional administrative work will increase operational costs for rental unit.
- City of Fremont has rent control and rental inspection program, but Section 8 units are exempt from City ordinance. Hayward should consider exempting Section 8 units from City ordinance
- Ability for either the tenant or landlord to file with City
- Biggest problem is no trust between landlord and tenant
- Can rent increase due to tenant improvements for disabled tenant?
- Disagreement with policy because too much regulation for private property. Violation of property rights.
- Disagreement with policy because it could create additional administrative work for property managers which then leads to increasing operating costs for property management.
- Request for information related to tenant evictions and rent increases on City's website. Trends and causes.
- Request for information related to fair trade love income and rent control.
- Request for information on evictions and rent increases.
- Rent increase necessary for operating expenses and costs.
- Rent control hurts landlords who need to increase rent to maintain property and provide safe, comfortable, and affordable housing.
- Look at Berkeley to see how dysfunctional this is.
- Rent increases out of control
- Landlords have expenses as well
- Information can be gathered from other sources
- Who pays for program?
- This would cause an increase in property management expenses for the property which would eventually lead to increasing the tenants rent to supplement the property management expenses in the property budget.
- Doesn't like Government to get involved

- Punishes good landlords
- Discourages investment/development in Hayward
- Both landlords and tenants should provide information such as tax returns or pay stubs to prove hardship.
- The current 6 month mask on UD's by the County, enables tenants to go out and find housing after a UD without prejudice for 6 months. You will be taking this away from the people you are trying to protect.
- Policy should only apply to property owners with 5+ units.
- Concerns about how City will pay for additional administrative tasks
- Concerns about property values dropping in Hayward
- Will this policy cost additional \$ for landlords?
- In disagreement with proposed policy – supply and demand should control the price of rent
- How will this policy be monitored and enforced?
- If mechanisms are expensive, consider using city funds to offer rent subsidies to those most in need
- Need tracking for big corporations
- I don't like it. It makes an eviction process even more complicated with an additional step to complete. Same with lease renewals. If the city needs data, ask the local real estate offices.
- I think it will cost the landlords more money. Who pays for this?
- You can see what rents are via numerous websites. This will add more work to owners/managers and as you don't want rents to go up how will that work?
- As long as it is for collecting statistics, no problem.
- Yes, let's enact this policy immediately!
- How can I help this policy establish!
- No! Let landlord and tenant deal with it.
- Why should city get involved creating bottleneck in the legal process.
- Let things stand as it is, with approved rent increase within the city.
- Unwieldy and landlords will pay.
- I dislike rent control.
- This is just more government imposed paperwork put on landlords. If I'm going to raise rents I give the tenants 60 days notice. If I have to notify the city, so be it BUT I DO NOT want this process to extend my ability to raise rents past the already imposed 60 day requirement.
- The city should all those college students that worked on rent control to work on system that creates housing that can be built fast without fees that large amounts of time.
- Who is going to pay for the added city office? Are tenants?
- You are trying to screw the very people who provide rental units in the city.
- I am against this policy. City government does not need to get bigger via data collection.
- [I think the proposed policy] sucks.

- Yes [the City is missing something], you will destroy the desire to own rental property in Hayward.
- Don't implement any of them.
- Too much control on the part of the City.
- City would be taking over decisions regarding rent.
- [This is] Invasion of privacy rights for the Owners of Real Property.
- [The City is missing] again, common sense.
- Is this going to cost more money (i.e...head count, man hours, etc...) for the city to set up this program and monitor it? What are the consequences of not filing this paperwork?
- Rental trends are very fluid. By the time the city identifies some trends they could be obsolete.
- If it becomes too difficult to own and manage rental property in Hayward then owners will simply sell their properties and go elsewhere to purchase rental units and that will further affect the rental housing availabilities in the city.
- If this is required, it should be free to landlords. It should also be available online to upload.
- How will this data ultimately be used. Need limits to prevent mishandling and abuse.
- These policies are ANTI owners and will have unintended consequences. NO owner after working so hard all their life to own property for some govt entity to control how much to rent for...
- There is already record numbers of sellers/owners taking out their equity and leaving the area/state. More control will not work...housing affordability is a PERSONAL issue, not a CITY issue? If you cannot live in an area then you either share rent w/someone, GET A BETTER job or get a 2nd job or MOVE to an AREA that you CAN AFFORD...that is called PERSONABLE RESPONSIBILITY.
- Very expensive way to collect data. This information can be provided through alternative means rather than building new agencies specifically for data collection...monies that could and should be spent on tenant housing assistance.
- Why not have the agencies (e.g. HACA, Eden Housing) already in place that make up a large percentage of rents in the City of Hayward provide the information.
- Too expensive. Find alternative method for data collection.
- I do not like this policy. It will create a logistical challenge for both the city employees and the owners of the properties.
- Disgusting. More senseless paperwork required by the City of Hayward who can't handle the paperwork and requirements they have placed on Apartment Owners through the years with no progress to ever show for it. Just more burdens.
- Yes [the City is missing] the big picture of all these "ideas".
- I am strongly opposed to this proposed policy. I feel that it is a violation of privacy for both the tenant and the landlord.
- We would need the tenants consent prior to releasing copies of any letters or notices that have been issued to them.

- A bit mixed on this. I see the value in having the data this would generate. It might well show that the vast majority of landlords are very judicious about raising rents. But I don't really like sharing my business decisions.
- 99.9% of landlords are already following extremely strict guidelines when terminating a tenancy and some are even afraid to terminate tenancies due to the repercussions which causes neighboring tenants to move out and the landlords to lose money.
- Pay IREM, CAA, or REIS for their current market trends.
- Too much paperwork and regulation.
- Don't do it.

Relocation Assistance Program

- Great disincentive for people to purchase investment property
- 60-90-day notice should suffice
- First time homebuyers cannot move into their own home.
- X3 FMR is too high
- Request for information related to tenant and landlord laws should be on City's website
- In favor of this policy
- Eliminate the ability for landlord to recoup "banked" money.
- Burden must be landlord to bring this to city, not tenant
- Disagreement with policy. Landlord shouldn't have to pay anything for tenant relocation to move into their own home.
- Fear of "professional tenant" who tries to take advantage of this policy.
- Concerns about subleases become permanent lease.
- Recommendation to lighten regulations
- What if landlord is charging rent that is below FMR?
- Provide landlord workshops and tenant workshops on a regular basis to keep everyone on the same page.
- This causes financial burden to owners of single-family units whose property is an investment for retirement.
- In favor of policy and would be very helpful
- X3 FMR is too much for relocation costs
- In disagreement with landlords paying relocation costs
- This policy discourages people to invest and development in Hayward
- If a property is damaged due to natural disaster such as an earthquake would this policy apply and require landlord to pay relocation costs for tenant to find temporary or permanent housing?
- Consider exemptions such as SFH
- X3 FMR is too high. What is I am renting my property for below FMR and now the policy is asking that I pay x3 the FMR to move into my own property?
- When does the landlord have to pay relocation cost/fee?
- X3 FMR is not enough to relocate
- This is unfair financial burden to owners of SFH who make purchases as investments for retirement
- Is tenant relocation assistance tax deductible for landlord?
- There is no protection for landlords. Should provide protection for both landlords and tenants.
- Believes landlord shouldn't have any right to evict tenant at no fault.
- Recommends no loop holes for landlords
- How will you implement enforcement of this program/policy? How will you verify that the landlord is doing what they say they were going to do?

- Consider either or option such as providing advance notice to move-out 3-6 months/ 6 months?
- Propose time instead of financial assistance
- 30- or 60-day notice of eviction is ok, but not financial assistance
- Request for landlords and property managers workshop in Hayward
- Does this apply to month-to-month properties?
- City's website should include tenant and landlord rights
- What is you're selling your rental property? Does this policy apply? Exemption?
- Relocation costs shouldn't cost more than the current monthly rent
- If you can't evict someone for no cause (just cause eviction), then why would you need this policy?
- This is counter productive to the emergency ordinance (just cause eviction) that just passed
- Tenant should prove hardship before collecting relocation payments
- What if tenant exceeds their deposit in damages ... who pays for that?
- Recommends that if a natural disaster occurs or fire caused by resident, landlord should not be required to pay relocation costs
- Recommends that relocation costs be subject to income tax and tenants should receive a 1099 for amount of payment
- Not all landlords have "deep pockets"
- The owner should not be penalized for having to notify tenants that they must move due to certain circumstances. Providing tenants with 2-3 months to find another home should be adequate rather than requiring owners to pay three times the FMR
- This policy allows lawyers to abuse the system
- I think if this were to go thru, it should not be based on the fair market rate if the tenant is paying lower than fair market rate, it should be based on the current rent tenant is paying. Not many landlords charge first, last and deposits, my thought first and deposit are sufficient. I'm also not understanding the compliance with Government regulations, that needs to be made clear. For example eminent domain?
- What if a landlord falls on hard times, is old or ill and needs to move into one of their units and doesn't have the money to pay the tenant? Hardship clause?
- Can we do this across the board? If gas prices go up can they pay me? If I lose my job can they pay me?
- Totally against such a draconian law, especially if the owner simply wishes to go out of the rental business. Instead require a long notice (say 180 days) to give the tenant time.
- Great policy! Let's make it happen.
- Thanks and let's make this happen!!! How can I help.
- No relocation if tenant violates lease.
- Why 3 times?
- Tenant should relocate to cheaper location if unable to pay current rent.
- It is the trend.

- He'll. Those "fair market rents are ABOVE what my actual rents are. You mean to tell me I would have to pay a tenant three times fair market even if their current rent is hundreds of dollars a month below what they are currently paying? Just a note I have NEVER asked a tenant to move for a "not Fault" reason.
- Against this policy. This is too one sided for tenants. If tenants leave a rental in good shape, they would have saved a month's rent (as last month's rent was prepaid) and receive their deposit back. Policy should not be 3x FMV rent.
- Policy needs to consider cases where rent is below FMV is determining the relocation amount. Tenant has benefited from below market rent so should have some savings if having to secure a new place to live.
- [I think the proposed policy] sucks.
- Don't implement the rules.
- Just stay with what you now have.
- Terrible policy. If owner cannot move back into his unit, you are taking away personal property rights. It has always been the right of the owner to move back into his/her unit if owner needs to do so.
- Yes [the City is missing something]. You are giving all the rights to the tenants and the owner of the property will have none.
- If an owner needs to move back into his property, he should be able to do so by giving the tenant enough time to look for another place. But to force the owner to pay the tenant because he/she needs to move back is to take the property rights of the owner away. A law like this does not have a place in the U.S. And you can be sure that nobody will want to rent out his/her home on a temporary basis. Selling the property will be much better option, and there will be less rental properties. It has always been the right of an owner to move back into his/her house, if owner needs to do so. It is different if the owner wants to remove the tenant to rent the property for more money. But to move back in should be a right for the owner.
- California Law is clear on giving property Notices to Vacate in the event of what you call "Not at Fault" Evictions.
- Evictions by percentage are generally the fault of the Tenants and can be traced through the Court System as they are public information.
- You're not taking into consideration the financial stability of the Owners who are being punished.
- Ridiculous! A tenant can leave with 30 days notice, putting the property owner at the inconvenience of suddenly having to incur unexpected costs due to a vacancy (repairs, painting, cleaning, temporary utility charges, key/lock changes, property management fees, etc...) yet a property owner cannot give the same advance notice to the tenant? Screams loudly of bias and discrimination against rental property owners to me.
- Rental properties simply cannot be judged solely by the number of bedrooms. This chart for "2019 fair market rents" doesn't take in effect a myriad of factors since as: size of bedrooms, number of bathrooms, location, square footage of units, quality of appliances, amenities, presence/absence of a garage, etc...

- Not all rental properties are created equal! Nor can they be placed in a box and all listed at the fair market rate. If the mortgage, property taxes, HOA fees, management fees, repairs/maintenance costs exceed the “fair market rent” as found in the above charts then landlords will sell and that will cause a decrease in available rental units at any price!
- Rent control raises rents, look at S.F. for example!
- Yes, [the City is missing] the law of supply and demand.
- Are those the only 3 no fault eviction criteria? What if the landlord is facing financial difficulties of his own and cannot afford it, so then would the landlord be forced to be homeless himself, and not provide upkeep for his tenants? If there are extra government requirements that the landlord cannot afford and would rather have the tenant move and keep the place empty or sell, how would that work?
- This doesn't help or incentivize anybody to become a landlord.
- ANGRY, its not a govt issue. MOVE where you can AFFORD AS ALL NORMAL people do.
- Not a govt issue. It's a personal responsibility issue. PEOPLE LIVE WHERE THAN CAN AFFORD TO LIVE. WHY IS IT THE OWNERS RESPONSIBILITY TO PAY THEM TO LEAVE? HOMELESSNESS IS THEIR CHOICE NOT THE LANDLORDS CHOICE? THE LANDLORD/OWNER HAS WORKED HARD TO INVEST AND WORK ON PROPERTY FOR THE GOV'T TO CONTROL IT? THERE WILL BE BACKLASH. OWNERS WILL LEAVE/SELL AND THERE WILL BE VACANCIES AND MASS DISREPAIR.
- Will increase housing costs exponentially.
- The day this policy comes into effect landlords will be forced to increase deposit amounts to the absolute maximum amount available under the law as well as max out rent rates (which will increase) due to the absolute increase of risk associated with the rental business in the City of Hayward.
- Penalizing a landlord for providing a lower rent rate (usually over the course of years) and then using an arbitrary market rent guide to determine the penalty is egregious and wrong.
- I do not like it. This will reduce the ability of the property owner to improve their properties.
- So, my rents are \$1,000 for my one bedroom apartments but you would require me to reimburse my tenants at your HUD rate of \$1,706??? Really????
- YES [the City is missing something]. YOU ARE ALL MICRO MANAGING. SICKENING.
- It is not our practice to issue eviction notices without “Just Cause”, owner occupied units, or other items mentioned. To lump everyone together and expect them to pay for relocation is unfair and unjust to the landlord.
- Very bad idea. I can see requiring 60 days notice if the unit is month-to-month. That should give a tenant time to relocate. If there is a lease, 60 days notice that the lease will not be renewed should suffice.
- It's the landlord's property, not the tenant's. If the landlord chooses to take it off the rental market, that's his prerogative.

Public Comments by Topic

Attachment VI

- This is absurd, 99% of tenants milk this system and it is unfair to the landlords. I would propose a 60-day notice of termination to provide adequate time for the tenant to save money and move.
- Set aside funds from the city to cover moving costs. This should not be put on the landlords.
- Why do it?
- Most people are responsible for themselves.
- Don't do it.

Tenant Retaliation Program

- In favor of the proposed policy and believes City needs tenant protection ordinance.
- Proposed policy missing a clause concerning repeated attempts as a form of harassment. Other jurisdictions have recognized that one tactic that comes up often is the repeated pressure from Landlords to relocate tenants with buy out funds. This form of harassment needs to be called out explicitly. Oaklands TPO does this well by limiting landlords to offering buyout no more than once per 6 months.
- Suggest that among the proposed consequences for landlords in violation include – injunctive relief by private right of action, treble damages for deterrence, and attorneys fees for tenants if win and landlords should only get attorney fees if they can show tenant acted in bad faith
- Overall, policy is reasonable. Some small landlords like single family home or condo are not professionally known and I think applies to all rental is too strict if they do not have a chance to know. City must put more effort to educate them for both landlords and tenants. Should represent both parties to not penalize either parties.
- Because there are a lot of tenants who play the system and do not respect private property rights.
- Need landlord retaliation protection program
- In favor of proposed policy
- What about tenants harassing landlord?
- In disagreement of the proposed policy
- This is already provided via State law
- Some parts of the proposed policy is reasonable whereas others is not
- Concerns about enforcement and what steps will be take if tenants violate/abuse policy? Recommends that the tenant pay a \$100 fee to start the process and they lose that fee is claims are not substantiated
- Would like to see what other jurisdictions have done
- This policy creates loopholes for tenants
- In support of protection of tenant and landlord should be protected from false accusation
- This seems to be a fair policy.
- Yes, let's make this w
- Educate tenants to respect and take care of unit
- Tenants always rely on landlord to clean their mess and dirty living habits
- Landlords provide roof over lot of people but are always looked differently
- Who or what will be the judge?
- Yes [you are missing something].
- Tenants already have protections granted by federal, state, and city governments. This is redundant policy in my opinion and NOT NECESSARY!
- No comment as I have no experience of the type listed.
- Tenants are the reason for the problems. Owners react to what the tenants do.

- Yes [the City is missing something], penalties for the tenants who disrespect the property and the owner.
- One one, not tenants or owners deserve all this proposed protection from their evil deeds.
- I do not harass my tenants, and do not know any other landlord who would harass his/her tenants in the ways that you list.
- Yes [the City is missing something], you are identifying landlords as devils, capable of anything unfair and mean.
- There are already measure in the law to prevent harassment of tenants.
- California Law is clear on Retaliatory Evictions. There is no norms because each property, Owner and Tenants are different with different circumstances.
- This is like double jeopardy. Once with the State and then with the City.
- Yes, bad landlords should be held accountable for unprofessional and unlawful business practices.
- Let's just make sure that tenants are held to the same standards.
- It's a good idea, as long as it goes both ways.
- Also need to think about landlord rights. The fact of carrying a \$500K to \$1M+ loan is not easy. The loss for a landlord can be unexpected and almost unlimited for items such as repairs or being sued, or what if tenant doesn't pay rent for months.
- GOVT SHOULD NOT BE IN THE RENTAL BUSINESS
- HELP THE HOMELESS BY GETTING THEM OFF THE STREET AND TAKING CARE OF THEMSELVES, NOT PUNISHING THE OWNERS.
- Who is the arbiter that would make these determinations?
- These are issues that should and can only be presided over by a judge.
- Leave it to the Courts. City of Hayward is not a judicial branch and should not attempt to enter this arena. Huge potential legal liability taken on by the City of Hayward, their constituents and citizens.
- I do not like it, I think the state protections are adequate.
- No protections for landlords who have tenants who do not care about taking care of our units.
- [The City is missing] everything.
- We take great pride in the maintaining our property. We do not conduct business in any of the manners described in items 1 through 8. Again, lumping all property management companies under one umbrella is unfair and unjust.
- I'm fine with it. Treating tenants properly is good business practice. Landlords that don't give the rest of us a bad name.
- Educate your landlords and advise them on the laws.
- One sided favoring tenants.
- Not a fair policy.
- Let the existing Federal & State laws handle it.

City of Hayward, California
Vacancy Decontrol Ordinance and Process Review

May 2019

**Management
Partners**



Management Partners



May 3, 2019

Ms. Kelly McAdoo
City Manager
City of Hayward
777 B Street
Hayward, CA 94541

Dear Ms. McAdoo:

Management Partners is pleased to transmit our project report on our review of the City's vacancy decontrol provisions in its Rent Stabilization Ordinance. Our analysis indicates that the City has historically reviewed its role as a repository of decontrol applications as opposed to arbitrator of vacancy decontrol decisions.

Decontrol applications have typically included the basic information required to validate decontrol under the terms of the ordinance. Yet the current improvement threshold is quite low and does not seem to reflect a value that would indicate significant improvement was made to a unit to justify permanently being decontrolled from rent stabilization.

Ultimately, very few units remain controlled under the ordinance. The program could not be expected to have a significant impact on overall housing affordability or to significantly address the concerns being voiced by tenants and lower/middle income renters. City leaders will need to develop a more comprehensive rent stabilization approach if they wish to address diminishing affordable housing resources in Hayward.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald E. Newfarmer".

Gerald E. Newfarmer
President and CEO

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Executive Summary

Management Partners was engaged to conduct a review of the vacancy decontrol provisions in the City's rent stabilization ordinance. The City Council enacted an 18-month moratorium on May 29, 2018 to provide time to assess the vacancy decontrol process. This project involved reviewing the decontrol application processes to date, evaluating the City's role in the decontrol process, and analyzing the current improvement value thresholds that allow landlords to apply for decontrol.

Key Observations

Management Partners' project team members have identified four primary issues regarding the vacancy decontrol program. In general, historically there has been a passive approach to administration of the ordinance. The genesis of this approach can no doubt be found in priorities and policy interpretations dating back several decades, which were followed by subsequent managers and staff until the current housing market situation resulted in this assessment.

- 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.*

Hayward currently has approximately 22,200 rental units. However, only about 9,500 units (43%) were originally subject to the City's Residential Rent Stabilization Ordinance. Approximately 7,900 applications for decontrol under the terms of the ordinance had been received by the City, leaving approximately 1,600 units (7% of the current number of rental units) that are still subject to the rent control ordinance.

- 2. The City has historically viewed its role as a repository of decontrol applications as opposed to arbitrator of vacancy decontrol decisions.*

The ordinance defines the term "Rent Review Officer" as a person assigned by the City Manager to administer and enforce the ordinance. In practice, once improvements have been made to a

vacant rental unit the applicant landlord filed an application form and paid a fee to the Building Unit to have the unit inspected to confirm improvements were made. Once the inspection occurred and the application was signed by the building inspector, the application attesting to compliance with the ordinance was received by the Rent Review Office. City staff maintained those records and made them available for arbitration.

Current staff reported their understanding of the earlier processes for verifying the decontrol application did not include approval of an application following a regulatory review by the rent review officer. However, the form in use for many years included the signature of building officials confirming the improvements and included the phrase "Certification Approved By." Also, there is a signature blank for the rent review officer to sign which is labelled "Application Approval-Signature of Deputy." These phrases have been changed in the past two years to remove the implication that staff has approved the decontrol status.

Management Partners' team members reviewed 30 case files. They indicated that the City did not make any expressed determinations of decontrol of the units, indicative of the ambiguity in the existing Ordinance regarding the City's expected role in the vacancy decontrol process. In one case, there was a letter to an applicant from staff related to a decontrol application from a developer. The letter referred to documents that were provided by the applicant as part of its application for decontrol and indicated that the properties were decontrolled. Those supporting documents were not part of the file for the units that were claimed to have been decontrolled even after staff's review. This example highlights the challenge of maintaining records for decades that could be necessary for a future arbitration.

- 3. Decontrol applications included the basic information required under the terms of the decontrol ordinance based on our testing, yet in few cases were applicants required to provide receipts or other substantiation of improvements implemented.***

Management Partners' review of the decontrol applications found that the files uniformly contained the decontrol application inspection form signed by a building official in substantiation of the completion of improvements to the property. The inspection forms were then signed by the then current Rent Review Officer. The files all included required noticing statements of the first tenant following the application. However, in most cases, property owners were not

required to provide substantiation of the amounts expended for improvements.

In one case, no records of the improvements were on file and the decontrolled status was ruled as invalid in arbitration.

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.*

The current improvement value thresholds in place range from \$1,566.43 for a one-bedroom unit to \$3,132.86 for a three-bedroom unit. While the thresholds have been increased for inflation per the terms of the ordinance, the general value of these improvement thresholds in today's environment do not seem to justify permanent decontrol of a residential unit.

For the cost of one modern energy-efficient refrigerator, a new washer and dryer set, or replacement of one to three windows, a property owner of a one-bedroom unit can have their unit permanently exempted from rent control provisions. Historically, the improvements reported in the applications were primarily painting, carpet, drapes and other minor improvements that are routine during tenant changes or even periodically for very long-term tenants. These minor improvements offered no long-term benefit to tenants other than the one first occupying a unit following the application and no benefit to the community in the habitability of the rental stock.

In other cities that have adopted rent increase limitations, as not to discourage investment in rental properties, their legislation allows for increases above the rent increase threshold to cover the cost of capital improvements or increased operating expenses. This ensures that the property owner can make a reasonable profit and ongoing investment in the property.

Conclusions and Recommendations

At this stage we know that if an effective rent stabilization or rental unit habitability program is desired by the City, the current ordinance is not providing it, nor is it a particularly good framework for building such a program. The current ordinance and its vacancy decontrol provisions provide no clear policy objective, such as rent stabilization or improving habitability. Similarly, it offers little to no benefit to tenants renting units years after the decontrol improvements were made.

Given the length of time since most of the rental units were decontrolled and the low level of improvements that were required to be decontrolled, the current tenant population has had no benefit or protection that seems to be the original intent of the ordinance. Most tenants have not had rent protections for decades in the Bay Area's fundamentally dysfunctional housing market and the modest improvements have long ago worn out. Our analysis focuses on several approaches to improving the policy goals and administration of the program if it were retained.

This report identifies a total of 22 recommendations. Of these, 21 recommendations would help the administration of vacancy decontrol program be more effective in its current form, if the decontrol process is maintained. Some of the highest priority recommendations are as follows:

- Establish a more proactive role for the City issuing administrative decisions on whether a unit is decontrolled;
- Modify the ordinance to require landlords to provide substantiation of the value of improvements made when applications for decontrol are submitted, and that the unit was vacated voluntarily;
- Increase the improvement threshold a minimum of five times the existing levels to align the ordinance with broader policy interests regarding housing costs and rental property maintenance standards;
- Limit allowable improvements to only include those items that have lasting impact rather than routine maintenance such as painting;
- Improve and enforce landlord noticing requirements regarding decontrolled status of the rental unit for subsequent tenants; and
- Define a penalty for failing to properly notice tenants at the beginning of their tenancy.

Even if the City implements these 21 recommendations, the program will still be applicable only to a small number of rental units. Therefore, it could not be expected to have a significant impact on overall housing affordability or to significantly address the concerns being voiced by tenants and lower/middle income renters.

Ultimately, as indicated in our final recommendation in this report, City leaders should develop a more comprehensive rent stabilization or habitability management approach. We understand that the City Council and staff are currently taking such an approach. Minor modifications to the current provisions may no longer be relevant in the current housing context. We believe that the Ordinance should be comprehensively retooled to cover more units and use modern techniques that have been

developed in other Bay Area communities over the last several years to address housing affordability through rent stabilization practices. Undoubtedly, Hayward would develop some unique approaches appropriate to the community. Using the current program as a beginning template point probably introduces more complications than necessary and would result in an obviously awkward situation in which decontrolled units become controlled again. It might be better to view the current rent stabilization ordinance as having met the needs that existed when it was created and to move to a clean, repeal-and-replace approach.

Background and Methodology

Rent Stabilization Ordinance

Affordable housing has been a significant public policy issue from time to time in the San Francisco Bay Area for the last 50 years. Today it is a significant issue affecting every community in the Bay Area. Various types of rent stabilization or control efforts have been undertaken by numerous cities.

The City of Hayward was one of the first cities in the region to implement a Residential Rent Stabilization Ordinance (“ordinance”) in 1983 that limited rent increases by landlords on primarily multi-family rental housing units. The ordinance included a provision that allowed landlords to absolve their properties of rent control by investing in improvements to their property once the property was voluntarily vacated by an existing tenant. In a city with over 22,000 rental units, only 9,500 units were originally subject to the ordinance. Today, as many as 1,600 units remain rent stabilized.

The ordinance allows landlords to permanently exempt units from rent control after they have been voluntarily vacated and met an improvement value threshold of between \$1,500 and \$3,100, depending on the size of the unit.

In response to the current state of the housing market and particularly the fact that demand for rental units is outstripping supply and driving up market rate rentals, on May 29, 2018 the Hayward City Council enacted an 18-month moratorium on the vacancy decontrol provisions of the ordinance. Management Partners was selected to analyze the vacancy decontrol process, conduct a review of decontrol applications, evaluate the City’s role in the decontrol process, and analyze the current improvement value thresholds that allow landlords to apply for decontrol.

Hayward Rental Housing Profile

Comprising 45.32 square miles on the eastern edge of the San Francisco Bay, Hayward is an economically and ethnically diverse city of

approximately 153,689 residents. However, the increase in Hayward'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 57% of Hayward renters experience a cost burden – they spend over 30% of their household income on rent. Of the 46,713 housing units in Hayward, 22,237, or 47.6%, are rental units. Of the 22,237 rental units, approximately 14,941, or 67%, are covered under the Residential Rent Stabilization Ordinance. Of the 14,941 rental units, 9,506 are subject to the rent-increase limitations because 5,435 single family homes are exempt under state law.

To date, the City has received 7,918 applications for the decontrol of rent controlled units. The City estimates that only 1,000 to 1,600 units continue to be rent stabilized under the ordinance. While low income renters are the most impacted by rising rents and lack of available rental housing, all Hayward renters are experiencing the effects of a tight rental market.

Moratorium on Vacancy Decontrol

On May 29, 2018 City Council enacted an 18-month moratorium on the vacancy decontrol provisions of the Ordinance. During the moratorium period, City staff were requested to conduct a thorough review of the vacancy decontrol process under the Ordinance and make better informed proposals without risking the loss of additional units due to an improvement value threshold that the City Council believed was too low.

Purpose of This Study

City leaders sought input on the five issues below relative to the vacancy decontrol provisions.

- 1. City's Role.** Regarding vacancy decontrol applications, the City's role was interpreted to be limited to the collection and archiving of decontrol applications. Has the City's role been clearly communicated to stakeholders via correspondence and application forms and reflected in arbitrator's decisions? If not, what are the implications?
- 2. Compliance with Ordinance Provisions.** Since the applications have not been reviewed for compliance with the ordinance upon receipt, there are questions about the nature, magnitude, and implications of the compliance issues with vacancy decontrol applications that have been filed with the City.
- 3. Status of Decontrolled Units.** Based on the provisions in the current ordinance, can a definitive answer regarding the status of a unit as decontrolled be provided? If not, are there changes to the

ordinance that could provide clarity to interested stakeholders without violating the rights of other stakeholders?

4. **Achieving the Purposes of the Ordinance.** Based on the purpose of the ordinance, does the vacancy decontrol section achieve any of the stated purposes? If not, would an increase in the vacancy decontrol improvement value address this? If so, what is the appropriate amount?
5. **Ordinance/Process Improvements.** During our review of the areas above, what changes would improve the effectiveness or clarity of the ordinance or processes?

Project Approach

Management Partners gathered and analyzed information using a variety of means. While reviewing and analyzing data and documents, our project team relied on our experience in working with other jurisdictions in California and our knowledge of practices used by other California cities in implementing rent stabilization ordinances. We used the following techniques to gather information:

- Conducted interviews with City and Housing Division staff and consultants that serve in the role of mediator;
- Reviewed and analyzed a variety of data and documents provided by the City and the Housing Division;
- Performed a detailed review of randomly selected vacancy decontrol applications; and
- Conducted research on cities in California that have implemented and have a track record administering rent stabilization ordinances. Following are the nine agencies were researched for this project.
 - Alameda
 - Berkeley
 - East Palo Alto
 - Los Angeles
 - Oakland
 - San Francisco
 - San Jose
 - Santa Monica
 - West Hollywood

Each of these techniques is described in more detail below.

Interviews

An important component of this study was obtaining input about the vacancy decontrol program from a variety of constituencies. We conducted interviews with the following:

- Deputy City Manager overseeing the Housing Division;

- Housing Division Manager;
- Housing Division application intake technician;
- Deputy City Attorney involved in administration of the Ordinance;
- Staff from the City’s Building, Planning and Code Enforcement Divisions, including a senior planner, building inspector, code compliance senior secretary and code compliance manager; and
- Conflict Resolution Specialist with Project Sentinel, the City’s chosen third-party mediator.

Review and Analysis of Data and Documents

Management Partners’ team members reviewed a variety of documents and data to inform our observations and recommendations. We reviewed Ordinance #16-19, the City’s Residential Rent Stabilization Ordinance and its various provisions, focusing on the vacancy decontrol provisions in Section 8 of the ordinance.

To better understand how the City has been administering the ordinance since it went into effect, we reviewed the following additional information.

- Administrative policies, procedures and application forms related to vacancy decontrol.
- Hayward rental housing data, including
 - Total residential units in the City,
 - Rental properties originally subject to the ordinance, and
 - Rental properties that have filed for decontrol.
- Publicly available information, forms, and descriptions of processes on the City’s Residential Rent Stabilization program (www.hayward-ca.gov/your-government/programs/residential-rent-stabilization) and the Housing Division (www.hayward-ca.gov/your-government/departments/housing-division) websites.

Review of Vacancy Decontrol Applications

We reviewed and tested a sample of 30 decontrol applications. In selecting our sample from the population of decontrol applications, we attempted to randomly select 30 applications as follows:

- A total of 15 items that were subject to appeal and/or arbitration proceedings from January 1, 2017 to December 31, 2018 to assess the review process leading to the arbitrator’s decisions and the communication of those results to the affected parties; and

- A total of 15 items randomly selected from the entire population of decontrol applications from the original adoption of the ordinance to date.

There were insufficient items in the population of applications that were subject to appeal in the 2017 and 2018 timeframe, so we expanded that window to include items dating back to 2010. Otherwise, a total of 30 items was selected as indicated above.

Our testing procedures included reviewing documentation within the applications selected for testing, evaluating their completeness and compliance with the ordinance and any administrative policies and procedures in place that impact the processing of decontrol applications. We also attempted to determine how the City has communicated its role to stakeholders via correspondence and application forms.

Research on Rent Stabilization Ordinances in Other Cities

Peer comparisons provide a perspective to help understand how rent stabilization ordinances have been implemented in other jurisdictions. Over the past two years Management Partners has conducted rent stabilization program reviews for several other agencies. While not directly within our scope, we have included this data set because it may be helpful to City leaders to assess how to address vacancy decontrol.

Our team members reviewed publicly available information on each of the peer cities' rent stabilization programs, including information about allowable rent increases, relocation benefits, just-cause and government-ordered eviction provisions, review processes for resolving rent disputes, and any provisions related to decontrol of units when properties become vacant. As necessary, we reached out to staff from peer cities to learn more about their programs.

Research on Rent Stabilization Ordinances in California

Rent Stabilization and Tenant Protection Provisions in California

This report uses the term “rent stabilization” rather than “rent control” to refer to local rent regulations that can be enacted in California under limits imposed by state law. Rent control refers to a form of rent increase limitation used in several large east coast cities in the 1940s through 1970s, where rent increases on a limited number of rental units were essentially frozen for years. This resulted in many problems for both property owners and the cities that enacted the controls.

The key difference between rent control and rent stabilization is the use of “vacancy decontrol” in rent stabilization programs, which allows rents to float to market rates for new tenants following a voluntary vacancy by an existing tenant. Under this approach, rent controls are in place for continuing tenants but normal turnover allows rents to more closely follow the direction of the rental market. Vacancy decontrol is a key feature of the California statute that limits rent stabilization ordinances, known as the “Costa-Hawkins Act” (California Civil Code §1954.5 et seq.). In addition to vacancy de-control, the Costa-Hawkins act provides several other restrictions on local ordinances including:

- Prohibiting restrictions on rents for single family homes and condominiums; and
- Prohibiting regulation of rents on buildings constructed after February 1, 1995 or earlier dates defined in ordinances that were in place at the passage of the act.

Rent stabilization ordinances are frequently part of a larger package of tenant protections that have been enacted within a handful of California cities. These tenant protections outwardly share some common characteristics including the following.

- Limits rent increases for continuing tenants to either a flat percentage or, more commonly, to all or a portion of the regional Urban Consumer Price Index (CPI-U)

- Limits the reasons a landlord may evict a tenant so standard Civil Code procedures cannot be used to create a vacancy that allows the landlord to increase rent to market rates, thereby subverting the rent increase limits
- Requirements that landlords pay relocation assistance for the non-fault eviction of a tenant
- Protections against retaliatory behavior by the landlord when a tenant invokes their rights under the tenant protection ordinances
- Habitability requirements for rental properties
- Mechanisms to ensure continued profitability for property owners in the face of rent regulations and the need to maintain the rental properties

Despite these broad commonalities, each set of ordinances and associated regulations reflect the specific needs and political will of each city, resulting in widely different tenant protection programs. For example, the cities of Berkeley and Santa Monica started their rent regulation programs before the limits imposed by Costa-Hawkins. These cities evolved from more traditional full rent control models and now have prescriptive ordinances and regulations enacted by elected or commissioned rent boards. Frequent reporting of rents being charged, and other terms of tenancy are required from landlords and the staff supporting each rent board calculate maximum allowable rents on a unit by unit basis.

The City of San Francisco has moderately prescriptive regulations but provides almost no oversight or tracking of actual rents beyond publishing the increases allowed each year. Enforcement of the rent limits and other violations of the ordinances are done on a complaint basis only.

Research Cities

For this study, Management Partners provides comparisons between Hayward and other cities with mature rent stabilization programs. While the rent stabilization programs carry many common characteristics, no two are exactly alike. Instead, each is tailored to reflect community needs and interests. Key housing statistics for the research cities are provided in Table 1. Hayward's vacancy rate is by far the lowest of the agencies surveyed at 1.8%.

Table 1. Summary of Occupied Units and Vacancy Rates in Rent Stabilization Cities for 2018

City	Population	Total Units	Occupied Units	Vacancy Rate
Alameda	78,863	32,987	30,957	6.2%
Berkeley	121,874	50,953	47,772	6.2%
East Palo Alto	30,917	7,891	7,272	7.8%
Hayward	162,030	49,913	48,994	1.8%
Los Angeles	4,054,400	1,483,697	1,382,970	6.8%
Oakland	428,827	172,170	162,763	5.5%
San Francisco	883,963	397,083	368,186	7.3%
San Jose	1,015,316	335,164	324,285	3.2%
Santa Monica	92,416	52,441	47,472	9.5%
West Hollywood	36,723	25,833	23,603	8.8%

Source: E-5 2018 Population and Housing Estimates for Cities, Counties, and the State

Cities with similar rent stabilization programs may have vastly different local rental and housing markets. Median rents and rent burden levels are presented in Table 2. It shows Hayward’s renter annual household income is lower than the average among agencies researched, while monthly gross rents are just slightly above the average. These two factors lead to the rent burden percentage being higher than the peer averages.

Table 2. Summary of Median Income and Median Rent in Peer Rent Stabilization Cities for 2017

Cities	Renter Annual Household Income	Monthly Gross Rent	Percent of Renters Spending at Least 30% of Income on Rent
Alameda	\$70,285	\$1,607	45.4%
Berkeley	\$44,769	\$1,523	56.1%
East Palo Alto	\$51,900	\$1,613	63.3%
Hayward	\$56,791	\$1,562	55.4%
Los Angeles	\$40,368	\$1,302	60.7%
Oakland	\$44,746	\$1,255	52.8%
San Francisco	\$76,386	\$1,709	40.5%
San Jose	\$96,662	\$1,822	52.7%
Santa Monica	\$72,341	\$1,669	47.5%
West Hollywood	\$59,252	\$1,490	48.4%
AVERAGE	\$61,857	\$1,554	51.9%

Source: American Community Survey Five-Year Estimates

Table 3 indicates the general profile of peer city housing inventories and distribution of units across housing structures for 2018.

Table 3. Summary of Housing Units in Peer Cities for 2018

City	Single Detached	Single Attached	Two to Four	Five Plus	Mobile Homes
Alameda	13,987	3,406	5,927	9,540	127
Berkeley	20,997	2,083	10,022	17,633	218
East Palo Alto	4,276	300	267	2,900	148
Hayward	25,898	4,878	2,935	13,880	2,322
Los Angeles	557,999	87,903	130,497	697,216	10,082
Oakland	74,315	6,941	32,661	57,698	555
San Francisco	65,848	59,605	81,513	189,515	602
San Jose	176,798	32,321	23,277	91,809	10,959
Santa Monica	9,734	1,832	5,291	35,380	204
West Hollywood	2,271	703	2,336	20,478	45

Source: E-5 2018 Population and Housing Estimates for Cities, Counties, and the State

Table 4 summarizes the rent regulations currently in place in the peer cities. The cities with longer-term programs can have complicated rent adjustment histories as ordinances or regulations were adjusted in response to court decisions or changes in legislation, including the enactment of the Costa-Hawkins Act. All research cities other than Alameda allow rent adjustments based on changes in the Consumer Price Index (CPI). CPI throughout California has averaged around 3% over the past five years.

Alameda, San Jose and Hayward are the only agencies among those researched that set a fixed percentage to guide allowable rent increases. Alameda is unusual compared to the others in that it does not set an annual allowable increase. Instead, for all rent increases above 5%, landlords must file a notice with the Housing Authority and all rent increases above 5% are subject to review by their Rent Review Advisory Committee.

Table 4. Rent Regulations in Peer Cities

Agency	Annual Allowable Increase	Maximum Allowable Increase
Alameda	Rent increases above 5% are subject to Rent Review Advisory Committee review	None
Berkeley	65% of CPI-U	None
East Palo Alto	80% of CPI	10%
Hayward	5% for controlled units; subject to arbitration if over 5%	None
Los Angeles	100% of CPI-U	8%

Agency	Annual Allowable Increase	Maximum Allowable Increase
Oakland	100% of CPI-U	10%
San Francisco	60% of CPI-U	7%
San Jose	5%	5%
Santa Monica	75% of CPI-U with several special surcharges possible in certain school areas and other municipal service-related issues	None
West Hollywood	75% of CPI-U	10%

Attachment B provides a more detailed overview of the rental stabilization programs for each of the peer cities.

Individual Rent Increases and Vacancy Decontrol Provisions

An important element found in each of the peer agency programs is a fair return on investment regulation, or the ability to make individual rent adjustments based on costs that are beyond control of the landlord or are otherwise needed to maintain profitability. Most programs have provisions to help landlords who have been charging very low rents for extended periods of time.

Hayward’s approach to allowing units to be permanently exempt from the rent stabilization provisions of the ordinance is unique among the agencies researched. The peer cities provide rent increase protections to ongoing tenants regardless of improvements unless the landlord can provide appropriate justification for larger rent increases as described below. All rents can be reset to market rate by the landlord upon voluntary vacancy under state law.

Pass-throughs for the costs of major property repairs when needed are defined in the program regulations for each of the research cities. All programs have slightly different capital improvement pass-through policies intended to support ongoing habitability of rental units or to encourage safety improvements to properties. For example, the cities of Santa Monica and San Francisco have specific incentives built into their capital improvement policies for making earthquake safety improvements.

What constitutes a capital improvement varies among the peer cities differs. Some allow replacement costs for specific housing amenities, such as laundry equipment, to be passed through. In such cases, a standard lifespan is assigned, over which the cost of new appliances may be prorated. In other cases, they may include costs for standard elements of the buildings such as roofs and parking lot pavement that are passed through to tenants, while others assume they are core business costs associated

with providing rental housing that must be reflected in the base rent. Those latter cities may allow the cost of new tenant amenities and improvements the city wishes to incentivize to be passed through, but not basic features of the rental property.

Other pass-through cost allowances include increases in property taxes due to the passage of bond measures or special taxes. Utility cost increases are frequently allowed where there are no separate meters. All programs allow 50% of the fees for the rent stabilization program to be passed on to the tenants on a monthly basis.

Los Angeles offers some unique relief to individual landlords (“Mom and Pop” landlords) in reduced relocation payments required for certain reasons such as converting a rental unit to occupancy by the owners or certain close family members. To qualify, landlords must own no more than four rental units and an additional single-family home in Los Angeles County.

Just-Cause for Eviction

State law allows a landlord to terminate a tenancy without cause at the end of a lease or other tenancy term by giving the tenant a 30- or 60-day notice. A just-cause for eviction ordinance retains the State’s noticing timelines, but also requires a landlord to provide written cause for the termination and evidence supporting the termination action. Typically, “just-cause” ordinances provide a limited range of allowable causes for eviction. One of the primary impacts of these programs is a shift in the burden of proof for an eviction from the tenant to the landlord, because failure to prove one of the allowable causes is an affirmative defense a tenant may use to contest the eviction.

Just-cause for eviction rules are often part of a strong rent regulation ordinance designed to protect tenants from a landlord’s ability to evict without cause under civil procedures to create vacancies to gain potentially significant rent increases pursuant to the Costa-Hawkins Act. However, just-cause ordinances can also become problematic for a landlord seeking to evict a tenant for reasons other than to increase the rent. Because legitimately evicted tenants may use the appeals processes to delay the eviction, many landlords believe just-cause ordinances make it more difficult to evict bad tenants.

While typically paired with rent control or stabilization, a just-cause ordinance can also be a stand-alone ordinance designed to protect tenants from unilateral landlord eviction decisions. They can apply to most tenants as well as to specific tenants, such as to tenants of rent stabilized

units only. For example, the just-cause sections of ordinances for Berkeley apply to the rent-controlled units as well as almost all other rental units.

Analysis

Management Partners analyzed five specific areas as part of this project, and we have organized our analysis into the following components.

- **Assessment of the vacancy decontrol process.** An overview of the process and whether it is achieving the objectives of the ordinance.
- **Review of vacancy decontrol applications.** A detailed review of 30 applications randomly selected for review to determine adherence to the provisions of the ordinance.
- **City's role in the vacancy decontrol process.** Observations regarding how the City has historically viewed its role and reflections on what the City's proper role should be.
- **Evaluation of the improvement threshold.** A review of the existing improvement threshold's in terms of the definition of improvements and their values.
- **Other matters.** Other observations in our review of the ordinance and its impact on driving housing affordability and rent stabilization in Hayward.

Assessment of the Vacancy Decontrol Process

Overview of the Process

The current vacancy decontrol process is simple and inexpensive, but it is difficult for tenants and landlords to get and maintain certainty regarding the decontrol status of rental units. Section 8(a) of the Ordinance specifies that for a unit to be decontrolled from the City's rent control provisions, it must meet the following requirements:

1. The unit must be voluntarily vacated by the tenant;
2. The landlord must make specified improvements to the unit in amounts ranging from \$1,566.43 to \$3,132.86 depending on unit size;
3. The landlord obtains written certification from the City building official that the rental unit complies with the City's Housing Code and building security requirements; and

4. The landlord files a written document with the rent review officer within 30 days following subsequent rental of the unit that it has been decontrolled.

It is relatively simple for a landlord to file for rent decontrol once their unit has voluntarily been vacated. As a result, most rental units have been decontrolled over the last 36 years since the ordinance was introduced. The difficulty comes when the landlord (especially in the case of new property owners) or the tenant want City staff to confirm whether a unit has been decontrolled. Currently, they cannot easily get that confirmation, and typically go through a time-consuming arbitration process. City staff are currently updating the database, which should provide better transparency when this is done. See further discussion and recommendations about this matter in the section entitled the *City's Role in the Vacancy Decontrol Process* below.

Recent Transitions in Administration

The recent transition of the vacancy decontrol application process and related disputes from the City Attorney's Office to the Housing Division is appropriate and should be maintained.

The City Attorney's Office had historically overseen the decontrol process, especially as it relates to disputes between landlords and tenants. In Fall 2017, the City transitioned the process from application to dispute resolution to the Housing Division. The City Attorney's Office is still involved in assisting in legal disputes, however day-to-day administration of the ordinance rightly belongs in the Housing Division.

Substantiation of Improvements

Section 8(a)(2) requires the landlord to make improvements to the unit prior to renting it to a subsequent tenant upon decontrol. The ordinance is silent, however, with respect to the requirement that documentation in the form of receipts be provided to demonstrate that the monies have been spent in accordance with the ordinance's provisions.

We understand that the City's code enforcement officer is now requiring receipts to be provided; however, that was not the case in prior years. If the City maintains the vacancy decontrol ordinance provisions, the ordinance should be updated to reflect that substantiation is required for the City to verify that the improvement thresholds have been met. In some cases, property owners may want to provide quotes from contractors of the work proposed, however quotes should not be accepted as verification that the improvements were implemented. The best form

of substantiation is receipts that indicate the amounts were paid to the contractor by the property owner.

Recommendation 1. Update Section 8(a)(1) of the Residential Rent Stabilization Ordinance to require that landlords provide receipts to substantiate that the improvements have been made and that the dollar thresholds have been met.

Recommendation 2. Update vacancy decontrol application forms to indicate requirements for receipts to accompany the application before the unit will be decontrolled.

Substantiation of Voluntary Vacancy

As indicated earlier, the ordinance indicates that the vacancy decontrol provisions only apply if a unit was vacated voluntarily. However, the ordinance is silent regarding the documentation required to allow City staff or the arbitrator to determine if the housing unit was vacated voluntarily. Staff rely on the application affidavit by the property owner that it met this (and other) requirements.

Property owners should be required to provide documentation to substantiate the voluntary vacancy of the rental unit before it is decontrolled. This could be in the form of written notice and/or communication between the landlord and prior tenant that the unit was vacated voluntarily. This information would need to be attached to the application to proceed.

Recommendation 3. Require written documentation to accompany the vacancy decontrol application that supports the property owners' assertion that the rental unit was vacated voluntarily by the prior tenant.

Cost Recovery of the Rent Stabilization Program

Section 18 of the ordinance exacts a fee on property owners for the administration of the rent stabilization program. This fee is currently set at \$3.50 per unit and is based on expenditures incurred over two years prior. There has not been a cost recovery/fee study conducted in recent years to determine if the City is covering its future anticipated costs.

An updated cost recovery study would allow the true costs of administering the rent stabilization program. This would provide City Council with the data to establish a cost recovery policy. We believe the

City should establish a policy that seeks full cost recovery for the rent stabilization program from property owners.

Recommendation 4. Conduct a cost recovery/fee study of the rent stabilization administrative fees charged to property owners and establish a policy that the fees will achieve full cost recovery.

Review of Vacancy Decontrol Applications

Overall Compliance with Ordinance Provisions

As mentioned previously, Management Partners reviewed the decontrol applications of 30 rental units including 15 units where the decontrolled status was subsequently arbitrated. The units selected for testing and the results of our review are summarized in Table 5 below.

Table 5. Vacancy Decontrol Applications Selected for Testing

Street Number	Street Name	Unit	Application Date	Upgrades Done	Amount of Improvement	Appeal Date	Decision
26903	Huntwood Avenue	D	11/4/1999	No data - app only provided, date signed by applicant 12/17/87, City Attorney date stamp 11/4/99	Not provided	4/18/2017	Improperly decontrolled - rent restricted
250	West Jackson Street	49	8/28/1987	Carpets	\$759.50	9/28/2017	Decontrolled
250	West Jackson Street	29	8/10/1987	Refrigerator, Drapes, Carpets	\$812.63	10/18/2017	Decontrolled
250	West Jackson Street	31	5/8/1987	Cabinet Refinish, Drapes, Smoke Det	\$376.92	10/18/2017	Decontrolled
250	West Jackson Street	13	5/27/1986	Carpet, Refrigerator, Kitchen and Bath floors	\$1,219.90	10/18/2017	Decontrolled
250	West Jackson Street	45	8/23/1985	Refrigerator, Garbage Disposal	\$585.14	10/18/2017	Decontrolled
250	West Jackson Street	11	4/23/1998	Carpet, Range hood, Bath floor, Closet doors, Plumbing	\$679.00	10/18/2017	Decontrolled
250	West Jackson Street	27	8/23/1985	New carpet	\$461.00	10/18/2017	Decontrolled
21803	Thelma Street	5	9/11/1986	Bath fixtures, stove, refer, carpets, drapes	\$2,720.00	3/12/2018	Improperly noticed - decontrolled after correcting deficiency
1365	D Street	47	7/5/1989	No data - app only provided	Not provided	6/4/2018	Unit 47 was not properly decontrolled. The unit remains subject to the provisions of the Ordinance.
1365	D Street	7	5/8/1987	Drapes, floor	\$480.00	8/2/2018	Improperly noticed - decontrolled after correcting deficiency

Street Number	Street Name	Unit	Application Date	Upgrades Done	Amount of Improvement	Appeal Date	Decision
25538	Del Mar Avenue	7	7/16/1987	Carpet, Sink, Faucets, Tub, Smoke Det	\$1,482.00	9/9/2018	Improperly noticed - decontrolled after correcting deficiency
25538	Del Mar Avenue	2	5/28/1987	Carpet, kitchen sink, shower/bath floor tiles, paint, windows	\$1,962.52	9/13/2018	Improperly noticed - decontrolled after correcting deficiency
27069	Belvedere Court	1	1/14/1988	Carpet and pad, Drapes	\$1,273.96	11/16/2018	Improperly noticed - decontrolled after correcting deficiency.
25538	Del Mar Avenue	6	4/4/1989	Carpet, tile, locks, paint, Refrigerator, screens	\$2,009.70	N/A	Improperly noticed - decontrolled after correcting deficiency
25013	Whitman Street	9S	7/22/1985	Paint, carpet, drapes, "Dinette" fixture: bath sink	\$1,543.80	N/A	N/A
2527	Kelly Street	11	12/31/1985	Carpet, drapes, paint	\$1,061.95	N/A	N/A
25190	Cypress Avenue	324	1/3/1986	Refrigerator	\$300.00	N/A	N/A
24952	Muir Street	N/A	4/4/1986	Paint, drapes, carpets, flooring, front door	\$1,784.00	N/A	N/A
27920	Manon Avenue	7	4/28/1986	Vinyl, Refrigerator, heater, drapes	\$2,220.50	N/A	N/A
25190	Cypress Avenue	220	10/3/1986	Microwave	\$250.00	N/A	N/A
1137	Walpert Street	110	12/2/1987	Drapes	\$223.65	N/A	N/A
781	Fletcher Lane	219	10/5/1988	Carpet	\$875.00	N/A	N/A
27500	Tampa Avenue	100	11/2/1989	Paint, Refrigerator, light fixtures	\$885.00	N/A	N/A
822	W. A Street	114	11/1/1993	Paint, cabinet stain, drapes, refrigerator, kitchen sink	\$1,282.41	N/A	N/A
1180	E Street	501	5/1/1995	Carpets, blinds	\$1,115.00	N/A	N/A
22264	South Garden Avenue	204	3/20/2002	Carpet, stove, Refrigerator	\$1,467.03	N/A	N/A
339	Industrial Parkway	2	5/8/2002	Range	\$489.22	N/A	N/A

Street Number	Street Name	Unit	Application Date	Upgrades Done	Amount of Improvement	Appeal Date	Decision
22313	South Garden Avenue	N/A	8/11/2016	Carpet, stove, Refrigerator	\$1,467.03	N/A	N/A
816	W. A Street	9	5/17/2017	Not in the file. Letter by Deputy City Attorney to the landlord refers to information provided by the landlord but only the letter is on file.	Unknown	N/A	N/A

In general, the decontrol and arbitration processes were consistently applied and in compliance with the ordinance. Of the 15 units that were arbitrated, two were ruled as improperly decontrolled with rent increases disallowed by the arbitrator due to a problem with the applications and subsequent tenant notifications. In both cases over 18 years had passed between the date of the application and final decision. An additional six units had rent increases that were ruled as not in compliance with the ordinance because the tenants were not properly noticed as required by the ordinance. Those rent increases were authorized by the arbitrator once the landlord properly complied with the noticing requirements.

Records of several, but not all, of the units reviewed included letters from property managers, owners, or their attorneys indicating the housing unit had completed the decontrol process and declaring that the landlords consider the unit to be decontrolled. Noticing is required by the landlord to subsequent tenants under the ordinance, but there is not an expressed requirement that a copy of such notice be provided to City staff.

Tenant Noticing Requirements

The landlord is required to provide the new tenant who moves in after decontrol with information that their unit was decontrolled. Landlords generally only notice the first tenant after decontrol. Future tenants often do not know whether their unit was decontrolled when they move in and can be surprised when they receive a large rent increase.

Based on our review of the application files, tenant noticing requirements of the ordinance are not being met by property managers and landlords. The judgements in six of the 15 cases in arbitration required the landlords to provide proper notification of the tenants prior to implementing a rent increase of more than 5%. Cities with active rent control programs are engaged in frequent outreach and education programs to ensure compliance with the ordinance, particularly noticing requirements. Effective outreach programs provide more effective compliance with the rent stabilization ordinances and ensure tenants know their rights under the statutes.

The arbitrators had been allowing rent increases following correction of inadequate noticing. However, advance notices are generally required by the peers to ensure tenants are aware of their rights and responsibilities at the time they begin their tenancy. This is intended to reduce subsequent disputes and abuses. A penalty fine or delay of rent increase for not complying with the noticing requirements would be an appropriate enforcement aid. Staff may be directed to develop forms and information brochures to facilitate compliance.

Recommendation 5. Renew outreach efforts to inform current property managers and owners of their responsibilities to notify tenants of the notification requirements of the ordinance.

Recommendation 6. Develop a fine or penalty for failing to provide proper noticing of tenant rights at the beginning of tenancy.

This lack of noticing also creates problems for landlords. Landlords sometimes come to arbitration thinking their unit is decontrolled based on old paperwork from the city, but they do not have a record that they told the current tenant that their unit was decontrolled. The arbitrator will often rule that the unit is not decontrolled because of this lack of noticing of the current tenant.

This situation needs to be rectified by requiring landlords to provide all future tenants with notice regarding a unit's status relative to the vacancy decontrol provisions, and the City needs to ensure that proper noticing is given to those tenants by requiring documentation from the landlord.

Recommendation 7. Require landlords to notify future tenants that their unit is decontrolled, with copies provided to the City.

City's Role in the Vacancy Decontrol Process

Recordkeeper Rather than Administrator

The City's role in the vacancy decontrol process is not specifically addressed in the ordinance. This ambiguity has led City staff historically to interpret their role as primarily being one of recordkeeper to ensure property owners file the necessary applications and get the required inspections to be compliant with the provisions of the ordinance. The City has not audited decontrol applications, nor up until approximately two years ago did it require that property owners file receipts for improvements made to properties. No actions were taken by City staff to officially notice property owners or tenants that their properties were decontrolled.

The City's view of its role has led to a hands-off approach in offering any form of positive statement to applicant property managers or owners on compliance or non-compliance of the application with the ordinance. At time, this has resulted in arbitrations many years after the application process.

This ambiguity about the decontrol status of units was mentioned by many interviewees as a major issue. There is no publicly available list of units determined to be decontrolled. City staff are currently preparing a database of decontrolled units that have been documented, which will help in future questions regarding a unit's status.

Currently, tenants and landlords must use arbitration to find out if a unit is decontrolled. They must petition and have an arbitrator review the status of a rental unit to get confirmation of decontrol status. Requiring individual dispute resolution to determine a unit's decontrol status is frustrating, time consuming and expensive for tenants and landlords. For the benefit of both tenants and landlords, there needs to be a simpler, clear and transparent process for a landlord or tenant to get a definitive answer as to the decontrol status of their unit.

We believe City staff should issue an administrative decision on whether a unit is decontrolled and should complete and publish the database of decontrolled units. Requiring an arbitrator to make that determination should be discontinued. However, appeals of decontrolled status to an arbitrator should continue.

Recommendation 8. Establish rules and processes for the rent review officer to issue a city administrative decision on whether a unit is decontrolled following review of the decontrol application.

Recommendation 9. Complete and publish the database of decontrolled units on the City's Housing Division website and keep it updated.

Clarify Recordkeeping Responsibilities with Arbitrator

In several of the arbitrator decisions reviewed, the arbitrator referred to documents that were not in the record packages that had material bearing on the arbitrator's decision. One of the record packages consisted solely of a letter from the City Attorney's Office to a property owner indicating the City could not dispute the owner's notion that most units in the complex were decontrolled given the documents provided by the landlord. The documents were not on file.

Staff members report that the documents provided in arbitration are maintained by the City's arbitration contractor. Given the decades-long history between decontrol applications and subsequent arbitrations, the City record packets should include all documents related to the decontrol and the arbitrations.

Management Partners does not advise assigning records management to the contractor since such contractors may not be used consistently over time. It is a best practice for the City to maintain the long-term records when such records are significant to the interests of its residents and businesses.

Recommendation 10. Assign full recordkeeping responsibility for rent stabilization and decontrol applications, including arbitration decisions, to the City.

Recommendation 11. Obtain and retain copies of all supporting documentation and final determinations by the arbitrator for each property for which they have been assigned for review and decision.

Public Information Regarding Vacancy Decontrol and the Arbitration Process

The current information about decontrol on the City's website is in several different places and is quite general. The website should help both landlords and tenants determine the decontrol status of their unit. For example, it should inform landlords of the questions they should ask about decontrol status before they buy rental units in Hayward.

The website too frequently asks people to contact the Rent Review Office when links could be created to lead to more detailed, helpful information. Updated, comprehensive and centralized information will help tenants and landlords understand their rights and responsibilities. Detailed information should be provided for both parties about the questions they should ask before they lease or buy rental units in Hayward.

Recommendation 12. Enhance the online presence regarding rent stabilization on the City's website with more comprehensive, updated and easy-to-understand information in one location.

Our interviews with staff and Project Sentinel, our review of arbitration records, and our review of the City's website suggest that most tenants do not know about the arbitration process. Given the lack of reliable information and noticing on whether a unit has been decontrolled, tenants need to understand how they can confirm the status of their unit.

Tenants often do not know that they can petition and have an arbitrator review the decontrol status of their unit. When tenants do petition, it is a more efficient arbitration process if tenants in a rental complex consolidate petitions. Their decontrol history is frequently similar.

Currently, Project Sentinel, who manages the arbitration process, is not allowed to inform other tenants in a rental complex when a tenant petition is filed by one or more units in their complex. This results in some tenants in a complex having large rent increases voided because the arbitrator found their units were not decontrolled and other tenants with similar histories receiving large increases.

We have several recommendations in this area that will improve the ability for tenants to understand their rights relative to the rent stabilization ordinance and its provisions concerning a unit's decontrolled status.

Recommendation 13. Develop standard language required in notices from landlords to tenants about their right to petition and have an arbitrator review their unit's vacancy decontrol status.

Recommendation 14. Require landlords to notice new tenants at the time of lease execution based on the updated noticing requirements.

Recommendation 15. Allow the arbitrator to notice all tenants in a rental complex upon completion of an arbitration in the same complex when the arbitrator believes that other units may have a similar history of the property's decontrol status.

Recommendation 16. Update the City's website with information regarding the tenant's ability to have an arbitrator review their vacancy decontrol status and when noticing provisions change.

Evaluation of the Improvement Threshold

Low Threshold for Achieving Permanent Exemption from Rent Stabilization

The ordinance was introduced in 1983 and established limits on rent increases. It also provided a low-cost way for a landlord to decontrol a rental unit when the unit was voluntarily vacated. Some interviewees observed that the ordinance was probably intended to become obsolete as landlords made improvements when units became vacant and the ordinance was not intended to commit to having rent-stabilized units in perpetuity. Others indicated that the ordinance was intended to encourage property owners to make sufficient improvements to their property that would justify rent increases above what was previously

being charged before a unit became voluntarily vacant. Interviewees noted the ordinance helps stabilize rents for those tenants still subject to rent control.

In our experience, cities will typically adopt limitations on rent increases for apartments occupied between roughly 1978 and 1995 (i.e., based on the provisions of the Costa-Hawkins Act). Rent increases are typically authorized without petition for additional increases based on a flat 5% to 8% allowed or when the increase is within a high percentage of the regional CPI-U up to 100% of CPI-U. Additional increases can also be granted by the regulating city program in cases where the property owner cannot maintain a reasonable profit and when the property owner makes substantial capital improvements to the rental property.

The City's ordinance is not constructed like any peers in California, so good parallel practices are not available. Certainly, the improvement threshold remains very low, defined at a level that offers minimal benefit to tenants or improvements in housing stock in exchange for permanent lifting of rent controls. The consensus among staff, arbitration representatives, and tenants is that the improvement threshold is too low.

The capital improvement programs of typical rent stabilization programs in the state can provide some ideas on determining an appropriate level. All the peer city programs allow landlords to raise rent above the controlled levels if the landlords make improvements that provide substantial new benefits to the tenants or are necessary to maintain habitability. The costs are then passed to the tenants on a pro-rata basis over a reasonable lifespan of the asset. The recommendations above focus on changes to the definitions to align the authorized improvements with the philosophies of peer cities in defining allowable capital cost pass-throughs.

As indicated earlier, a current one-bedroom apartment owner could simply purchase a modern energy-efficient refrigerator and be done with rent control on their property permanently. The question becomes what is considered a sufficient investment in rental property to justify rent control to be permanently decontrolled for a housing unit.

City leaders must consider policy interests of fairness and equity among existing property owners, protection of the remaining 1,600 rent stabilized units, and improvement to the housing inventory. We believe an increase of up to ten times existing amounts (i.e., \$15,600 for a one-bedroom unit or \$31,300 for a three-bedroom unit) can easily be justified as a substantial improvement warranting permanent exemption from the rent stabilization provisions concerning rent increases.

If the City were to lift the moratorium on vacancy decontrol, we believe it should transition to a higher improvement threshold through an increase of at least five times the current thresholds should form the basis of any improvements required. This would equate to approximately \$8,000 for a one-bedroom unit, and approximately \$16,000 for a three-bedroom unit. Such improvements at these levels would equate to a bathroom remodel, replacing/implementing hardwood floors in living spaces, energy-efficiency changes (e.g., insulation, weatherproofing, replaced heating and air conditioning units,), or three to six window replacements within the unit.

Recommendation 17. Increase the improvement threshold a minimum of five times their current levels to align the ordinance with broader policy interests relative to housing costs and condition of remaining rental properties.

Definition of Improvements

The ordinance defines several improvements that may be included in the total and a list that describes routine improvements whose costs cannot be included in the total to support decontrol of the unit. Most of the capital improvement allowances in other cities' rent stabilization programs describe such a division in allowable and unallowable expenses.

There are several weaknesses in the City's definitions relative to other ordinances. Section 8(f)(1)(x) allows the cost of unscheduled painting of all painted surfaces to make the unit rentable. Section 8(f)(2)(vi) prohibits "Painting interior walls." There is no definition of "unscheduled painting" in the ordinance.

Almost every application reviewed by Management Partners included painting in justification of decontrol with no information about whether the painting was scheduled or unscheduled. Regardless, most capital improvement policies in peer cities disallow all painting, which is seen as a routine maintenance activity that is to be expected and included in the income and expense structure of a rental business. Even if other routine maintenance items are to be allowed, painting should be removed from authorized list of improvements to avoid confusion.

Recommendation 18. Modify the ordinance and remove painting from the list of authorized expenses under Section 8(f)(1).

In addition to the conflicts in painting, several other routine maintenance items are assumed to part of the rental business cost structure under peer rent stabilizations including floor material replacement and maintenance, drapes, and wall coverings. In addition to painting, these are the most common expenses claimed in the records reviewed. All such maintenance has a limited lifetime but are used support a permanent exemption from rent stabilization. It is certain that units repainted or had floors replaced in the 1980s to 1990s have long since required such work to be redone several times. It is not clear that any long-term habitability goals can be met with such incentives.

Recommendation 19. Define the items included in Section 8(f)(1)(iii-iv) as routine maintenance to encourage improvements that provides long term benefits on habitability.

Section 8(f)(1)(ix) defines remodeling costs as allowable. Remodeling rooms, walls, closets or ceilings are allowed “to improve the living space” of the unit. There is no definition of what such improvements must accomplish “to improve the living space.” Rent stabilization programs that allow pass-through of capital costs often require any such improvements add a new housing service. Window replacements often must be more energy efficient. All such improvements typically require permits. Although the routine building ordinances require such permits, adding the requirement to the ordinance would aid in enforcement.

In addition, Building Division staff commented that improvements such as new kitchen or bathroom cabinets as described in Section 8(f)(1)(vi) are generally low-quality cabinets made from particle board that degenerates in a few years, leaving the physical condition of the kitchens and baths in rental units in worse conditions in just a few years. Building staff members are interested in providing their expertise to add such definitions and improve the habitability of City housing stock.

Recommendation 20. Create an interdepartmental staff task force that includes Housing Division staff, building inspectors, and planners to develop greater specificity on the level of improvements required under Section 8(f)(1).

Other Matters

Reframing Vacancy Decontrol

The term “vacancy decontrol” in rent stabilization programs both in California and other states has a particular common use referring to landlords’ rights to set rents at market level following any voluntary

vacancy. The state's Costa-Hawkins Act reflects common usage in its requirement to allow rent decontrol following all voluntary vacancies.

It may be more accurate to entitle the City's decontrol mechanism as "improvement decontrol" to avoid confusion between common usage, state mandates, and the decontrol mechanism to the City's Ordinance. This will properly set in landlord, tenants, City staff, and other stakeholder's minds the intent of this section of the Ordinance.

Recommendation 21. Modify the title of Section 8 in the City's ordinance as *improvement decontrol* to be consistent with best practices and state law.

Comprehensive Housing Affordability Strategy

The City is facing significant pressure from tenant constituencies to address affordable housing matters. The vacancy decontrol provision in the ordinance was the subject of this study, however it is but one small component in the overall set of policy choices that the City Council faces in addressing the affordable housing issue.

Housing affordability is a complex policy issue for the City and should be considered through a comprehensive approach. Such an approach would consider affordability that includes local and regional partnerships and policy setting to address the needs of both tenants and property owners in the community. We know that the City Council and staff are focused on this matter and believe that the comprehensive approach would better suit the needs of the community rather than merely adjusting the vacancy decontrol provisions of the Ordinance in a vacuum.

Recommendation 22. Establish a comprehensive set of housing policies that equitably address affordability and the needs of tenants and property owners.

Conclusion

City leaders face difficult choices in balancing the needs of property owners and tenants in rental housing. The rampant increases in housing costs in the Bay Area place significant pressure on tenants to afford to live, work and play in communities such as Hayward. The City has a history of rent stabilization efforts through the ordinance enacted nearly 40 years ago. However, due to a low improvement threshold that was implemented when the vacancy decontrol section of the ordinance was introduced, it became far too easy for landlords to meet the improvement thresholds and have their units decontrolled with little long-term benefit to the community. The City now has only as many as 1,600 units that remain controlled. The City Council must decide whether remaining housing units subject to the rent control provisions of the ordinance should be maintained or if a comprehensive housing affordability strategy should be developed.

However, if the City Council wishes to maintain the vacancy decontrol provisions related to improvements made to existing rent-controlled units, we recommend several actions. These include updating the vacancy decontrol provisions by increasing the improvement threshold that would allow a landlord to decontrol its housing units, clarifying the types of improvements that would qualify for decontrol, improving the noticing requirements to ensure that landlords and tenants are clear about whether units are still subject to the rent control provisions of the Ordinance, and improving the public information available to current and prospective property owners and tenants to inform them of their rights and status of the property they wish to lease. While these modifications will improve the administration of the vacancy decontrol provisions, they will not provide long-term policy goals such as maintaining affordability or ensuring habitability of the rental inventory.

Attachment A – List of Recommendations

- Recommendation 1. Update Section 8(a)(1) of the Residential Rent Stabilization Ordinance to require that landlords provide receipts to substantiate that the improvements have been made and that the dollar thresholds have been met.
- Recommendation 2. Update vacancy decontrol application forms to indicate requirements for receipts to accompany the application before the unit will be decontrolled.
- Recommendation 3. Require written documentation to accompany the vacancy decontrol application that supports the property owners' assertion that the rental unit was vacated voluntarily by the prior tenant.
- Recommendation 4. Conduct a cost recovery/fee study of the rent stabilization administrative fees charged to property owners and establish a policy that the fees will achieve full cost recovery.
- Recommendation 5. Renew outreach efforts to inform current property managers and owners of their responsibilities to notify tenants of the notification requirements of the ordinance.
- Recommendation 6. Develop a fine or penalty for failing to provide proper noticing of tenant rights at the beginning of tenancy.
- Recommendation 7. Require landlords to notify future tenants that their unit is decontrolled, with copies provided to the City.
- Recommendation 8. Establish rules and processes for the rent review officer to issue a city administrative decision on whether a unit is decontrolled following review of the decontrol application.
- Recommendation 9. Complete and publish the database of decontrolled units on the City's Housing Division website and keep it updated.
- Recommendation 10. Assign full recordkeeping responsibility for rent stabilization and decontrol applications, including arbitration decisions, to the City.
- Recommendation 11. Obtain and retain copies of all supporting documentation and final determinations by the arbitrator for each property for which they have been assigned for review and decision.
- Recommendation 12. Enhance the online presence regarding rent stabilization on the City's website with more comprehensive, updated and easy-to-understand information in one location.
- Recommendation 13. Develop standard language required in notices from landlords to tenants about their right to petition and have an arbitrator review their unit's vacancy decontrol status.
- Recommendation 14. Require landlords to notice new tenants at the time of lease execution based on the updated noticing requirements.
- Recommendation 15. Allow the arbitrator to notice all tenants in a rental complex upon completion of an arbitration in the same complex when the arbitrator believes that other units may have a similar history of the property's decontrol status.

Recommendation 16. Update the City’s website with information regarding the tenant’s ability to have an arbitrator review their vacancy decontrol status and when noticing provisions change.

Recommendation 17. Increase the improvement threshold a minimum of five times their current levels to align the ordinance with broader policy interests relative to housing costs and condition of remaining rental properties.

Recommendation 18. Modify the ordinance and remove painting from the list of authorized expenses under Section 8(f)(1).

Recommendation 19. Define the items included in Section 8(f)(1)(iii-iv) as routine maintenance to encourage improvements that provides long term benefits on habitability.

Recommendation 20. Create an interdepartmental staff task force that includes Housing Division staff, building inspectors, and planners to develop greater specificity on the level of improvements required under Section 8(f)(1).

Recommendation 21. Modify the title of Section 8 in the City’s ordinance as *improvement decontrol* to be consistent with best practices and state law.

Recommendation 22. Establish a comprehensive set of housing policies that equitably address affordability and the needs of tenants and property owners.

Attachment B – Rent Stabilization Provisions of Comparative Agencies

See Attachment starting on the next page.

Data Category	Data Point	Berkeley	Santa Monica	East Palo Alto	Los Angeles	San Jose	West Hollywood	Oakland	San Francisco	Alameda
Overview of Program	Population	121,000	92,000	29,137	3,957,022	1,030,000	37,000	420,000	870,000	79,000
	Elements of Rent Stabilization Program*	Rent Stabilization, Just Cause, Anti-Retaliation, and Ellis Act	Rent Stabilization, Just Cause, Anti-Retaliation, and Ellis Act	Rent Stabilization, ARPO, and Condo Conversion. Also Fair Return and Adjustment for maintenance and repairs	Rent Stabilization, Just Cause, Anti-Retaliation, and Ellis Act	Rent Stabilization, Just Cause, Anti-Retaliation, and Ellis Act	Rent Stabilization, Just Cause, Anti-Retaliation, and Ellis Act	Rent Stabilization, Just Cause	Rent Stabilization, ARPO, and Condo Conversion. Also Fair Return and Adjustment for maintenance and repairs	Rent Stabilization, Partial Just Cause, Ellis Act, Requirement to offer Year long lease
	Authorization by Charter or Ordinance	Ordinance	Charter	City Council Ordinance for rent stabilization 1988. Just Cause by voter referendum 2010.	Ordinance	Ordinance	Ordinance	Ordinance	Ordinance	Ordinance
	Municipal provided Services	Arbitration and Mediation	Arbitration and Mediation	Arbitration and Mediation	Arbitration and Mediation	Arbitration and Mediation	Arbitration and Mediation	Arbitration and Mediation	Arbitration and Mediation	Mediation
	Annual Allowable Increase	65% of CPI	75% of CPI-U	80% of CPI up to 10% max	3-8% tied to CPI, 100% of CPI-U	5% (Interim Ordinance currently in place)	75% of CPI-U to 5.5%	100% of CPI-U with Banking cannot exceed 10%. Banked increases cannot exceed CPI-UX3	60% of CPI-U up to 7%	5% non-binding arbitration on Costa-Hawkins exempt units, binding on non-exempt
	Allowable Pass-Through	Utilities, earthquake or other major damage to property. MNOI assessment.	Local taxes, utilities where paid by landlord. Capital pass-through in many cases	Utilities and other operating expenses above base year plus increases. Capital expenses.	Capital pass through at 50%, cannot raise rent more than \$55/mo. Rehab at 100%. 10% increase for major system. "Just and reasonable" cost recovery.	Under development. Staff will be recommending operating cost and capital pass-throughs based on MNOI assessment	MNOI assessment on income minus operating costs defined in the ordinance. Well defined exclusions from consideration.	Operating costs, capital improvements.	Capital improvements and utilities.	Capital improvements (under a general rent increase petition) and utilities.
	Relocation Assistance	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes, no temporary except government ordered
	Just Cause for Eviction	Yes	Yes	Yes	Yes	Stabilized units only proposed	Yes, covers all rental units	Yes	Yes	Partial just cause. Up to 10% of the total units open to "No Cause" evictions in a month, 25% of total in a year.
	Voluntary or Mandatory Mediation	Both, 1000 consultations/month. 150 each leading to mediation and arbitration	Voluntary with all petitions prior to a hearing, also available to resolve misc. disputes		Referrals to various support agencies for miscellaneous disputes.	Arbitration and mediation by hearing officers based on the type of dispute.	Mediation appeals to Board	Mediation available for misc. disputes	Mediation, appeal to arbitration then to rent control board	Non-binding mediation less than 5% and public hearing with binding decision by RRAC, appeal to City Council
	Decision making body for dispute resolutions (rent board, hearing officer, other)	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Administrative Law Judges	Ordinance defines roles for "hearing officers" but the majority of cases are mediated by staff and decisions made by the RRAC after public hearing.
	Who rules appeals?	Rent Stabilization Board	Rent Stabilization Board	Rent Stabilization Board	Rent Stabilization Board	Courts	Rent Commission	Rent Stabilization Board	Rent Stabilization Board	City Council may make a non-binding recommendation to RRAC after review, otherwise the courts.
	Regulation of condominium conversions?	Yes. Relocation program.	Yes. Relocation program.	Yes. Relocation program.	Yes. Relocation program.	Normal development control. Relocation protections under development.	Yes. Relocation program.	Yes. Relocation program.	Yes. Relocation program.	Promoted in housing element
	Regulation (i.e., permit, public review, etc.) of the demolition of rental units?	Yes	Yes	Yes	Yes			Yes	Yes	
Budget Data	Program Budget	\$4,550,000	\$5,026,553	\$485,300	\$22,347,942	Under development.	\$1,900,000	\$2,950,000	\$6,942,409	\$1,939,248
	Funding sources (General Fund, Special Fund, Fees, Other)	Fees and grants	Fees and interest on fund balances	Fees and general fund	Rent Stabilization Fund \$9,698,533 ARRA EECBG \$93 ARRA Energy Efficiency \$8725	San Jose's program in undergoing major changes and expansion of services. Fees not yet updated.	Fees and other funds (Rent control part of larger housing dept. services)	Fees and other funds	Fees and grants	General fund, fee under development
	Fees (Controlled Units)	\$234.00	\$174.96	\$234.00	\$24.51		\$120.00	\$30.00	\$360.00	
	Fees (non-controlled units)									
	Predicted Income from Unit Fees	\$4,467,762	\$4,818,748	\$544,050	\$14,706,000	\$0	\$2,019,840	\$1,950,000	\$6,228,000	
	Who pays fees (provide exemptions as well)?	Landlord	Landlord/Tenant	Landlord/tenant	Landlord		Landlord/Tenant			Landlord
Are pass through fees allowed?	Up to \$8/mo. increase in certain cases may be passed through. May be reimbursed by the city to low income tenants.	50%	50%	50%	50%	Policy not yet developed	50%	50%	50%	Policy not defined in ordinance
	Number of rent stabilized Units	19,093	27,542	2,325	600,000	46,000	16,832	65,000	173,000	13,037
	Number of units subject to just cause for eviction	24,306	40,935	All rental units	All rental units	46,000	Most rental units	All rental units	Rent controlled units only	Combination of just cause on rent-controlled units and other restrictions generally

Data Category	Data Point	Berkeley	Santa Monica	East Palo Alto	Los Angeles	San Jose	West Hollywood	Oakland	San Francisco	Alameda
Workload Data	Approximate total customer interactions (drop-ins, phone calls, emails) for last year?	12,000	35,000				13,696		42,806	
	Average annual number of hearing cases	150	55				105		2,000	
	Average annual number of mediation cases	150	78				520			
	Average annual number of petitions cases	141	104				1,040		2,000	
	Section 8 Exemptions		707							
	Ellis evictions		86				706 units		2304	
	Average annual number of notices									
Database Overview	What information is collected about rent stabilized units, tenants and landlords?	Rent Registry	Rent Registry	Rent Registry	Rent Registry as of Jan 2017	Rent Registry	Unit Registry	Unit Registry	None, managed by complaint only	Unit registry
	How does program collect information**	Web and typical contact methods	Web and typical contact methods		Web mostly	Web and typical contact methods	Web and typical contact methods	Web and typical contact methods	Web and typical contact methods	
	What product is used for database?	Web Methods	Proprietary	PC Tools	3Di and Internal staff	Salesforce	Proprietary	Proprietary	Proprietary	Proprietary
	Who maintains database?	Clerical staff		Staff	Staff	Staff				
	Approximate cost to implement database				\$1,500,000	\$100,000 estimate				
	Approximate annual cost of program database maintenance	Minimal currently, but application is dated				Roughly \$35,000				
What database information is made public?	Misc. performance reports, yearly report	Misc. performance reports, yearly report		Performance goal summaries	Misc. performance reports more on broader t	Yearly program report	Misc. performance reports	Misc. performance reports	Monthly reports	
Outreach	How do you reach out to the public, landlords and tenants (i.e., direct mail, email, public meetings, media)?	Website, publications, direct assistance, public education events	Website and 5 landlord outreach events/yr.	Website, publications	Website, remote service stations, publications, educational events	Website and landlord, tenant, and general public outreach events	Website, annual outreach events, public meetings	Website, annual outreach events, mass mailings	Website, publications, educational events	Website, brochures
	*Elements include: limits on annual rent increases, limits on rent increases over multiple years, prescribed ranges for allowable rents, procedures for evictions, procedures for complying with Ellis Act, limits on condo conversions, and other.									
Staffing	Positions					Proposed				
	Director	1	1		1		0.33	0.15	1	
	Manager	1	2		3		1	1	2	
	Attorney	3	3	1	2	2			13	
	Other Legal	1	1	1		1			1	
	Supervisor	1	2	1	11	3	1		1	
	Housing Coordinator/Analyst/Investigator	6	7		37	9	6	4	12	
	Junior Analyst		1			1			1	
	Senior Administrative	1.75			3	1	1		1	
	Administrative	5	4		26	2	3	3	6	
	IT	1	3			1.5				
	City Staff Subtotal	20.75	24	3	83	21.5	12.33	8.15	38	38
Hearing Officers		1.9	0.1	3	13		4			

Mandatory Mediation Program with Binding Arbitration

The proposed mediation/arbitration program is similar to the current program stipulated under the current RRSO. One of the objectives of the proposed new RRSO is to improve communication so that tenants will have a better understanding why rent may need to be increased above 5% and prevent large rent increases that displace tenants. This will be accomplished through either direct communication, mediation and/or arbitration. The proposed new RRSO also updates outdated language regarding mediation and simplifies the process.

Tenant and landlords will be encouraged to communicate regarding rent increases above a 5% threshold. Per the proposed the new RRSO, a landlord must provide a tenant with the contact information of the person designated to discuss rent increases and the tenant shall make a good faith effort to discuss the rent increase.

If direct communication is 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. All decisions will be subject to appeal. This process will both protect tenants from large rent increases and protect landlords from escalating costs that will prevent a fair return on their investment. Page 3 illustrates the proposed arbitration/mediation process.

Residential Rent Increase Threshold

The 5% rent increase threshold will include increases in rent and housing service costs such as maintenance, repairs, parking, utilities included in rent per their lease agreement. The following is excluded from the rent increase threshold:

1. A rent increase after the covered rental unit has been voluntarily vacated;
2. A rent increase after lawful eviction;
3. A rent increase stipulated in a lease entered into on or before July 25, 2019;
4. Governmental-Utility Services costs where the lease agreements stipulate the utilities will be paid by the tenant, and the landlord provides supporting documentation of the utility service costs and method for determining the allocation of costs, if the utility is not separately metered;
5. An increase for capital improvements pre-approved through a landlord petition process, and total annual increase and capital improvement increase does not exceed 10%; and
6. Banked rent increase applied for years that a rent increase was not imposed where the total annual rent increase and banked rent increase does not exceed 10%.

Capital improvement increases and banked rent increases are subject to limitations but can be applied over time.

While utilities that have been passed through to the tenant per the terms of their lease have been excluded from the rent increase threshold, provisions have been added that require landlords to disclose information that substantiates increased utility service costs allocated to a unit using a ratio utility billing system (RUBS) or similar unmetered allocation arrangement. Additionally, tenants can request review of the utility costs if landlords fail to provide the required information or if the utility costs increase by 1% of the tenant's rent.

Rent Review Process Improvements

The proposed changes to the mediation/arbitration process in the existing RRSO include:

1. Moving the requirement that the tenant must make a good faith effort to discuss the rent increase or reduction in housing service with the landlord until after the tenant has filed a petition;
2. Elimination of requirement that 25% of the affected tenants must sign a petition if the property consists of 10 units or more;
3. Revising the role of the mediator to be consistent with current practices;
4. Addressing procedural issues, such as feasibility of scheduling time frames and required response times.
5. Addition of a landlord petition process to obtain approval of capital improvement pass-through prior to issuing the capital improvement pass-through increase to avoid the redundancy of multiple petitions being filed regarding the same property.

Justifications for Rent Increases above 5% (Standards of Review)

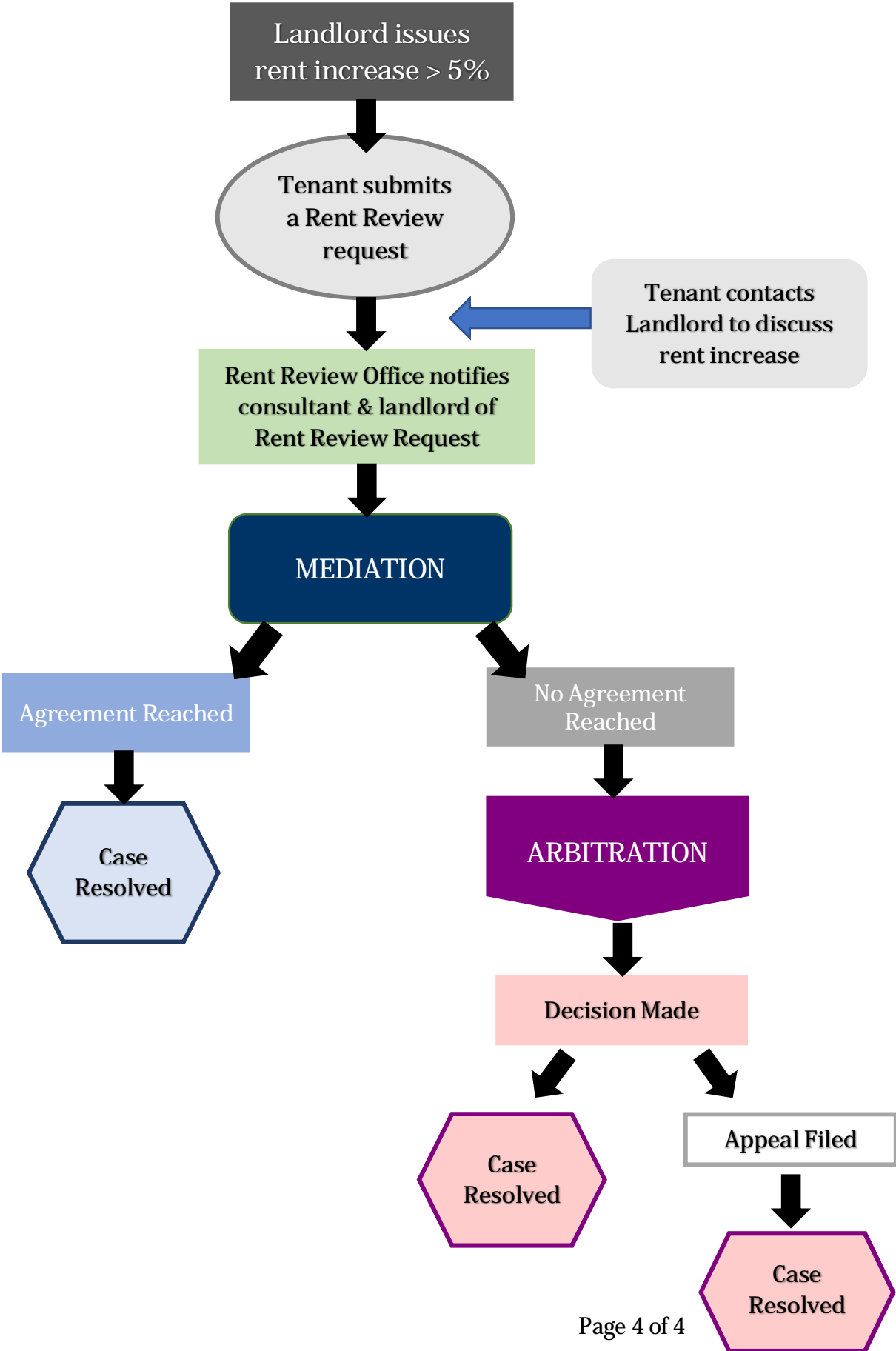
Rent increases above five percent would be allowed if justified based on established criteria. The Standards of Review in Section 9 of the proposed new RRSO establish the criteria for evaluating rent increases above five percent. The standards of review both protect the landlord's right to a fair return and ensure that a tenant is not overburdened by financial decisions made by the landlord. The justifications for increasing rent above 5% in the proposed new RRSO include:

1. Unavoidable increases in maintenance and operating expenses;
2. Rent increases from previous years that were not applied, subject to limitations (banking);
3. Capital improvement costs, including cost of seismic retrofit and cost financing of capital improvement costs, subject to limitations;
4. Rent increases necessary to meet constitutional fair return requirements.

Eliminated from these provisions is debt service, not associated with a corresponding capital improvement in the units, as a justification for increasing rent. Debt service related to capital improvements has been incorporated into capital improvement costs. Loans obtained to acquire a building should be based on existing rent and therefore would not require increased debt service.

Also added to the standards of review are the grounds for denial of a rent increase or a reduction of rent. Grounds for denial of a rent increase include open and persistent housing code violations, landlord failure to pay the rent program service fee, and landlord failure to provide the tenant with proper notice of rent increase, banked rent increase or documentation related to Government-Utility Costs. Grounds for reduction of rent include substantial deterioration of the unit, other than as a result of normal wear, and tear and reduction of housing service.

Proposed Mediation and Binding Arbitration Process





CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: RPT 19-313

DATE: June 18, 2019

TO: Mayor and City Council

FROM: Council Member Aisha Wahab

SUBJECT

Consider an Item for Discussion on a Future City Council Agenda Regarding Providing a Down Payment Assistance Program to Hayward Residents to Purchase Their First Home in Hayward, CA

RECOMMENDATION

That the City Council discusses whether staff time and City resources should be devoted to researching an item regarding providing a Down Payment Assistance Program to Hayward residents to purchase their first home in Hayward, CA.

SUMMARY

Council Member Wahab requests that Council consider an item for discussion on a future City Council agenda regarding providing a Down Payment Assistance Program to Hayward residents to purchase their first home in Hayward, CA.

ATTACHMENTS

Attachment I City Council Referral Memo

City Council Referral Memorandum

Council Members may bring forward a Council Referral Memorandum (Memo) on any topic to be considered by the entire Council. The intent of this Council Referrals section of the agenda is to provide an orderly means through which an individual Council Member can raise an issue for discussion and possible direction by the Council to the appropriate Council Appointed Officers for action by the applicable City staff.

Date: 6/18/19
To: Hayward Mayor & Council
From: Hayward City Council Member Aisha Wahab
Subject: Down-Payment Assistance Program for Hayward Residents

REFERRAL REQUEST: Hayward City Council must consider providing a down-payment assistance program to Hayward residents to purchase their first home in Hayward, CA.

Historically, housing has been unattainable or incredibly challenging for communities of color, women, low-income individuals, and seniors due to ageism, racism, red-lining, income-discrimination, and much more. In the last decade, through predatory lending, unclear mortgages rates, and an economic downturn, home-ownership and keeping one's home became impossible.

The median household income of Hayward (\$69,572) is slightly higher than the California average (\$69,051) but significantly lower than the Alameda County median household income (\$82,654). While the average home cost in Hayward has hit the \$700,000 mark with a down payment needing to be about 20% of that (\$140,000).

In Hayward, vulnerable groups have been displaced, either through force or gentrification. Housing costs have become unbearable, with senior homelessness projected to triple in the next decade. Millennials pay more than 60% of their income to housing and student loans. Housing is a human right. Housing needs to be addressed at multiple levels: rent, homelessness, production, protection from displacement, and more.

In the last six months, Hayward has allocated funds (\$3 million) to the Hayward Navigation Center to address homelessness, approved a down-payment assistance program (up to \$150,000 per employee) to Hayward employees looking to purchase a home in Hayward, and focused on correcting the Rent Stabilization Ordinance to address the decades of bad policy for renters.

The time has come for Hayward City Council to promote home-ownership among Hayward Residents.

REFERRAL REQUEST:

Hayward City Council must consider providing a down-payment assistance program to Hayward residents to purchase their first home in Hayward, CA.

Considerations (these are all factors that can be discussed and amended at a future date, once the referral is approved):

- Hayward Residents Priority Preference in Home-Ownership (5 years of residency)
- For Primary Residence Only (no use of home for rental, sale, etc. for 5+ years)
- No Restrictions on the Type of Home (Single Family, Condo, Townhome)
- No Restrictions on applicant's job or location of job

- This is intended for Hayward residents without discrimination but within the realms of certain financial qualifications/considerations. The Goal is to reduce the barrier of home-ownership for the majority of prospective home-buyers.
- Alameda County Boost Program is intended for first-responders & teachers
- Hayward City's Employee Down-Payment Assistance Program covers all Hayward employees.
- Moderate Income applicants should be a priority, not just low-income applicants as the Area Median Income is not reflective of current struggles.
- Hayward's Down Payment Assistance provides up to 20% of down-payment to purchase home
 - With a Goal to Remove PMI (Private Mortgage Insurance)
 - With a Goal to make mortgage affordable
- Financial health of applicant & education of home-ownership process will be considered
- Partnership with other agencies for potential funding options
- Interest charge to be no more than CPI (maximum 3%) and only flat rates through the life of the loan.

Timeline:

First Report Back to Council should be within 2 months.

Stakeholders:

Residents, Realtors & Associations, Financial Institutions, Housing Experts

Prepared & Submitted By:

Aisha Wahab

Aisha Wahab, M.B.A.

Hayward City Council Member