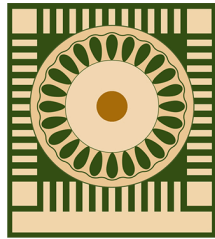


CITY OF HAYWARD

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



CITY OF
HAYWARD
HEART OF THE BAY

Agenda

Tuesday, May 29, 2018

7:00 PM

Council Chambers

City Council

Mayor Barbara Halliday
Mayor Pro Tempore Elisa Márquez
Council Member Francisco Zermeño
Council Member Marvin Peixoto
Council Member Al Mendall
Council Member Sara Lamnin
Council Member Mark Salinas

SPECIAL CITY COUNCIL MEETING**CALL TO ORDER Pledge of Allegiance: Mayor Halliday****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.

LEGISLATIVE BUSINESS

1. [LB 18-018](#) Emergency Ordinances Related to the Residential Rent Stabilization Ordinance (Report from City Manager McAdoo)

Attachments: [Attachment I Staff Report](#)
[Attachment II Emergency Ordinance on Moratorium](#)
[Attachment III Emergency Ordinance on Section 19](#)

CITY MANAGER'S COMMENTS

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

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items.

ADJOURNMENT**NEXT MEETING – June 5, 2018, 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 #: LB 18-018

DATE: May 29, 2018

TO: Mayor and City Council

FROM: City Manager

SUBJECT

Emergency Ordinances Related to the Residential Rent Stabilization Ordinance

RECOMMENDATION

That the City Council:

1. Adopts an emergency ordinance of the City Council of the City of Hayward enacting a moratorium on decontrolling rental units pursuant to Section 8 of the City of Hayward's Rent Stabilization Ordinance. (Attachment II); and
2. Adopts an emergency ordinance of the City Council of the City of Hayward amending Section 19 of the City of Hayward Residential Rent Stabilization Ordinance and clarifying the applicability of Section 19 related to eviction for cause provisions to units that are currently rent controlled and were previously rent controlled pursuant to the ordinance (Attachment III).

SUMMARY

Staff has identified two actions that can immediately improve tenant protections in the City of Hayward. The proposed action items covered in this report include:

1. Adopting an emergency ordinance enacting a moratorium on decontrolling rental units pursuant to Section 8 of the City of Hayward's Rent Stabilization Ordinance; and
2. Adopting an emergency ordinance amending the Residential Rent Stabilization Ordinance to clarify the applicability of Section 19 related to eviction for cause provisions to units that are currently and were previously rent controlled.

Enactment of an emergency ordinance would require at least five affirmative votes by Council and the ordinance would go into effect immediately. If only four Council members vote for the proposed ordinances, then adoption would occur at the next City Council meeting and the ordinances would go into effect 30 days after adoption.

Staff does not recommend pursuing a moratorium on rent increases at this time, as outlined in the staff report under the Policies for Discussion section. Lastly, staff seeks confirmation as to whether the Council still wishes to pursue mandatory mediation as a policy option to mitigate rent increases for units not subject to rent limitation provisions of the Residential Rent Stabilization Ordinance.

ATTACHMENTS

- Attachment I Staff Report
- Attachment II An Emergency Ordinance of the City Council of the City of Hayward enacting a moratorium on decontrolling rental units pursuant to Section 8 of the City of Hayward's Rent Stabilization Ordinance
- Attachment III An Emergency Ordinance amending Section 19 of the City of Hayward Residential Rent Stabilization Ordinance



DATE: May 29, 2018
TO: Mayor and City Council
FROM: City Manager
SUBJECT: Emergency Ordinances Related to the Residential Rent Stabilization Ordinance

RECOMMENDATION

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BACKGROUND

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 46,713¹ housing units in Hayward, 22,237¹, or 47.6% are rental units. Of the 22,237 rental units, approximately 14,941², or 67% are covered under the Residential Rent Stabilization Ordinance. Of the 14,941 rental units, only 9,506² are subject to the rent-increase limitations because 5,435² single family homes are exempt under state law. To date, the City has received 7,918 applications for decontrol of rent controlled units. It is therefore estimated that between 1,000 and 1,600 units continue to be rent controlled under the City's Residential Rent Stabilization Ordinance. 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.

On January 31, 2017, the City Council convened a work session to review housing affordability strategies and resources in Hayward and Alameda County. Council explored four major areas in depth and directed staff to pursue five specific strategies for further Council review and potential implementation. One of the strategies included the study of the Residential Rent Stabilization Ordinance and review of housing affordability strategies.

On February 6, 2018, City Council convened a work session to review this topic and provided direction regarding rental housing affordability policy options. After public input and Council discussion, Council consensus centered on the following four policy options:

- A. Improve the City's role in providing information;
- B. Require mandatory mediation;
- C. Impose longer noticing periods on large rent increases; and
- D. Reduce barriers to affordable/efficient entitlement of new development.

During this work session, community members proposed three emergency tenant protections measures. These measures included the following:

- A. Removal of vacancy decontrol language from the Residential Rent Stabilization Ordinance;
- B. Enactment of an emergency moratorium on rent increases; and

¹ U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates. B25127: Tenure by Year Structure Built by Units in Structure - Universe: Occupied Housing Units

² Calculated from U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates. B25127: Tenure by Year Structure Built by Units in Structure - Universe: Occupied Housing Units

- C. Adoption of an emergency moratorium on no-cause evictions or amendment of eviction for cause language in the Residential Rent Stabilization Ordinance to cover more units.

On March 27, 2018, the City Council convened a work session to further discuss the Council supported affordable rental housing strategies and the community proposed emergency tenant protection measures. Prior to the March 27, 2018 work session, staff determined that the City did not have the authority to extend the noticing periods for large rent increases since noticing periods were established by state law. Council continued its support to: 1) improve the City's role in providing information; 2) explore implementation of a mandatory mediation program; and 3) reduce barriers to development of housing. In response to the community's proposed tenant protection measures, Council also directed staff to amend the Residential Rent Stabilization Ordinance to 1) increase the improvement value threshold for decontrolling a unit; 2) clarify the language regarding the applicability of Section 19 regarding eviction for cause, and 3) evaluate the implications of implementing a moratorium on rent increases and no-cause evictions. Additionally, Council identified a need to protect tenants from bad faith business practices utilized by some landlords.

DISCUSSION

Action Items for Discussion

Emergency Moratorium on Vacancy Decontrol. In consideration of the community's proposal to remove vacancy decontrol language from the Residential Rent Stabilization Ordinance and Council's desire to increase the vacancy decontrol improvement value threshold, staff recommends Council consider imposing a moratorium on decontrolling rental units pursuant to Section 8 (Vacancy Decontrol) of the Residential Rent Stabilization Ordinance, while appropriate long-term action can be determined. The Vacancy Decontrol moratorium will be in place for 18 months and will protect an estimated 1,000 to 1,600 units subject to rent increase limitations. During this 18-month period, staff will evaluate Section 8 of the ordinance, determine an appropriate vacancy decontrol improvement value threshold, and evaluate the administrative process of decontrolling units under the Residential Rent Stabilization Ordinance.

The moratorium would be effective immediately but will allow property owners to complete decontrol applications for units where a tenant has voluntarily vacated the unit and the property owner has initiated improvements, meeting or exceeding the improvement value threshold, prior to the effective date of the moratorium. Property owners will be required to document that the unit has been voluntarily vacated either by providing a declaration from the previous tenant or a declaration under penalty of perjury from the landlord. Additionally, property owners will be required to provide documentation demonstrating the initiation of improvements prior to the effective date of the Ordinance by providing a copy of a building permit, a construction contract, or receipts.

The moratorium will allow staff time to conduct a thorough review of the vacancy decontrol process under the Residential Rent Stabilization Ordinance and make better informed

proposals without risking the loss of additional units due to an improvement value threshold that is clearly too low. If new procedures or a higher decontrol threshold are determined to be necessary, the pause in decontrol applications will prevent conflicts and confusion related to transition from old requirements to new requirements.

Enactment of an emergency ordinance would require at least five affirmative votes from Council. If only four Council members vote for the proposed ordinance, then adoption would occur at the next City Council meeting and the ordinance would go into effect 30 days after adoption.

Applicability of Eviction for Cause Clarification. The language regarding the applicability of eviction for cause under the Residential Rent Stabilization Ordinance is unclear. Section 19 (Eviction for Cause) of the Residential Rent Stabilization states that “No landlord shall be entitled to recover possession of a rental unit covered by the terms of this ordinance unless the landlord shows the existence of one of the following grounds: . . .” It is necessary for clarification purposes to amend Section 19 to explicitly state that rental units covered under the ordinance include units that have been decontrolled pursuant to Section 8 (Vacancy Decontrol). This clarification will ensure that the ordinance will serve as a defense for no cause evictions for tenants who live in units that are covered by the Ordinance, including decontrolled units. There are 14,941 units covered by the Ordinance, which represents 67% of the rental units in the City of Hayward.

Enactment of an emergency ordinance would require at least five affirmative votes from Council. If only four Council members vote for the proposed ordinance, then adoption would occur at the next City Council meeting and the ordinance would go into effect 30 days after adoption.

Policies for Discussion

Moratorium on Rent Increases. Staff does not recommend a moratorium on rent increases at this time. A survey of other cities (Oakland, Santa Cruz, and Mountain View) that have imposed a moratorium on rent increases demonstrates that these cities have done so to mitigate concerns that pending legislation would cause immediate increases in rents or terminations of tenancy. Currently, in Hayward, no such legislation is pending. Staff is proposing a moratorium on further decontrols because legislation is pending related to amendments to the decontrol provisions of the Rent Stabilization Ordinance. Staff is concerned that imposing a rent increase moratorium based on market trends alone, may expose the City to litigation. Staff is also concerned that imposing a rent increase moratorium may cause some developers with housing projects in the pipeline to delay construction of these projects until the conclusion of the moratorium, further compounding the issue of housing availability. Some of these pipeline projects include the construction of affordable units within the project.

Mandatory Mediation. Mandatory mediation provides a forum for tenants and landlords to discuss issues, such as rent increases, and come to a decision based on the needs of both parties. Per Council direction, staff is currently working to finalize a potential scope for a

citywide mandatory mediation program, determine program costs, and identify potential service providers. Recently, a concern was raised regarding the effectiveness of mandatory mediation due to an inherent power imbalance between tenants and landlords. Staff is reviewing information and data from other local jurisdictions to evaluate whether mediation and rent review programs are helping both tenants and property owners achieve favorable outcomes. Initial findings indicate that mediation programs could help motivate tenants and property owners to come to an agreement that resolves a dispute on their own. However, there is little evidence to indicate whether mandatory mediation helps tenants attain a sustainable rent or discourages landlords from imposing excessive rent increases.

In addition, staff is performing an analysis on the potential costs for program coordination, as well as the methods by which local jurisdictions are funding their rent review programs. Program costs for surrounding cities can range from \$45,000 to over \$500,000, depending on program scope, and the extent that services are directly provided by the City. Two of the jurisdictions surveyed charge property owners a per-unit fee ranging from \$20 to \$30 to fund administration of their mandatory mediation programs. As such, the City's current fee structure may not sufficiently support increasing the City's current scope of services.

Staff will continue to gather more information to evaluate the efficacy and costs associated with a mandatory mediation program and will prepare recommendations for Council's review in the coming weeks unless directed otherwise.

Staff requests direction from Council on whether to continue pursuing the development of a mandatory mediation program at this time.

Staff is also working to implement an electronic system that would allow the City to track and monitor complaints and other housing related issues. This system would provide staff with data upon which additional programs or policies can be implemented, for example, the recommendation from Council to develop programs to protect tenants from bad faith business practices utilized by some landlords. Regardless of the outcome of tonight's discussion, staff intends to continue pursuing implementation of this system.

FISCAL IMPACT

There is no known or currently identified fiscal impact associated with the proposed adoption of emergency ordinances related to the Residential Rent Stabilization Ordinance.

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities Strategic 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. On February 26, 2018, staff hosted a subsequent listening session to hear the stakeholders' feedback on Council supported affordable rental housing strategies.

NEXT STEPS

Based on previous Council direction, staff continues to evaluate the following policy options to further mitigate concerns with housing affordability, which include:

- | | |
|---|-----------|
| 1. Mandatory mediation program | June 2018 |
| 2. Tenant relocation assistance program which requires landlords to provide relocation assistance to tenants for landlord-caused termination of tenancy | July 2018 |
| 3. Tenant Protection ordinance which provides tenants legal recourse if they are harassed by the property owner | July 2018 |
| 4. A system to track complaints | TBD |

An implementation date for a system to track tenant complaints has not been determined because staff would like to ensure that any system acquired to track complaints can also manage the workflow created by the Residential Rent Stabilization Ordinance and/or any other rental unit legislation being considered. The intent of the system would be to provide a single repository of information to track all rental unit activity related to any rent affordability strategies such as the Residential Rent Stabilization Ordinance and Mandatory Mediation. Ideally, the system would not only track complaints but would also provide a history of tenant petitions under the Rent Review Ordinance and related decisions by the arbitrator.

Staff will bring each of the policy items outlined above on the specified dates individually for Council consideration.

Prepared by: Christina Morales, Housing Division Manager

Recommended by: María A. Hurtado, Assistant City Manager

Approved by:

A handwritten signature in black ink, appearing to read "K. McAdoo". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kelly McAdoo, City Manager

ORDINANCE NO. 18-

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD ENACTING A MORATORIUM ON THE DECONTROL OF RENTAL UNITS PURSUANT TO SECTION 8 OF THE CITY OF HAYWARD'S RESIDENTIAL RENT STABILIZATION ORDINANCE

THE CITY COUNCIL OF THE CITY OF HAYWARD hereby ordains as follows:

SECTION 1. Findings.

A. Pursuant to Article XI, Section 7 of the California Constitution and Government Code Section 36937, the City of Hayward ("City") may make and enforce all regulations and ordinances using its police powers. Further, pursuant to the City Charter, Section 617, the Council may declare an ordinance to be necessary as an emergency measure for preserving the public peace, health and safety.

B. The City has one of the least affordable housing markets in California and the United States, which exacerbates the City's shortage of decent, safe, affordable, and sanitary rental housing.

C. Renters occupy about 47.6 percent of the City's housing stock and 57 percent of renters are cost burdened under the federal definition, meaning they spend more than 30 percent of their income on housing.

D. Through the City's Fall 2017 and Winter 2018 Community Outreach on Housing, the City received extensive public testimony about the exorbitant costs and scarcity of Rental Units.

E. Given the housing cost burden faced by many City residents, excessive rental increases threaten the public health, safety, and welfare of City residents, including seniors, those on fixed incomes, those with low and moderate-income levels, and those with other special needs to the extent that such persons may be forced to choose between paying rent and providing food, clothing, and medical care for themselves and their families.

F. Housing insecurity and excessive rent increases could result in homelessness and displacement of low-income families.

G. The City currently regulates rent increases and evictions for residential housing covered under its Residential Rent Stabilization Ordinance.

H. Of the approximately 22,237 Rental Units in Hayward, at most 14,941 units were originally covered under the City's Residential Rent Stabilization Ordinance, approximately 5,435 single family residents would be exempt from the rent increase limitations of the ordinance and only approximately 1,000 to 1,600 units remain subject to the City's regulations on rent increases.

I. Section 8 of the City's Residential Rent Stabilization Ordinance currently permits landlords, upon satisfaction of prescribed conditions, to decontrol a Rental Unit covered under the Ordinance and thereafter to increase any initial rent and any subsequent rent increase beyond the Ordinance's five percent (5%) per annum maximum.

J. The City Council finds and determines that a Moratorium on the decontrol of Rental Units pursuant to Section 8 of the City's Rent Stabilization Ordinance is necessary to protect the access of Hayward residents, particularly low-income and working people, to affordable housing in the city while the City evaluates the decontrol process.

K. Based upon the above-described facts and circumstances, and for these same reasons, the City Council finds that this ordinance is necessary as an emergency measure for preserving the public peace, health and safety, and therefore it may be introduced and adopted at the same meeting and shall take effect immediately if passed by at least five (5) affirmative votes.

L. This Ordinance prohibits Rental Units covered under the City's Residential Rent Stabilization Ordinance from being decontrolled pursuant to Section 8 of the Residential Rent Stabilization Ordinance during the Moratorium Period.

SECTION 2. Definitions.

A. City Council. The Hayward City Council.

B. Housing Services. Housing Services include, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades, and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, Utility Charges that are paid by the Landlord, refuse removal, furnishings, telephone, parking, the right to have a specified number of occupants, the right to have pets, and any other benefit, privilege, or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.

C. Initiated Improvements. Initiated Improvements include, one or more of the following three actions by a landlord prior to the effective date of this Ordinance: (1) obtained a building permit issued by the City of Hayward for improvements to a Rental Unit as required by the Hayward Municipal Code; (2) executed a contract for

improvements to a Rental Unit consistent with the amounts necessary for decontrol under Section 8(a)(2) of the Residential Rent Stabilization Ordinance; or (3) obtained receipts/documentation evidencing improvements to a Rental Unit consistent with the amounts necessary for decontrol under Section 8(a)(2) of the Residential Rent Stabilization Ordinance.

D. Landlord. An owner of record, lessor, sublessor, or any other person, entity or non-natural person who receives or is entitled to receive rent for the use and occupancy of any Rental Unit or portion thereof in the City of Hayward, and the representative, agent, or successor of such owner, lessor, sublessor, entity or non-natural person.

E. Moratorium Period. From the effective date of this Ordinance and continuing for a period of eighteen (18) months (unless extended), no housing provider shall initiate the decontrol of a Rental Unit covered under the City's Residential Rent Stabilization Ordinance.

F. Property. All Rental Units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.

G. Rent. The total consideration, including any bonus, benefit, or 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.

H. 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.

I. Rental Unit. Any residential dwelling 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, provided that such residential dwelling unit is one of at least five (5) residential dwelling units, whether located on the same or different parcels of land within the City, which are under common ownership. For purposes of this definition, common ownership shall be deemed to exist whenever a single individual or entity has any kind of ownership interest whether as an individual, partner, joint venture, stock owner, or in some other capacity, in five (5) or more nonmobile home residential dwelling units located within the City of Hayward and reports to the Internal Revenue Services any income received or loss of income resulting from such ownership or claims any expenses, credits, or deductions because of such ownership.

J. Voluntary Vacancy. A voluntary vacancy is any vacancy other than a vacancy that occurs when the tenancy has been terminated by the landlord by notice pursuant to California Civil Code section 1946 or has been terminated upon a change in the terms of the tenancy noticed pursuant to California Civil Code section 827, except a change

permitted by law in the amount of rent or fees.

For purposes of this subsection, the landlord's termination or nonrenewal of a contract or a recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, shall be construed as a change in the terms of the tenancy pursuant to Civil Code section 827.

An otherwise voluntary vacancy under this subsection shall be considered nonvoluntary if (i) the Rental Unit has been cited in an inspection report by the appropriate governmental agency as containing any of the conditions described in section 17920.3 of the Health and Safety Code, excluding any caused by a disaster, (ii) the citation was issued at least 60 days prior to the date of the vacancy; and (iii) the cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time.

To evidence voluntary vacancy Landlords shall provide to the City of Hayward's Housing Division a declaration by the previous tenant that the unit was voluntarily vacated or a declaration under penalty of perjury by the Landlord that the unit was voluntarily vacated, and the previous tenant was asked to sign the declaration but is unavailable or has refused to sign.

K. Tenant. A Tenant, subtenant, lessee, sublessee, or a person entitled to the use or occupancy of a Rental Unit.

SECTION 3. Imposition of Moratorium on the Decontrol of Rental Units.

A. During the Moratorium Period, no Landlord shall decontrol any Rental Unit covered under the City's Residential Rent Stabilization Ordinance. This Moratorium shall not apply to any Landlords whose tenant Voluntarily Vacated the unit and who Initiated Improvements after the Voluntary Vacancy but prior to the effective date of this Ordinance, and who submitted records evidencing the Voluntary Vacancy and Initiated Improvements to the City of Hayward's Housing Division with an application for decontrol.

B. Exemptions.

The following Rental Units are exempt from the entirety of the Moratorium established under 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) Dwelling units in multi-family housing projects currently financed or insured by a federal, state, or local agency or receiving rent subsidy assistance therefrom if the units are subject to rent controls because of such financing, insurance, or subsidy;
- 3) Dwelling units located in a structure for which a certificate of occupancy is first issued after July 1, 1979;
- 4) Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding housing; provided that such accommodations are not occupied by the same tenant for thirty (30) or more continuous days; and
- 5) Dwelling units in a nonprofit cooperative that is owned, occupied, and controlled

C. Initial Rents. This Moratorium does not regulate the initial Rent at which a Rental Unit is offered.

D. Affirmative Defense. In any action by a Landlord to recover possession of a Rental Unit, the Tenant may raise as an affirmative defense any violation of or noncompliance with any of the provisions of this Ordinance.

E. Fair Return Determinations. This Moratorium, unless extended, is only effective for the Moratorium Period as defined herein. Given that the City's rent increase limitation under Section 3 of the City's Residential Rent Stabilization Ordinance allows for a rent increase of 5 % per annum and provides standards of review for increases that exceed 5% per annum, the City Council finds that this Moratorium does not deny any owner a fair and reasonable return on their investment.

F. Petition for Relief from Moratorium. If during this Moratorium Period a property owner believes the application of this Moratorium's limitation on the Decontrol of a Rental Unit would deprive the owner of the ability to receive a just and reasonable return on their investment, the owner may petition the City Manager for authorization to Decontrol said Rental Unit. The city manager shall establish a procedure for reviewing such petitions.

SECTION 4. Enforcement Procedures

The City, at its sole discretion, may choose to enforce the provisions of this ordinance through administrative fines and any other administrative procedure set forth in Hayward Municipal Code Chapter 1, section 1-3.00. Violations of the provisions of this ordinance may be subject to fines, or imprisonment, or both, not to exceed the limits set forth in California Government Code, section 36901. The City's decision to pursue or not

pursue enforcement of any kind shall not affect a tenant's rights to pursue civil remedies.

SECTION 5. Civil Remedies.

A Tenant may bring a civil suit in the courts of the state alleging that a Landlord has violated any of the provisions of this Ordinance or any regulations promulgated hereunder including that the Landlord has demanded, accepted, received, retained a payment or payments in excess of the maximum five percent (5%) Rent increase permitted for Rental Units covered under the City's Residential Rent Stabilization Ordinance, failed to maintain a Rental Unit in compliance with applicable health and safety and building codes, including but not limited to Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10, or decreased Housing Services. In a civil suit, a Landlord found to violate this Ordinance shall be liable to the Tenant for all actual damages, including but not limited to the damages described in this Section. A prevailing Tenant in a civil action brought to enforce this Ordinance shall be awarded reasonable attorneys' fees and costs. Additionally, upon a showing that the Landlord has acted willfully or with oppression, fraud, or malice, the Tenant shall be awarded treble damages. No administrative remedy need be exhausted prior to filing suit pursuant to this Section.

SECTION 6. Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 7. Effective Date and Expiration Date.

This ordinance shall take effect immediately following its adoption and shall continue for a period of eighteen (18) months (unless extended). The City Clerk shall publish a notice indicating the adoption of the emergency ordinance, including the title; subject matter index; the date, time, and place of its introduction and adoption, and the vote thereon, within one week after the emergency ordinance is adopted.

SECTION 8. Environmental Determination.

The City Council finds that the adoption and implementation of this Ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061 (b)(3) in that the City Council finds there is no possibility that the implementation of this Ordinance may have significant effects on the environment.

INTRODUCED at a regular meeting of the City Council of the City of Hayward,
held the ____ day of ____, 2018, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the
____ day of ____, 2018, 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

ORDINANCE NO. 18 -

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD AMENDING SECTION 19 OF THE CITY OF HAYWARD RESIDENTIAL RENT STABILIZATION ORDINANCE CLARIFYING THE APPLICABILITY OF SECTION 19 TO UNITS THAT ARE CURRENTLY RENT CONTROLLED AND WERE PREVIOUSLY RENT CONTROLLED PURSUANT TO THE ORDINANCE

THE CITY COUNCIL OF THE CITY OF HAYWARD hereby ordains as follows:

SECTION 1. Findings.

- A. Pursuant to Article XI, Section 7 of the California Constitution and Government Code Section 36937, the City of Hayward ("City") may make and enforce all regulations and ordinances using its police powers. Further, pursuant to the City Charter, Section 617, the Council may declare an ordinance to be necessary as an emergency measure for preserving the public peace, health and safety.
- B. The City has one of the least affordable housing markets in California and the United States, which exacerbates the City's shortage of decent, safe, affordable, and sanitary rental housing.
- C. Renters occupy about 47.6 percent of the City's housing stock and 57 percent of renters are cost burdened under the federal definition, meaning they spend more than 30 percent of their income on housing.
- D. Through the City's Fall 2017 and Winter 2018 Community Outreach on Housing, the City received extensive public testimony about the exorbitant costs and scarcity of rental units.
- E. Given the housing cost burden faced by many City residents, excessive rental increases threaten the public health, safety, and welfare of City residents, including seniors, those on fixed incomes, those with low and moderate-income levels, and those with other special needs to the extent that such persons may be forced to choose between paying rent and providing food, clothing, and medical care for themselves and their families.
- F. Housing insecurity and excessive rent increases could result in homelessness and displacement of low-income families.

G. In 1983, the City Council for the City of Hayward first adopted the City of Hayward Residential Rent Stabilization Ordinance (Ordinance). The purpose of the Ordinance includes, but is not limited to, stabilizing rent increases for certain tenant and assuring efficient landlords a fair return on their property.

H. The City currently regulates rent increases and evictions for residential housing covered under its Rent Stabilization Ordinance.

I. Of the approximately 22,237 rental units in Hayward, at most 14,941 units were originally covered under the City's Rent Stabilization Ordinance, approximately 5,435 single family residents would be exempt from the rent increase limitations of the ordinance and only approximately 1,000 to 1,600 units remain subject to the City's regulations on rent increases.

J. Section 8 of the City's Rent Stabilization Ordinance currently permits landlords, upon satisfaction of prescribed conditions, to decontrol a rental unit covered under the Ordinance and thereafter to increase any initial rent and any subsequent rent increase beyond the Ordinance's five percent (5%) per annum maximum.

K. Section 19 (Eviction for Cause) of the Ordinance applies to units under the rent control program. Currently, there is ambiguity as to whether Section 19 applies to units that were previously rent controlled, but have been decontrolled pursuant to Section 8 of the Ordinance

L. Consistent with Council interpretation, it has been the practice of City staff to apply the provisions of Section 18 and 19 to rental units that are currently rent controlled and were previously rent controlled under the Ordinance.

M. The City Council of Hayward desires to clarify to both landlords and tenant that the provisions and 19 (Eviction for Cause) apply to rental units that are currently rent controlled and were previously rent controlled under the Ordinance.

N. Based upon the above-described facts and circumstances, and for these same reasons, the City Council finds that this ordinance is necessary as an emergency measure for preserving the public peace, health and safety, and therefore it may be introduced and adopted at the same meeting and shall take effect immediately if passed by at least five (5) affirmative votes.

SECTION 2. Provisions.

Upon the effective date of this ordinance, Section 19 of the City of Hayward Residential Rent Stabilization Ordinance is hereby amended to read as follows:

SECTION 19. EVICTION FOR CAUSE.

(a) Cause for Eviction. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this Ordinance, including units that were decontrolled pursuant to Section 8 of this Ordinance, unless the landlord shows 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, 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.

(b) Form of Notice. A landlord's failure to specify 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 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.

SECTION 3. Severability.

Should any part of this ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

SECTION 4. Effective Date and Publication.

This ordinance shall take effect immediately following its adoption. The City Clerk shall publish a notice indicating the adoption of the emergency ordinance, including the title; subject matter index; the date, time, and place of its introduction and adoption, and the vote thereon, within one week after the emergency ordinance is adopted.

SECTION 5. Environmental Determination.

The City Council finds that the adoption and implementation of this Ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061 (b) (3) in that the City Council finds there is no possibility that the implementation of this Ordinance may have significant effects on the environment.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of ____, 2018, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ____ day of ____, 2018, 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