



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.

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', written in a cursive style.

Kelly McAdoo, City Manager