

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13, 1983 and the Emergency Just Cause for Protection Ordinance, adopted by the City on March 5, 2019, are hereby repealed and replaced with this newly adopted Residential Rent Stabilization and Tenant Protection Ordinance, attached hereto as Exhibit "A" and incorporated herein by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)(1)(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 a 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

