



**DATE:** September 28, 2022

**TO:** Homelessness-Housing Task Force

**FROM:** Assistant City Manager

**SUBJECT:** Implementation Update on the Residential Rent Stabilization and Tenant Protection Ordinance

### **RECOMMENDATION**

That the Homelessness-Housing Task Force (HHTF) review and discuss this report on the implementation progress of the Residential Rent Stabilization and Tenant Protection Ordinance.

### **SUMMARY**

The Council approved the Residential Rent Stabilization and Tenant Protection Ordinance (RRSO) in June 2019, greatly expanding the number of rental units in Hayward covered by the new 5% annual rent increase threshold and creating additional protections, such as just cause eviction and prohibitions against harassing or discriminating against tenants. Additionally, in July 2020, Council adopted the Tenant Relocation Assistance Ordinance (TRAO), to ensure Hayward residents had the same protections that were afforded under the State Tenant Protection Act.

This report provides an informational update on the RRSO following three years of implementation, as well as the TRAO following two years of implementation which includes data on petitions for review of rent, as well as rent increase and termination notices, and relocation assistance cases. This report also includes a new analysis of evictions in Hayward, using unlawful detainer data from the Superior Court of Alameda County. Importantly, local and state eviction moratoria have been in place for the majority of the RRSO's implementation. Beginning with the City of Hayward residential eviction moratorium in March 2020 through to the time of this report writing, evictions have been restricted by either City, State, or County authority.

Given the unique nature of the majority of the RRSO implementation, staff does not recommend making any new changes to the RRSO beyond what Council already authorized in July 2020. Staff does recommend including revisions to the TRAO, to streamline implementation and improve compliance, as a project under Council's Preserve, Protect, and Produce Housing for All priority area of the Strategic Roadmap.

## **BACKGROUND**

### **RRSO Implementation**

On June 18, 2019,<sup>1</sup> the Council approved the introduction of a new RRSO to improve housing stability for Hayward tenants. Staff and community partners conducted a comprehensive and community inclusive process, including specific direction provided by the Council on February 19, 2019,<sup>2</sup> a community workshop on April 6, 2019, and numerous subsequent HHTF meetings, to develop the RRSO. The key components of the RRSO passed in June and made effective on July 25, 2019, include:

- Mandatory mediation program with binding arbitration that would be available to tenants upon rent increases greater than five percent and applicable to all pre-1979 units except single family homes and condominiums consistent with State law;
- Provisions to protect Section 8 voucher holders from discrimination;
- Requirements that landlords file rent increase notices and eviction notices with the City to obtain data about rental housing activity;
- Tenant retaliation protection provisions; and
- Just Cause for tenant evictions.

On March 5, 2020,<sup>3</sup> staff provided the HHTF with a progress report on RRSO implementation and made recommendations for revising the RRSO based on changes to State law and an analysis of implementation challenges. Task Force members supported recommendations for revisions to the RRSO presented in that report and, on July 14, 2020,<sup>4</sup> Council voted to adopt amendments to the RRSO and the addition of the Tenant Relocation Assistance Ordinance (TRAO; Chapter 12, Article 2 of the Hayward Municipal Code).

### **Rent Increase Threshold**

In July 2020, Council directed staff to analyze alternative lower rent stabilization thresholds for HHTF consideration, which staff presented to the HHTF in September 2020. Following public comment and discussion, the HHTF voted two to one to recommend lowering the threshold from a fixed 5% to 100% of the annual change in the area Consumer Price Index (CPI), with a

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<sup>1</sup>June 18, 2019 City Council Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=3985848&GUID=52D1B678-D6BB-401A-AB3C-8990885C0CDD&Options=&Search=>

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

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

<sup>3</sup>March 5, 2020, Homelessness-Housing Task Force Staff Report and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4344677&GUID=B0C788EE-6B8B-4B62-9006-2DA3C426E0B8&Options=&Search=>

<sup>4</sup>July 14, 2020, City Council Staff Report and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4590663&GUID=ADB12ECB-15EB-4DB2-B096-5A6D9877359A&Options=&Search=>

ceiling of 5% and a floor of 2%.<sup>5</sup> In November 2020, Council voted to maintain existing rent increase threshold.<sup>6</sup>

### COVID-19 Response

In response to COVID-19, the City of Hayward instituted several renter protections intended to mitigate housing instability caused by the pandemic. These protections included:

- **Rent Relief Program:** The Council authorized a total of more than \$1.7 million in HOME Investment Partnership Program (HOME) and emergency Community Development Block Grant (CDBG) funds for an emergency rent relief program, providing up to \$5,000 in direct rent payments to landlords on behalf of almost 700 tenant households.
- **Expanded Mediation:** The Council authorized the expansion of the City's agreement with Project Sentinel to provide a free mediation program to support landlords and tenants negotiating repayment plans when tenants are unable to pay rent due to the pandemic. Both landlords and tenants were eligible for the program.
- **Local Eviction Moratorium:** Before the State moratorium was enacted in August 2020, the Council adopted an emergency ordinance establishing a temporary moratorium on evictions for non-payment of rent caused by the COVID-19 pandemic or for no-fault evictions. Council extended the moratorium until it was superseded by State law.
- **Tenant Relocation Assistance Fund:** The Council adopted a resolution approving the City's federal stimulus expenditure plan for American Rescue Plan Act funds, including contributing \$250,000 to a relocation assistance fund for tenants displaced due to Code Enforcement action. This fund allows the City to make payments directly to tenants and recover the costs from landlords when landlords do not make assistance payments required by the TRA0. It also allows the City to make emergency relocation payments to income-eligible tenants displaced by a natural disaster.<sup>7</sup>

### DISCUSSION

This discussion section provides an overview of the RRSO implementation progress, including the following areas of implementation:<sup>8</sup>

- Analysis of unlawful detainer filings and termination notices;
- Analysis of rent increase notices submitted as required by the RRSO;
- Analysis of petitions submitted as part of the rent review process;

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<sup>5</sup> September 3, 2020, HHTF Staff Report and Materials:

<https://hayward.legistar.com/MeetingDetail.aspx?ID=761370&GUID=D60C2C6C-E382-4800-8A69-32CE0765CB8F&Options=info|&Search=>

<sup>6</sup> November 10, 2020 City Council Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4688319&GUID=8277676F-F530-499A-AD98-9D6E574A3FAF&Options=&Search=>

<sup>7</sup> July 13, 2021, City Council Staff Report and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=5028015&GUID=E0215022-6A47-486F-81C4-9BFB2583AE10&Options=&Search=>

<sup>8</sup> The staff report from the July 2020 RRSO update includes a comprehensive list of all resources and materials created to help tenants and landlords comply with the RRSO, as well as a discussion of the revisions made to the RRSO after its first year of implementation.

- Discussion of participation in the Eviction Prevention Learning Lab; and
- Discussion of Tenant Relocation Assistance Ordinance implementation.

It is important to note that, while the RRSO has been in effect in Hayward for three years, the majority of that time has been during the COVID-19 pandemic and corresponding local, state, and federal eviction moratoria. As such, it is difficult to measure the RRSO’s progress in meeting its goals of reducing displacement and to make comparisons between rent increase data submitted to the City’s Rent Review Office and market trends.

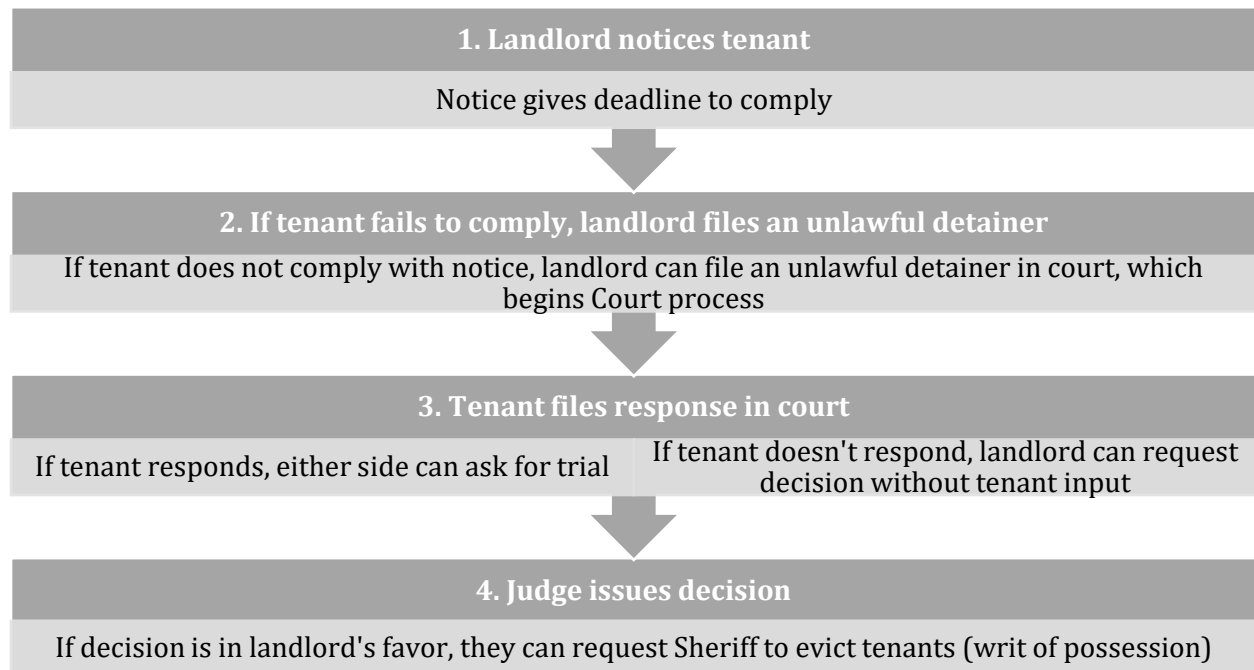
### Hayward Eviction Landscape

#### *Superior Court of Alameda County Unlawful Detainer Data*

In California, evictions follow the process outlined in Figure 1 below. Notably, the City of Hayward does not enforce evictions and does not provide legal advice to landlords or tenants regarding the eviction process. The City does have contracts with local non-profits to provide legal services to tenants and Hayward tenants may also access the Alameda County AC Secure program for legal resources.

Hayward’s RRSO requires an eviction to be based on one of 16 just cause reasons for an eviction. The just cause must be listed on the termination notice, which must also be provided to the City’s Rent Review Office. If a tenant does not comply with a lawful notice, the landlord may choose to file an unlawful detainer with the Superior Court of Alameda County. Tenants then have a brief window to respond and either party can request a trial. If the tenant does not respond, the landlord can request a decision from the judge without the tenant’s input. If the judge decides in favor of the landlord, the landlord can request a writ of possession, which is executed by the Sheriff’s Office to remove the tenant from the property.

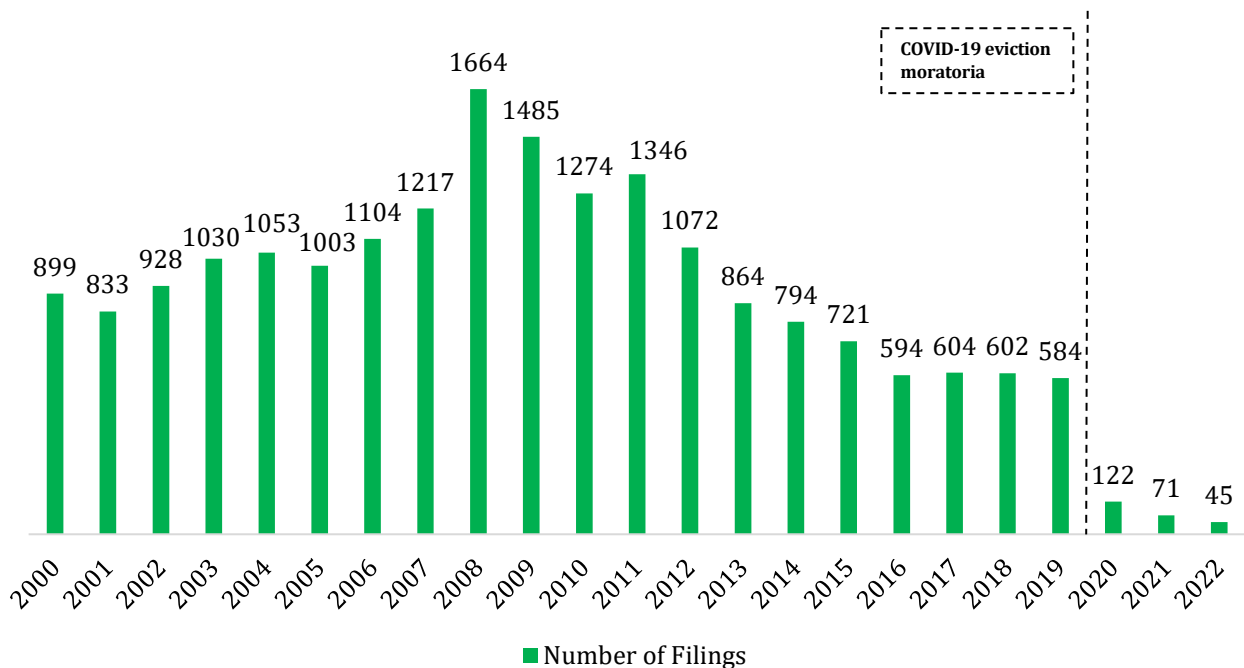
**Figure 1. Summary of the California Eviction Process**



Since the Summer of 2021, staff has requested unlawful detainer (UD) data from the Superior Court of Alameda County and has compiled data from January 2000 through July 2022. While State privacy law prevents the Court from providing the address or party names in an unlawful detainer case, the Court was able to provide city, zip code, filing date, disposition (outcome) date, disposition type, and if a writ of possession was filed and satisfied for unlawful detainers in Alameda County. The UD data has some limitations, including that there is no direct indicator of if a filing was for a commercial eviction and there is no information on if a tenant left the property or reached a resolution with the landlord outside of the court process prior to the writ of possession stage. Despite these limitations, the UD data illustrates trends in eviction filings and tenant response.

Figure 2 shows the total number of UD filings per year since January 2000, excluding filings determined by the Court to be most likely commercial evictions. Filings peaked during the 2008-2009 recession and were level beginning in 2016, averaging just under 600 filings a year in the four years prior to the COVID-19 pandemic.

**Figure 2. Annual Unlawful Detainer Filings: January 1, 2000 – June 30, 2022**



Local or state eviction moratoria were in place from March 2020 through June 2022. The City's local moratorium expired in September 2020, superseded by State law. State eviction protections concluded in June 2022; however, Alameda County's moratorium is still in effect. The County moratorium prohibits most evictions, except for those required to comply with health and safety violations and Ellis Act evictions. Key take-aways from the UD data during the pandemic include:

- Of the 122 UD filings in 2020, 89% (n=108) occurred prior to March 24, 2020, when the City passed a temporary moratorium on residential evictions.
- Following enactment of the first local moratorium through June 2022, there were 121 total UD filings in Hayward.

- 18% (n=22) of UD filings since the first moratorium resulted in a judgment and the majority of those were a default judgment, meaning the tenant did not respond to the filing.
- Of those resulting in a judgment, less than half (41%, n=9) had a satisfied writ of possession, meaning the tenants were evicted from the property by the Sheriff's Office

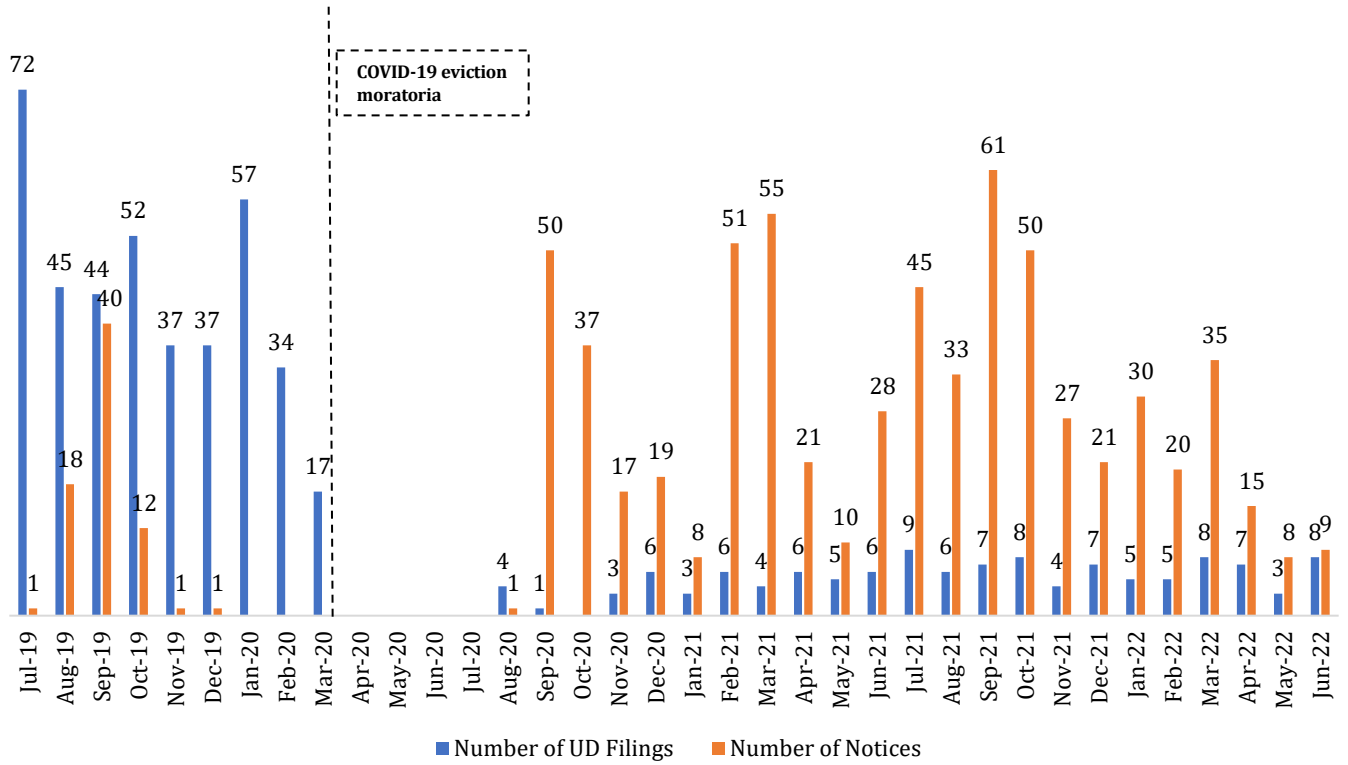
#### *Comparing Termination Notices and Unlawful Detainer Data*

The RRSO requires that landlords provide the Rent Review Office with copies of all rent increase and termination notices. Collecting such information enables staff to identify trends in Hayward's rental environment that were previously unclear without reliable data. As discussed in previous updates, there are important limitations to when analyzing and interpreting termination notice data submitted by landlords. It is likely that not all landlords are complying with the requirement to provide copies of notices to the Rent Review Office, so existing data may under-represent eviction notices.

The addition of UD filing data from the Court allows for comparisons between the volume of notices to terminate tenancy with actual UD filings. Notably, not all termination notices result in a UD filing. Often tenants pay rent late, resolve the issue with the landlord, or they may move out prior to the landlord filing a UD with the Court. Since the beginning of the RRSO, the City has received 772 termination notices. While pandemic eviction protections were in place, 95% of the notices received were for a failure to pay rent or utilities. In the period before the pandemic (i.e., July 2019 through March 2020), 86% of notices submitted to the Rent Review Office were for failure to pay rent or utilities.

As shown in Figure 3, prior to the onset of the pandemic and corresponding eviction moratoria, the number of UD filings was greater than the number of termination notices submitted to the Rent Review Office. However, landlords continued to file notices to terminate tenancy, despite existing moratoria on evictions during the pandemic. The significant increase in termination submissions to the City may be due to several factors, including increased outreach by the Rent Review Office during the pandemic, changes to state law that required serving the tenant with a 15 day notice of termination of tenancy related to non-payment of rent, and improved compliance as landlords paid closer attention to local requirements when trying to evict tenants during the pandemic.

**Figure 3. Comparing Termination Notices with Unlawful Detainer Filings since July 2019**

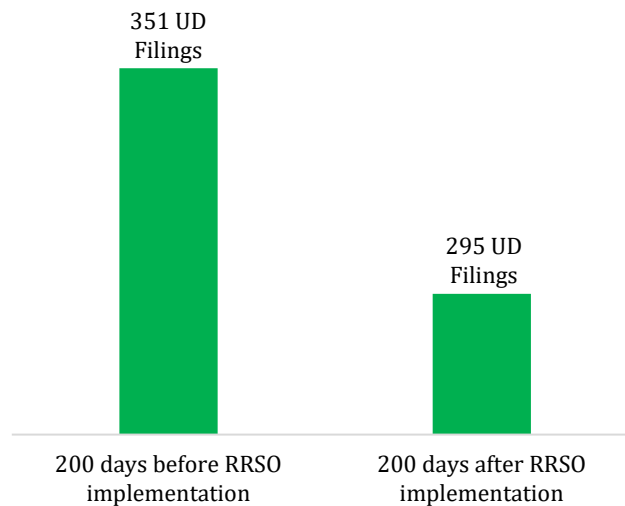


### *Unlawful Detainer Filings Before and After the RRSO*

Key objectives of the RRSO include stabilizing and creating more predictable rent increases and establishing just cause reasons for eviction to prevent unfair, discriminatory, or retaliatory evictions. Access to UD filing data from the Court allows for more reliable analysis of potential impacts of the RRSO.

While pandemic eviction protections make such analysis more challenging, comparison of equal time periods before and after the RRSO implementation and before the onset of the pandemic, shows a 15% reduction in UD filings following the implementation of the RRSO (see Figure 4).

**Figure 4. UD Filings before and after RRSO Implementation**



### **Rent Increase Notices Submitted to the Rent Review Office**

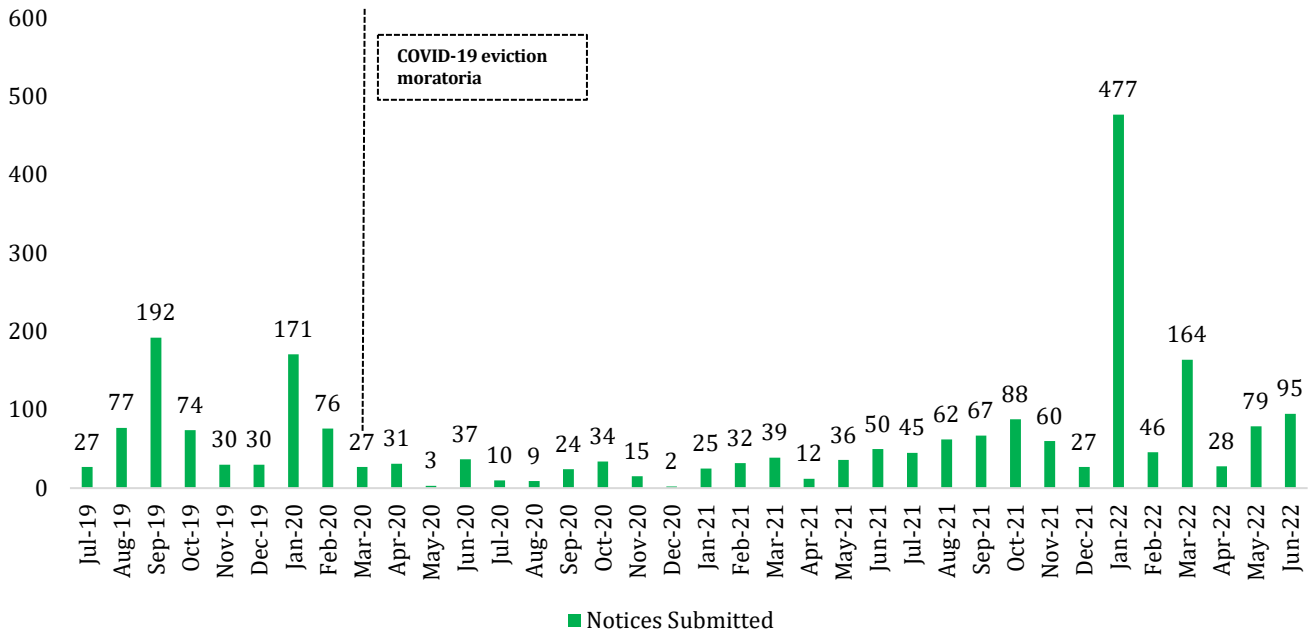
As with termination notices, landlords are required to provide copies of any rent increase notices to the Rent Review Office. The RRSO relies on landlords to self-report, therefore a compliance rate cannot be determined and the following analysis may not fully reflect all rent increase trends in Hayward. Additionally, while there were no rent increase freezes in place in Hayward or Alameda County during the pandemic, many landlords may have opted not to increase rents for tenants who were already struggling to pay.

Since the RRSO was passed in July 2019 through June 2022, the Rent Review Office has received 2,667 rent increase notices. Of those notices received, 86% had enough information to determine the amount of the rent increase. Notices were dropped from the analysis if they did not have an actual rent increase, if there was not sufficient address information to determine if the unit was a covered rental unit (i.e., those subject to the RRSO's rent increase threshold), or if the landlord provided multiple options depending on the length of the lease renewal. For rent increase notices that had sufficient information, the average rent increase amount was 4.7% for covered rental units and 5.2% for rental units.

The median number of rent increase notices submitted to the Rent Review Office during the pandemic was 35. There was a substantial spike in increase notices in January 2022, as shown in Figure 5. During that month, seven owners submitted over 30 increases for large properties, accounting for 76% of the increases submitted in January 2022. This is similar to trends in other high-volume months, like September 2019 and January 2020, where a few owners of larger properties submitted the majority of the increase notices.



**Figure 5. Rent Increase Notices Received from July 2019 to June 2021**

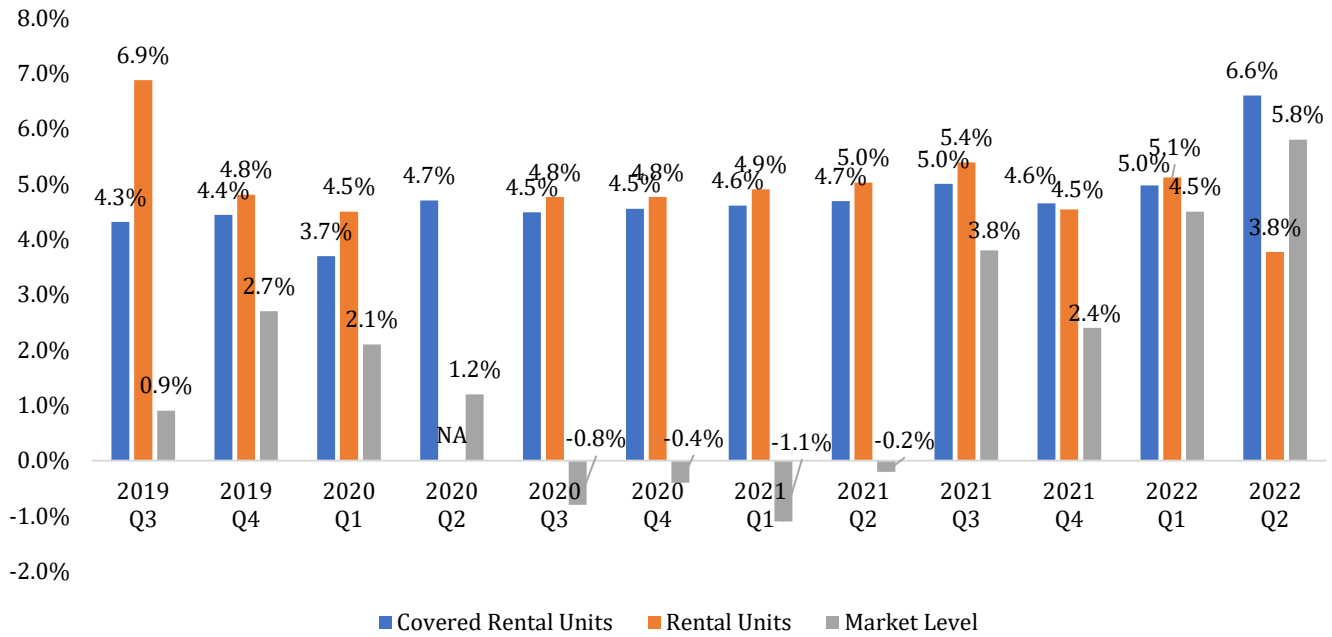


Data from the CoStar real estate database provides some insights into the Hayward rental market by surveying effective rent on new leases in multi-family rental properties.<sup>9</sup> When compared to the rent increase information shared with the Rent Review Office, market-level data show lower average effective rents during most of the pandemic, as shown in Figure 6. However, market rents rose notably beginning in the second half of 2021. With the exception of the most recent two quarters, market rents were still below rent increases submitted to the Rent Review Office. It is important to note that available data on multi-family effective rent changes does not capture existing leases or changes to those agreements over time, which includes potential substantial rent increases for individual households. While market prices for multi-family properties show decreases, not all tenants necessarily experience the relief of market rent depreciation.

It is also notable that the average rent increase for a covered rental unit from April through June 2022 was above the 5% threshold for covered units. The average exceeded the threshold in that quarter because 60% of the increases submitted to the Rent Review Office included banked rental increases. In other words, landlords that did not apply a rent increase in 2021 used that increase along with the allowable annual increase for 2022, exceeding the threshold as permitted under the RRSO and driving the quarterly average up to 6.6%,

<sup>9</sup> Effective rents refer to the actual rent after factoring in concessions or other discounts.

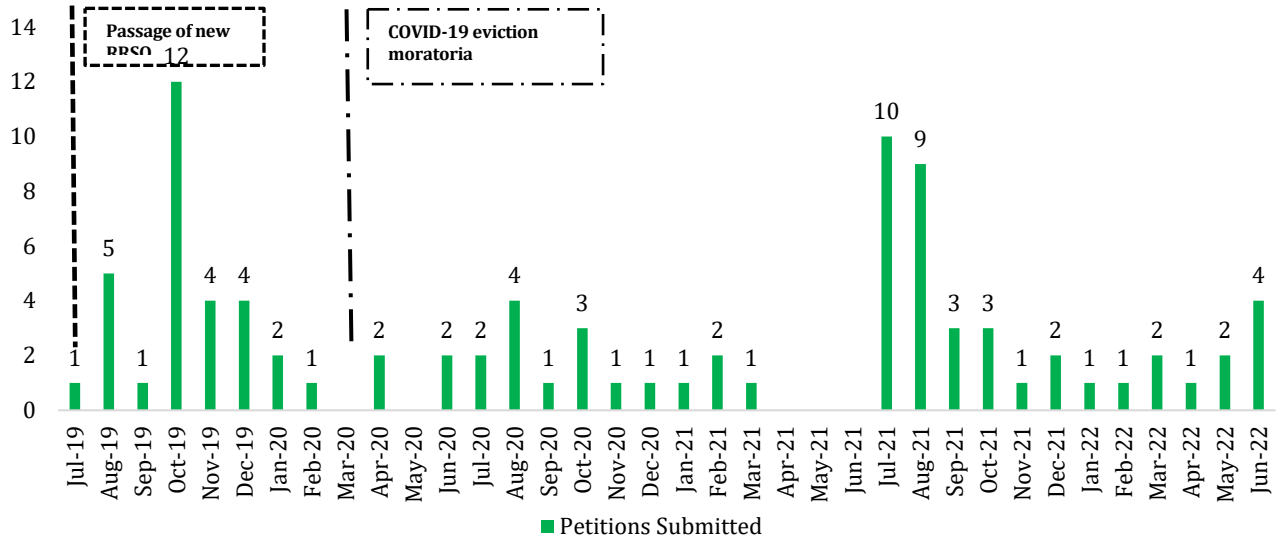
**Figure 6. Comparison of Average Rent Increases Submitted to the Rent Review Office and Average Multi-Family Market Rents from July 2019 through June 2022, by Quarter**



**Tenant and Landlord Petitions**

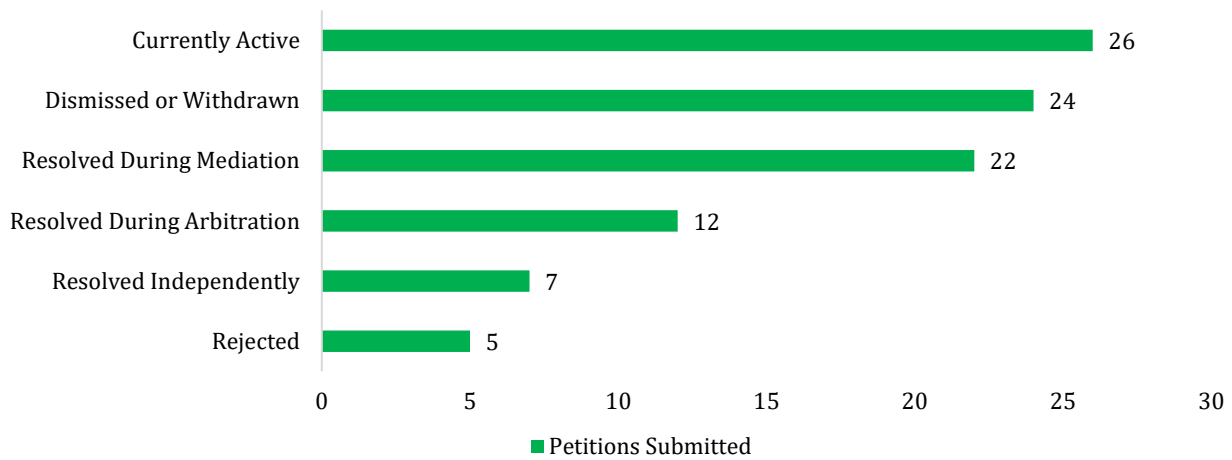
The RRSO’s rent dispute resolution process is initiated by a petition, either from a tenant or a landlord. As shown in Figure 7, the number of petitions submitted by tenants was highest during the first six months after the RRSO was revised in July 2019, which is when access to the mediation and arbitration process was expanded to more units. In the months following the Governor’s declaration of a state emergency and local emergency orders due to COVID-19, the number of petitions remained low with an average of 1 petition per month through June 2021. Since the last HHTF update, petitions spiked in July and August 2021. Of the 19 petitions in July and August 2021, 13 were from mobile home residents petitioning for a review of rent due to a decrease in housing services. The average petitions received since August 2021 was two per month.

**Figure 7. RRSO Petitions Received since July 2019 through June 2022**



Since the last HHTF update, the Rent Review Office has received 46 new petitions bringing the total received as of June 2022 to 96 petitions. Of those 46 new petitions, 42 were submitted by tenants and four were submitted by landlords. Figure 8 describes the outcomes of every petition received as of June 2022. The majority are currently active, meaning they are either being reviewed or scheduled for mediation or arbitration hearings. Out of 96 petitions, 34 have been resolved during mediation or arbitration and seven have been resolved outside of the resolution process. Additionally, 29 petitions were dismissed, withdrawn by the petitioner, or rejected after the review process. Those that were rejected were due to timeliness issues or were submitted for reasons that were not allowable reasons under the RRSO.

**Figure 8. Tenant Petition Outcomes, as of June 2022**



Under the RRSO, tenants can submit a rent review petition for any of the following reasons:

- **Unlawful Notice:** Landlord did not properly notify tenants of rent increase, banked increase, or increase in government utility service cost per the RRSO’s noticing requirements
- **Annual Rent Increase Over 5%:** Increase is over the allowable annual Rent Increase Threshold of 5% of the tenant’s current rent
- **Banked Rent Increase Over 10%:** Banked rent increase is above the allowable Banked Rent Increase Threshold of 10% of the tenant’s current rent
- **Utility Increase Over 1%:** Utility increase is above 1% of tenant’s current rent
- **Reduction in Housing Services:** Tenant is reporting a reduction of Housing Services (e.g. lighting, heat, water, laundry facilities, elevator services, common recreational services, etc.) that have not been restored or remediated
- **Housing Violations:** Property has uncured health, safety, fire, building violations or repairs
- **Capital Improvement Cost:** A Capital Improvement Pass-Through cost that is unlawful or has been calculated incorrectly

Additionally, landlords may submit petitions for the following reasons:

- **Fair Return:** An increase in rent above the threshold in an amount necessary to obtain a fair return on investment
- **Capital Improvement:** To set the proper amount of a capital improvement pass-through

Figure 9 describes the types of petitions the Rent Review Office has received. Petitioners can select one or more petition types when submitting their rent review application. As shown below most petitioners (36) have submitted rent review applications for receiving rent increases that are above the 5% annual threshold. The second most frequent petitions were for reduction of housing services, the majority of which were received after June 2021 after the Governor terminated the executive order that put into place the Stay-at-Home Order and social distancing restrictions on June 15, 2021.

**Figure 9. Tenant Petition Types, as of June 2022**



## **Eviction Prevention Learning Lab Participation**

For the past year, the City has been participating in the Eviction Prevention Learning Lab (EPLL).<sup>10</sup> The EPLL is a national peer-to-peer network focused on eviction prevention strategies, providing cities and their partners with access to best practices, policies, and tools for preventing eviction. It is facilitated by the National League of Cities and the Stanford Legal Design Lab. The City focused on the learning areas of 1) Tenant and Landlord Education and 2) Communication, Outreach, and Engagement. To date, staff have worked on refining outreach strategies, including integrating text messaging. Staff are also in the process of improving website accessibility and search optimization.

Through participation in the EPLL, the City was also selected as a pilot site for the development of the Foreclosure and Eviction Analysis Tool (FEAT).<sup>11</sup> Participation in the pilot led the City to request and obtain the UD data reported on in prior sections of this report. Current data from the County only provides zip code level geographic detail due to State privacy restrictions. Staff continue to work with the FEAT team to determine the best ways to apply the tool to the available data.

## **Tenant Relocation Assistance Ordinance Implementation**

Alongside the amendments to the RRSO approved in July 2020, Council also adopted Chapter 12, Article 2 of the Hayward Municipal Code, titled the Tenant Relocation Assistance Ordinance (TRAO). The TRAO creates permanent and temporary relocation assistance requirements for landlords to pay under certain circumstances when a tenant becomes displaced from their unit. Landlords are required to pay permanent relocation assistance when there is a no-fault just cause eviction. Temporary relocation assistance is required when landlords must complete substantial repairs that would temporarily displace the tenants, or when a government order is issued for health and safety issues. Since its implementation, staff have created a number of resources to facilitate compliance with the TRAO, including a summary and several noticing forms.

Since July 2020, staff have reviewed relocation cases at 20 properties, the majority of which have been initiated through a Code Enforcement inspection that has found the unit to be in violation of health and safety code. Staff from Housing and Code Enforcement work closely to share information on these cases and to communicate with the tenants. In many cases, landlords are either unwilling or unable to make the required relocation assistance payments. This trend was present after the first year of implementation, so staff requested authorization to establish the Tenant Emergency Relocation Assistance Fund, which Council authorized as part of the expenditure plan for the American Rescue Plan Act.<sup>12</sup> These funds allow staff to make relocation payments on behalf of non-compliant landlords, then recover the payment from the landlord through a special assessment. The funds are also available to make emergency payments to low-income tenants displaced from their homes due to a natural disaster. Through

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<sup>10</sup> For more information: <https://www.nlc.org/initiative/2021-eviction-prevention-learning-lab/>

<sup>11</sup> For more information: <https://www.newamerica.org/future-land-housing/blog/introducing-the-foreclosure-and-eviction-analysis-tool-feat/>

<sup>12</sup> July 13, 2021, City Council Staff Report and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=5028015&GUID=E0215022-6A47-486F-81C4-9BFB2583AE10&Options=&Search=>

June 2022, staff processed \$107,262 in emergency payments for tenants displaced due to natural disaster.

Additionally, implementation of the TRAO has been challenging due to the volume of unknown variables that need to be established to determine the amount of assistance owed to tenants and the varying scenarios that establish compliance deadlines. Staff has developed resource materials and has been providing technical assistance to stakeholders but recommends that the City consider simplifying the legislation to improve clarity and increase compliance. Staff intend to use the City Strategic Roadmap planning process to discuss adding the TRAO revisions as an additional project under Council's Preserve, Protect, and Produce Housing for All priority area.

### **ECONOMIC IMPACT**

This report is an informational update on the implementation progress of the RRSO. It does not propose any substantial legislative changes that would create any new or differing economic impact.

### **FISCAL IMPACT**

This informational update does not propose any changes or additions that would create a fiscal impact to the City's General Fund. The RRSO does include an administration fee, the revenue for which supports the implementation of the ordinance. This includes staff expenses, as well as education and outreach activities to ensure landlords and tenants are aware of their rights and responsibilities.

### **STRATEGIC ROADMAP**

This agenda item supports the Strategic Priority of Present, Protect, & Produce Housing. Specifically, this item relates to the implementation of the following projects:

Project 7, Parts 7b:	Monitor the implementation of the Rent Stabilization Ordinance and prepare a statistical report
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### **PUBLIC CONTACT**

Since it was passed in July 2019, the City has conducted several education and outreach workshops and received many inquiries regarding the RRSO. Despite COVID-19 restrictions, staff have held monthly remote and more recently hybrid workshops. Staff also attend resource fairs with faith-based and education partners.

In 2022, the Housing Division made changes to its walk-in and appointment-based communication with community members. First, the Division implemented the Microsoft Bookings feature, enabling community members to make an appointment online for either a phone or in-person meeting with staff in English or Spanish. Additionally, the Housing Division has started staffing the Permit Center. Co-location of Housing Services with Development Services and closer proximity to the Revenue Division is helping to streamline communication

for community members who previously often had to go to multiple floors within City Hall to resolve an issue. Now, Housing Division staff are present at the Permit Center during its Monday through Friday, 9:00 to 1:00 open hours and are available for walk-in meetings on the fourth floor during the hours the Permit Center is closed.

## **NEXT STEPS**

Staff will continue monthly outreach activities and will continue to monitor implementation of the RRSO, identifying additional opportunities to improve processes, forms, and outreach strategies. Staff will return with another annual update to the Task Force in September 2023.

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Irene Perez, Senior Secretary

*Recommended by:* Jennifer Ott, Assistant City Manager  
Christina Morales, Housing Division Manager

Approved by:



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Kelly McAdoo, City Manager