



DATE: February 19, 2019

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Update on Efforts Related to the City's Residential Rent Stabilization Ordinance and Provide Direction on Potential Amendments to the Residential Rent Stabilization Ordinance

RECOMMENDATION

That the City Council:

1. Receives an update on the status of the review of the vacancy decontrol process, findings from tenant focus groups, and status on the implementation of improved access to information and data tracking related to the Residential Rent Stabilization Ordinance (RRSO) (Attachment II), and
2. Provides direction on potential amendments to the RRSO.

SUMMARY

On May 29, 2018¹, the City Council adopted two ordinances aimed at taking steps towards addressing rent stabilization and tenant protections in the City of Hayward, including:

1. Adopting an emergency ordinance enacting a moratorium on decontrolling rental units pursuant to Section 8 of the RRSO, while a review of the process is conducted and more comprehensive actions to stabilize rents could be determined; and
2. Adopting an emergency ordinance amending the RRSO to clarify the applicability of Section 19 related to eviction for cause provisions to units that are currently and were previously rent controlled.

Additionally, the City Council provided direction to staff to improve access to information and data tracking related to the RRSO and to continue to evaluate options for more significant amendments to the RRSO that more comprehensively address rent stabilization in the City.

¹ May 29, 2018 Staff Report and Attachments:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=3512726&GUID=CC5F9A5F-1885-4AD7-81B1-BFA7C9A88C41&Options=&Search=>

Since then, City staff have made progress on a number of efforts related to the RRSO, including:

1. Retaining a consultant to review the vacancy decontrol process pursuant to Section 8 of the RRSO, which is subject to the moratorium approved in May 2018;
2. Implementing improved access to information and data tracking related to the RRSO;
3. Holding focus groups with tenants to gather more information on issues they are experiencing; and
4. Meeting with community stakeholders affiliated with both landlords and tenants to develop a proposed approach to making amendments to the RRSO to address issues of rent stabilization more comprehensively in the City (Attachment II).

Attachment II provides a status update on efforts #1-#3 listed above. Staff seeks Council direction on potential amendments to the RRSO described in greater detail in this report. After Council direction, staff will engage community groups and stakeholders and work through the newly formed Homelessness-Housing Council Task Force to review any proposed amendments to the RRSO. Once finalized, staff will bring the final recommended amendments to the RRSO for Council consideration and adoption later this calendar year.

Staff has provided the powerpoint presentation that will be given at Tuesday's meeting as Attachment III to provide an outline and summary view of this report.

BACKGROUND

Hayward, like other cities in the Bay Area, is experiencing rising housing prices, severe housing instability for its most vulnerable populations, displacement of existing residents of all incomes, and increasing homelessness. The increase in Hayward's and the Bay Area's population, absent a corresponding increase in housing units, has caused rents and prices to rise as supply has failed to meet demand. As a result, approximately 55% of Hayward renters experience a cost burden as they spend over 30% of their household income on rent. Between 2013 and 2017, rents increased in the City by 46% while the median income of renters only increased 25%. While low income renters are the most impacted by rising rents and lack of available rental housing, all Hayward renters are experiencing the impacts of a tight rental market. Additionally, renter-occupied units are disproportionately comprised of African-American and Hispanic households compared to all occupied units, which raises concerns that the risk of potential displacement is greater for certain racial and ethnic populations within the City.

Of the 46,713^[1] housing units in Hayward, 22,237¹, or 48% are rental units. Of the 22,237 rental units, approximately 14,941^[2], or 67% are covered under the RRSO. Of the 14,941 rental units, 9,506² are possibly subject to the existing rent-increase limitations because 5,435² single family homes are exempt under state law. However, of the 9,506 units, there are 2,115 two to four-unit buildings that are only subject to the ordinance if the owner owns more than 4 units. To date, the City has received 7,931 applications for decontrol of rent controlled units. Staff therefore estimates that between 1,000 and 1,600 units continue to be rent controlled under the City's RRSO.

On May 29, 2018², the City Council adopted two ordinances aimed at taking steps towards addressing rent stabilization and tenant protections in the City, including:

1. Adopting an emergency ordinance enacting a moratorium on decontrolling rental units pursuant to Section 8 of the RRSO while a review of the process is conducted and more comprehensive actions to stabilize rents could be determined; and
2. Adopting an emergency ordinance amending the RRSO to clarify the applicability of Section 19 related to eviction for cause provisions to units that are currently and were previously rent controlled.

Additionally, the City Council provided direction to staff to improve access to information and data tracking related to the RRSO and to continue to evaluate options for more significant amendments to the RRSO that more comprehensively address rent stabilization in the City.

Since then, City staff have made progress on a number of efforts related to the RRSO, including:

1. Retaining a consultant to review the vacancy decontrol process pursuant to Section 8 of the RRSO, which is subject to the moratorium approved in May 2018;
2. Implementing improved access to information and data tracking related to the RRSO;
3. Holding focus groups with tenants to gather more information on issues they are experiencing; and
4. Meeting with community stakeholders affiliated with landlord, realtor, and tenant groups to develop potential amendments to the RRSO to address issues of rent stabilization more comprehensively in the City.

Attachment II provides a status update on efforts #1-#3 listed above. Staff seeks Council direction on potential amendments to the RRSO described in greater detail below.

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

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

² May 29, 2018 Staff Report and Attachments:

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DISCUSSION

Staff met with community stakeholders throughout December, January, and early February from groups affiliated with landlords, realtors, and tenants regarding potential amendments to the RRSO that more comprehensively address issues of rent stabilization and tenant protection in the City. Based on these meetings and discussions, staff developed options for amendments to the RRSO that attempt to balance the feedback received from the various stakeholders and seeks Council direction. After Council direction, staff will engage community groups and stakeholders and work through the newly formed Homelessness-Housing Council Task Force to review any proposed amendments to the RRSO. Once finalized, staff will bring the final recommended amendments to the RRSO for Council consideration and adoption later this calendar year.

The proposed approach to amending the RRSO includes the following components:

I. Strengthen and Enhance Communication via a Mediation and Binding Arbitration Process

Staff recommends a program to improve communication between tenants and landlords that would provide mediation services regardless of vacancy decontrol status for rent increases that exceed a rent increase threshold of 5%, and that would be applicable to all rental units constructed prior to 1979 (except single-family homes and owner-occupied duplexes, triplexes, and quadraplexes). If not successfully resolved through mediation, then the dispute would be resolved through binding arbitration subject to standards of review that protect a landlord's right to a fair return and tenants' need for housing stability. The following provides additional information on staff's recommendation and alternatives for Council discussion.

Based on landlord feedback, the concept of improved communication among tenants and landlords was a major goal for any amendments to the RRSO and provided the basis for the proposed mediation-arbitration process. Feedback from the tenant focus groups and tenant advocacy groups indicated a perceived power imbalance in favor of landlords and advocacy for re-controlling all pre-1979 units with rent control similar to the cities of Richmond, Berkeley and Oakland.

This staff recommendation is a compromise that addresses landlords' desire for a more robust mediation process, but adds a binding arbitration component that requires landlord compliance in order to address tenants' concerns about perceived systemic inequity.

Alternatives for Council Consideration: Mediation – Arbitration Process

City staff considered alternatives to this proposed approach, including a stronger rent control ordinance similar to the cities of Richmond, Oakland and Berkeley, as well as a non-binding mediation and arbitration process similar to the cities of San Leandro, Fremont, and Union City. The following generally describes these alternatives and provides staff's rationale for not recommending these alternatives.

- **Rent Control.** The cities of Richmond, Oakland, and Berkeley have stronger rent control programs that limit rent increases based on a percentage of CPI ranging from 65% to 100%. Current rent increase limitations range from 2.5% to 3.6%. Landlords have the ability to petition for higher rent increase based on factors that affect their ability to receive a fair return on their investment such as increases in occupancy, changes in space or services, capital improvements, and increased operating costs. Tenants have the ability to contest rent if: the landlord has not complied with applicable laws; fails to provide adequate services; fails to meet obligations under the lease; or fails to address habitability issues. All three cities have rent boards with varying degrees of responsibility. Two of the boards administer the rent control program and have substantial autonomy. Board members are either elected officials or appointed by the City Council.

Administration of such a program would require a substantial increase in staffing levels and budget. Richmond, the most comparable City in terms of the number of restricted units, employs nine full-time staff and four part-time staff with a total budget of \$2.8 million. Property owners pay a fee for fully covered units in the amount of \$207 per unit.

NOT RECOMMENDED: Staff does not recommend stronger rent control similar to this model because it does not emphasize a process of communication between tenants and landlords, would create a significant administrative and possible financial burden on the City, and could create unintended consequences by discouraging investment in what are already the oldest units in the City.

- **Mediation without Binding Arbitration.** Neighboring jurisdictions such as Fremont, San Leandro, and Union City provide either a rent review or mandatory mediation program. In both the City of Fremont and the City of San Leandro, the ultimate recourse involves arbitration held by a rent review board. The rent review boards only review cases that involve units that are subject to the ordinance and exceed the established threshold for rent increases. In both cities, the rent review board consists of tenants, landlords, and neutral residents. Decisions by the rent review boards are only recommendations. In Fremont, if an agreement is reached between the tenant and landlord, the agreement is binding. If no agreement is reached, the proposed rent increase remains in effect. In San Leandro, if recommendations proposed by the rent review board are not accepted, the petition is referred to the City Manager for review. Union City provides a mandatory mediation program administered by a service provider. Decisions issued by the mediator are not binding.

Tenant advocacy groups have raised concern regarding the effectiveness of mandatory mediation due to concerns about a power imbalance between tenants and landlords. Staff reviewed information and data from other local jurisdictions to evaluate whether mediation and rent review programs are helping both tenants and property owners achieve favorable outcomes. Initial findings indicate that mediation programs could

help motivate tenants and property owners to come to an agreement that resolves a dispute on their own. However, there is uncertain evidence to indicate whether mandatory mediation helps tenants attain a sustainable rent or discourages landlords from imposing excessive rent increases. The City of Fremont's Rent Review Ordinance Mid-Year Report documents that the average rent increase before rent review was 14.8% and was 12.3% after rent review. Only forty-five percent of the participants (landlords and tenants) in the rent review program were satisfied with the program.

NOT RECOMMENDED: While staff supports the goal of improved communication, this approach is not recommended because, in the current housing market, tenants have little leverage in negotiations with landlords without binding arbitration, and are likely to be discouraged from participating. This process may also warrant the creation of a rent review board, which creates additional administrative and possibly financial burden to the City. Under the binding arbitration proposal, the cases would be heard and decided by a third-party arbitrator.

Alternatives for Council Consideration: Rent Threshold

The rent threshold would be applicable and necessary in any of the alternatives outlined above. While tenant advocates would like to see a rent threshold tied to the Consumer Price Index (typically in the 1-3% range), the landlords requested a much higher threshold in the 7-8% range. Therefore, staff proposes a threshold for mediation and binding arbitration at 5%, which is also consistent with what is currently in the RRSO.

Alternatives for Council Consideration: Applicable Rental Units

Lastly, while staff recommends making duplexes, triplexes and quadraplexes that are not owner-occupied subject to this mediation-arbitration process, single family homes and owner-occupied duplexes, triplexes and quadraplexes are recommended to be exempt from the mediation-arbitration rent threshold. It is much more likely that the income from rental units in a small, owner-occupied complex is being used to supplement a household income and offset housing costs, and, if subject to the proposed process, this could create greater housing instability for these households. Additionally, this definition would be much easier to verify than the current definition, which is based on ownership of units throughout the City. This definition of rental units would result in more units being covered than the existing definition in the RRSO.

City staff considered alternatives regarding which units would be subject to these recommended provisions of a potentially amended RSSO, including:

- **Current Definition of Rental Units.** The current definition exempts all rental units where the property owner owns 5 units or less in the City. Staff does not recommend continuing to use this definition because it is very difficult to track the number of units owned by a particular land owner, especially if spread over multiple properties in the City. This makes it difficult to identify which units are subject to the RRSO.

- **No Exemption of 2-4 Unit Complexes.** This alternative would not exempt any rental units within 2-4 unit complexes and only exempt single-family homes. This would result in more units being covered than the existing definition in the RRSO and more than staff's recommended owner-occupied 2-4 unit complexes in the RRSO.
- **Exemption of All Complexes with 4 Units or Less.** Another option would be to exempt all complexes regardless of ownership that are 4 units or less, as well as all single-family homes.

II. Vacancy Decontrol Process

As mentioned earlier in this report, there are approximately 1,000 to 1,600 rent-controlled units remaining in the City and that are subject to the May 2018 decontrol moratorium. Staff's final recommendation on any amendments to this process will be informed by the findings from the Management Partners review (currently scheduled to conclude in May 2019). However, there are some alternatives for the Council to consider and provide preliminary direction on:

- **Remove Decontrol Process.** Remove decontrol of any further rent-controlled units covered under Section 8 of the 1979 ordinance (approximately 1,000 to 1,600).
- **Maintain and Update the Vacancy Decontrol Process.** Another alternative is to maintain the existing vacancy decontrol process, but update the process per specific recommendations from the Management Partners study.
- **Suspend the Vacancy Decontrol Process for a Period of Time.** This alternative would include the formal suspension of the vacancy decontrol process for a longer period of time, such as five years, so that the City could assess at that future point in time whether the housing crisis has stabilized and the decontrol process should be allowed to continue.

III. Eviction for Cause

Below are several alternatives for Council consideration related to eviction for cause provisions in the ordinance:

- a. **Expand Eviction for Cause.** Based on information from tenant focus groups and regional housing data and groups, evictions have a significant and lasting impact on the stability and economic well-being of households and families, especially low-income households, and increases the risk of displacement and homelessness for the City's most vulnerable populations. This option could include: extending eviction for cause provisions to all 2-4 unit rental complexes (exempting single-family homes) or to all rental units in the City, including single-family homes (where it now only applies

to pre-1979 market rate housing where the landlord owns five or more units in the City).

- b. Maintaining the Current Definition of Rental Units.** The eviction for cause provisions could continue to apply to the current definition of rental units, which exempts property owners who own 5 units or less in the City. Staff does not recommend using this definition. It is very difficult to track the number of units owned by a particular land owner, especially if spread over multiple properties in the City, making it difficult to identify which units are subject to the eviction for cause provision.
- c. All Complexes with 4 Units or Less.** Another option would be to exempt all complexes regardless of ownership that are 4 units or less, as well as all single-family homes. This definition would most likely result in less units covered than by the existing RRSO.

IV. Other Tenant Protections

City staff has considered and discussed with stakeholders the potential for amending the RRSO to include more tenant protections, including: provisions related to prohibitions on discrimination against households using Section 8 vouchers; relocation assistance for no-fault evictions; other specific tenant protections against retaliatory evictions not covered by State law; and possible ways to legislate a landlord code of ethics (the California Apartment Association Code of Ethics can be found at this link: <https://caanet.org/ethics/>).

Tenant groups strongly requested that landlords be explicitly prohibited from discriminating against households with Section 8 vouchers from the Housing and Urban Development Department that are used by low-income households to assist in supplementing rental income. This prohibition would not impact landlords' ability to charge market rent for their units, but landlords have raised concerns about imposing a strict requirement that landlords must accept households with Section 8 vouchers. The concern is that this might reduce their ability to take other factors into consideration when selecting a tenant.

Regarding other tenant protections, staff has performed some review of other jurisdictions and how they are addressing relocation assistance for no-fault evictions and retaliation protections. Staff recommends considering a relocation assistance provision in an amended RRSO for no-fault evictions similar to surrounding jurisdictions at three times fair market rent and reviewing and considering additional tenant protections against retaliatory evictions.

Lastly, both landlords and tenants raised the issue of promoting the use of a landlord code of conduct as a way of incentivizing good behavior by landlords. Staff is exploring ways to incentivize compliance with the landlord code of conduct as part of any amendments to the RRSO or via other means.

Staff recommends that the City Council this evening provide its initial and general feedback on the potential additional protections described above, including: Section 8 voucher discrimination; relocation assistance for no-fault evictions; other anti-retaliation protections;

and incentivizing via a landlord code of ethics. Staff will then continue to work with stakeholders and the Council Homelessness-Housing Task Force on the details of any potential amendments.

V. Address Clarity and Transparency/Language Clean Up in the RRSO

City staff recommends considering requiring notices be filed with the City for rent increases and evictions, and addressing unclear provisions of the ordinance.

While a key request by tenant advocates was that the RRSO incorporate ways to track important information about rent increases and evictions in order to better understand the ongoing and evolving rental housing issues in Hayward, landlords are not supportive of rent increase notices due to the burden it places on landlords and the potential for unintended lack of compliance. An alternative would be to require only the filing of eviction notices with the City instead of both rent increase and eviction notices given the implementation issues raised by landlords.

Additionally, there are provisions of the RRSO that could be clarified and cleaned up, such as the process for determining exemptions. Any time major amendments are being made to an ordinance, it is an opportunity to clean-up unclear items. Staff, in consultation with landlord, realtors, and tenant stakeholders, will review the ordinance for opportunities to clarify any confusing or unclear provisions.

While staff is seeking direction from the City Council to amend the RRSO more comprehensively this evening, staff anticipates that future work drafting more detailed amendments will include consulting extensively with community stakeholders affiliated with both landlords, realtors, and tenants, as well as holding work sessions with the Council Homelessness-Housing Task Force.

FISCAL IMPACT

There is no fiscal impact associated with receiving informational updates and providing direction on an approach to making more substantial amendments to the RRSO. That said, depending on the direction provided this evening on potential amendments to the RRSO, staff will need to conduct further fiscal analysis on the staffing impacts of administering and enforcing an amended ordinance and on the amount of an updated fee for landlords to cover these expenses.

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities Initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work, and play for all. This item supports the following goal and objectives:

- Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

Objective 1: Centralize and expand housing services.

Objective 3: Conserve and improve the existing housing stock.

PUBLIC CONTACT

In January 2018, staff hosted meetings with tenants, landlords, representatives of community-based organizations, and advocates to listen to these stakeholders' perspectives on housing issues. Additionally, staff conducted an online survey to provide an alternate mechanism for participation in the housing discussion. Analysis of the results of the survey were included in the February 6, 2018³ staff report. On February 26, 2018, staff hosted a subsequent listening session to hear the stakeholders' feedback on Council supported affordable rental housing strategies. In October 2018, staff conducted four tenant focus groups. From December 2018 through February 2019, staff met with community stakeholders affiliated with landlords, realtors, and tenants to develop potential amendments to the RRSO to address issues of rent stabilization more comprehensively in the City.

NEXT STEPS

Upon receiving direction from the City Council this evening, staff recommends continued work with community groups and stakeholders, as well as with the Council Homelessness-Housing Task Force on any issues raised this evening and on drafting the details of proposed amendments to the RRSO. Staff would then return to the City Council with draft amendments to the RRSO for consideration and potential adoption later this year.

Other upcoming Council items related to the RRSO and affordable housing include: (1) a recommended approach on reducing barriers to housing development in March 2019; and (2) a presentation on the findings of the Management Partners study on the vacancy decontrol process anticipated in May 2019.

Prepared by: Christina Morales, Housing Division Manager

Recommended by: Jennifer Ott, Deputy City Manager

Approved by:



Kelly McAdoo, City Manager

³ February 6, 2018 Staff Report and Attachments:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=3335549&GUID=DDD8866E-BAEB-44BF-8EBB-2F716A750170&Options=&Search=>