

**City of Hayward, California**  
**Vacancy Decontrol Ordinance and Process Review**

**May 2019**

**Management  
Partners**





# Management Partners



May 3, 2019

Ms. Kelly McAdoo  
City Manager  
City of Hayward  
777 B Street  
Hayward, CA 94541

Dear Ms. McAdoo:

Management Partners is pleased to transmit our project report on our review of the City's vacancy decontrol provisions in its Rent Stabilization Ordinance. Our analysis indicates that the City has historically reviewed its role as a repository of decontrol applications as opposed to arbitrator of vacancy decontrol decisions.

Decontrol applications have typically included the basic information required to validate decontrol under the terms of the ordinance. Yet the current improvement threshold is quite low and does not seem to reflect a value that would indicate significant improvement was made to a unit to justify permanently being decontrolled from rent stabilization.

Ultimately, very few units remain controlled under the ordinance. The program could not be expected to have a significant impact on overall housing affordability or to significantly address the concerns being voiced by tenants and lower/middle income renters. City leaders will need to develop a more comprehensive rent stabilization approach if they wish to address diminishing affordable housing resources in Hayward.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald E. Newfarmer".

Gerald E. Newfarmer  
President and CEO



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## Executive Summary

Management Partners was engaged to conduct a review of the vacancy decontrol provisions in the City's rent stabilization ordinance. The City Council enacted an 18-month moratorium on May 29, 2018 to provide time to assess the vacancy decontrol process. This project involved reviewing the decontrol application processes to date, evaluating the City's role in the decontrol process, and analyzing the current improvement value thresholds that allow landlords to apply for decontrol.

### ***Key Observations***

Management Partners' project team members have identified four primary issues regarding the vacancy decontrol program. In general, historically there has been a passive approach to administration of the ordinance. The genesis of this approach can no doubt be found in priorities and policy interpretations dating back several decades, which were followed by subsequent managers and staff until the current housing market situation resulted in this assessment.

- 1. Many of the housing units subject to the City's rent control ordinance are already decontrolled, leaving a very small number subject to the rent stabilization policies of the ordinance.***

Hayward currently has approximately 22,200 rental units. However, only about 9,500 units (43%) were originally subject to the City's Residential Rent Stabilization Ordinance. Approximately 7,900 applications for decontrol under the terms of the ordinance had been received by the City, leaving approximately 1,600 units (7% of the current number of rental units) that are still subject to the rent control ordinance.

- 2. The City has historically viewed its role as a repository of decontrol applications as opposed to arbitrator of vacancy decontrol decisions.***

The ordinance defines the term "Rent Review Officer" as a person assigned by the City Manager to administer and enforce the ordinance. In practice, once improvements have been made to a

vacant rental unit the applicant landlord filed an application form and paid a fee to the Building Unit to have the unit inspected to confirm improvements were made. Once the inspection occurred and the application was signed by the building inspector, the application attesting to compliance with the ordinance was received by the Rent Review Office. City staff maintained those records and made them available for arbitration.

Current staff reported their understanding of the earlier processes for verifying the decontrol application did not include approval of an application following a regulatory review by the rent review officer. However, the form in use for many years included the signature of building officials confirming the improvements and included the phrase "Certification Approved By." Also, there is a signature blank for the rent review officer to sign which is labelled "Application Approval-Signature of Deputy." These phrases have been changed in the past two years to remove the implication that staff has approved the decontrol status.

Management Partners' team members reviewed 30 case files. They indicated that the City did not make any expressed determinations of decontrol of the units, indicative of the ambiguity in the existing Ordinance regarding the City's expected role in the vacancy decontrol process. In one case, there was a letter to an applicant from staff related to a decontrol application from a developer. The letter referred to documents that were provided by the applicant as part of its application for decontrol and indicated that the properties were decontrolled. Those supporting documents were not part of the file for the units that were claimed to have been decontrolled even after staff's review. This example highlights the challenge of maintaining records for decades that could be necessary for a future arbitration.

- 3. Decontrol applications included the basic information required under the terms of the decontrol ordinance based on our testing, yet in few cases were applicants required to provide receipts or other substantiation of improvements implemented.***

Management Partners' review of the decontrol applications found that the files uniformly contained the decontrol application inspection form signed by a building official in substantiation of the completion of improvements to the property. The inspection forms were then signed by the then current Rent Review Officer. The files all included required noticing statements of the first tenant following the application. However, in most cases, property owners were not



required to provide substantiation of the amounts expended for improvements.

In one case, no records of the improvements were on file and the decontrolled status was ruled as invalid in arbitration.

4. *The current and historic improvement thresholds that allow a unit to qualify for vacancy decontrol are quite low and do not seem to reflect values that would indicate significant improvement was made to the property to justify it being rent decontrolled permanently.*

The current improvement value thresholds in place range from \$1,566.43 for a one-bedroom unit to \$3,132.86 for a three-bedroom unit. While the thresholds have been increased for inflation per the terms of the ordinance, the general value of these improvement thresholds in today's environment do not seem to justify permanent decontrol of a residential unit.

For the cost of one modern energy-efficient refrigerator, a new washer and dryer set, or replacement of one to three windows, a property owner of a one-bedroom unit can have their unit permanently exempted from rent control provisions. Historically, the improvements reported in the applications were primarily painting, carpet, drapes and other minor improvements that are routine during tenant changes or even periodically for very long-term tenants. These minor improvements offered no long-term benefit to tenants other than the one first occupying a unit following the application and no benefit to the community in the habitability of the rental stock.

In other cities that have adopted rent increase limitations, as not to discourage investment in rental properties, their legislation allows for increases above the rent increase threshold to cover the cost of capital improvements or increased operating expenses. This ensures that the property owner can make a reasonable profit and ongoing investment in the property.

### ***Conclusions and Recommendations***

At this stage we know that if an effective rent stabilization or rental unit habitability program is desired by the City, the current ordinance is not providing it, nor is it a particularly good framework for building such a program. The current ordinance and its vacancy decontrol provisions provide no clear policy objective, such as rent stabilization or improving habitability. Similarly, it offers little to no benefit to tenants renting units years after the decontrol improvements were made.

Given the length of time since most of the rental units were decontrolled and the low level of improvements that were required to be decontrolled, the current tenant population has had no benefit or protection that seems to be the original intent of the ordinance. Most tenants have not had rent protections for decades in the Bay Area's fundamentally dysfunctional housing market and the modest improvements have long ago worn out. Our analysis focuses on several approaches to improving the policy goals and administration of the program if it were retained.

This report identifies a total of 22 recommendations. Of these, 21 recommendations would help the administration of vacancy decontrol program be more effective in its current form, if the decontrol process is maintained. Some of the highest priority recommendations are as follows:

- Establish a more proactive role for the City issuing administrative decisions on whether a unit is decontrolled;
- Modify the ordinance to require landlords to provide substantiation of the value of improvements made when applications for decontrol are submitted, and that the unit was vacated voluntarily;
- Increase the improvement threshold a minimum of five times the existing levels to align the ordinance with broader policy interests regarding housing costs and rental property maintenance standards;
- Limit allowable improvements to only include those items that have lasting impact rather than routine maintenance such as painting;
- Improve and enforce landlord noticing requirements regarding decontrolled status of the rental unit for subsequent tenants; and
- Define a penalty for failing to properly notice tenants at the beginning of their tenancy.

Even if the City implements these 21 recommendations, the program will still be applicable only to a small number of rental units. Therefore, it could not be expected to have a significant impact on overall housing affordability or to significantly address the concerns being voiced by tenants and lower/middle income renters.

Ultimately, as indicated in our final recommendation in this report, City leaders should develop a more comprehensive rent stabilization or habitability management approach. We understand that the City Council and staff are currently taking such an approach. Minor modifications to the current provisions may no longer be relevant in the current housing context. We believe that the Ordinance should be comprehensively retooled to cover more units and use modern techniques that have been

developed in other Bay Area communities over the last several years to address housing affordability through rent stabilization practices. Undoubtedly, Hayward would develop some unique approaches appropriate to the community. Using the current program as a beginning template point probably introduces more complications than necessary and would result in an obviously awkward situation in which decontrolled units become controlled again. It might be better to view the current rent stabilization ordinance as having met the needs that existed when it was created and to move to a clean, repeal-and-replace approach.

## Background and Methodology

### ***Rent Stabilization Ordinance***

Affordable housing has been a significant public policy issue from time to time in the San Francisco Bay Area for the last 50 years. Today it is a significant issue affecting every community in the Bay Area. Various types of rent stabilization or control efforts have been undertaken by numerous cities.

The City of Hayward was one of the first cities in the region to implement a Residential Rent Stabilization Ordinance (“ordinance”) in 1983 that limited rent increases by landlords on primarily multi-family rental housing units. The ordinance included a provision that allowed landlords to absolve their properties of rent control by investing in improvements to their property once the property was voluntarily vacated by an existing tenant. In a city with over 22,000 rental units, only 9,500 units were originally subject to the ordinance. Today, as many as 1,600 units remain rent stabilized.

The ordinance allows landlords to permanently exempt units from rent control after they have been voluntarily vacated and met an improvement value threshold of between \$1,500 and \$3,100, depending on the size of the unit.

In response to the current state of the housing market and particularly the fact that demand for rental units is outstripping supply and driving up market rate rentals, on May 29, 2018 the Hayward City Council enacted an 18-month moratorium on the vacancy decontrol provisions of the ordinance. Management Partners was selected to analyze the vacancy decontrol process, conduct a review of decontrol applications, evaluate the City’s role in the decontrol process, and analyze the current improvement value thresholds that allow landlords to apply for decontrol.

### ***Hayward Rental Housing Profile***

Comprising 45.32 square miles on the eastern edge of the San Francisco Bay, Hayward is an economically and ethnically diverse city of

approximately 153,689 residents. However, the increase in Hayward's population, absent a corresponding increase in housing units, has caused rents and prices to rise as supply has failed to meet demand. As a result, approximately 57% of Hayward renters experience a cost burden – they spend over 30% of their household income on rent. Of the 46,713 housing units in Hayward, 22,237, or 47.6%, are rental units. Of the 22,237 rental units, approximately 14,941, or 67%, are covered under the Residential Rent Stabilization Ordinance. Of the 14,941 rental units, 9,506 are subject to the rent-increase limitations because 5,435 single family homes are exempt under state law.

To date, the City has received 7,918 applications for the decontrol of rent controlled units. The City estimates that only 1,000 to 1,600 units continue to be rent stabilized under the ordinance. While low income renters are the most impacted by rising rents and lack of available rental housing, all Hayward renters are experiencing the effects of a tight rental market.

### ***Moratorium on Vacancy Decontrol***

On May 29, 2018 City Council enacted an 18-month moratorium on the vacancy decontrol provisions of the Ordinance. During the moratorium period, City staff were requested to conduct a thorough review of the vacancy decontrol process under the Ordinance and make better informed proposals without risking the loss of additional units due to an improvement value threshold that the City Council believed was too low.

### ***Purpose of This Study***

City leaders sought input on the five issues below relative to the vacancy decontrol provisions.

- 1. City's Role.** Regarding vacancy decontrol applications, the City's role was interpreted to be limited to the collection and archiving of decontrol applications. Has the City's role been clearly communicated to stakeholders via correspondence and application forms and reflected in arbitrator's decisions? If not, what are the implications?
- 2. Compliance with Ordinance Provisions.** Since the applications have not been reviewed for compliance with the ordinance upon receipt, there are questions about the nature, magnitude, and implications of the compliance issues with vacancy decontrol applications that have been filed with the City.
- 3. Status of Decontrolled Units.** Based on the provisions in the current ordinance, can a definitive answer regarding the status of a unit as decontrolled be provided? If not, are there changes to the

ordinance that could provide clarity to interested stakeholders without violating the rights of other stakeholders?

4. **Achieving the Purposes of the Ordinance.** Based on the purpose of the ordinance, does the vacancy decontrol section achieve any of the stated purposes? If not, would an increase in the vacancy decontrol improvement value address this? If so, what is the appropriate amount?
5. **Ordinance/Process Improvements.** During our review of the areas above, what changes would improve the effectiveness or clarity of the ordinance or processes?

## Project Approach

Management Partners gathered and analyzed information using a variety of means. While reviewing and analyzing data and documents, our project team relied on our experience in working with other jurisdictions in California and our knowledge of practices used by other California cities in implementing rent stabilization ordinances. We used the following techniques to gather information:

- Conducted interviews with City and Housing Division staff and consultants that serve in the role of mediator;
- Reviewed and analyzed a variety of data and documents provided by the City and the Housing Division;
- Performed a detailed review of randomly selected vacancy decontrol applications; and
- Conducted research on cities in California that have implemented and have a track record administering rent stabilization ordinances. Following are the nine agencies were researched for this project.
  - Alameda
  - Berkeley
  - East Palo Alto
  - Los Angeles
  - Oakland
  - San Francisco
  - San Jose
  - Santa Monica
  - West Hollywood

Each of these techniques is described in more detail below.

### **Interviews**

An important component of this study was obtaining input about the vacancy decontrol program from a variety of constituencies. We conducted interviews with the following:

- Deputy City Manager overseeing the Housing Division;

- Housing Division Manager;
- Housing Division application intake technician;
- Deputy City Attorney involved in administration of the Ordinance;
- Staff from the City’s Building, Planning and Code Enforcement Divisions, including a senior planner, building inspector, code compliance senior secretary and code compliance manager; and
- Conflict Resolution Specialist with Project Sentinel, the City’s chosen third-party mediator.

### **Review and Analysis of Data and Documents**

Management Partners’ team members reviewed a variety of documents and data to inform our observations and recommendations. We reviewed Ordinance #16-19, the City’s Residential Rent Stabilization Ordinance and its various provisions, focusing on the vacancy decontrol provisions in Section 8 of the ordinance.

To better understand how the City has been administering the ordinance since it went into effect, we reviewed the following additional information.

- Administrative policies, procedures and application forms related to vacancy decontrol.
- Hayward rental housing data, including
  - Total residential units in the City,
  - Rental properties originally subject to the ordinance, and
  - Rental properties that have filed for decontrol.
- Publicly available information, forms, and descriptions of processes on the City’s Residential Rent Stabilization program ([www.hayward-ca.gov/your-government/programs/residential-rent-stabilization](http://www.hayward-ca.gov/your-government/programs/residential-rent-stabilization)) and the Housing Division ([www.hayward-ca.gov/your-government/departments/housing-division](http://www.hayward-ca.gov/your-government/departments/housing-division)) websites.

### **Review of Vacancy Decontrol Applications**

We reviewed and tested a sample of 30 decontrol applications. In selecting our sample from the population of decontrol applications, we attempted to randomly select 30 applications as follows:

- A total of 15 items that were subject to appeal and/or arbitration proceedings from January 1, 2017 to December 31, 2018 to assess the review process leading to the arbitrator’s decisions and the communication of those results to the affected parties; and



- A total of 15 items randomly selected from the entire population of decontrol applications from the original adoption of the ordinance to date.

There were insufficient items in the population of applications that were subject to appeal in the 2017 and 2018 timeframe, so we expanded that window to include items dating back to 2010. Otherwise, a total of 30 items was selected as indicated above.

Our testing procedures included reviewing documentation within the applications selected for testing, evaluating their completeness and compliance with the ordinance and any administrative policies and procedures in place that impact the processing of decontrol applications. We also attempted to determine how the City has communicated its role to stakeholders via correspondence and application forms.

### **Research on Rent Stabilization Ordinances in Other Cities**

Peer comparisons provide a perspective to help understand how rent stabilization ordinances have been implemented in other jurisdictions. Over the past two years Management Partners has conducted rent stabilization program reviews for several other agencies. While not directly within our scope, we have included this data set because it may be helpful to City leaders to assess how to address vacancy decontrol.

Our team members reviewed publicly available information on each of the peer cities' rent stabilization programs, including information about allowable rent increases, relocation benefits, just-cause and government-ordered eviction provisions, review processes for resolving rent disputes, and any provisions related to decontrol of units when properties become vacant. As necessary, we reached out to staff from peer cities to learn more about their programs.

## Research on Rent Stabilization Ordinances in California

### ***Rent Stabilization and Tenant Protection Provisions in California***

This report uses the term “rent stabilization” rather than “rent control” to refer to local rent regulations that can be enacted in California under limits imposed by state law. Rent control refers to a form of rent increase limitation used in several large east coast cities in the 1940s through 1970s, where rent increases on a limited number of rental units were essentially frozen for years. This resulted in many problems for both property owners and the cities that enacted the controls.

The key difference between rent control and rent stabilization is the use of “vacancy decontrol” in rent stabilization programs, which allows rents to float to market rates for new tenants following a voluntary vacancy by an existing tenant. Under this approach, rent controls are in place for continuing tenants but normal turnover allows rents to more closely follow the direction of the rental market. Vacancy decontrol is a key feature of the California statute that limits rent stabilization ordinances, known as the “Costa-Hawkins Act” (California Civil Code §1954.5 et seq.). In addition to vacancy de-control, the Costa-Hawkins act provides several other restrictions on local ordinances including:

- Prohibiting restrictions on rents for single family homes and condominiums; and
- Prohibiting regulation of rents on buildings constructed after February 1, 1995 or earlier dates defined in ordinances that were in place at the passage of the act.

Rent stabilization ordinances are frequently part of a larger package of tenant protections that have been enacted within a handful of California cities. These tenant protections outwardly share some common characteristics including the following.

- Limits rent increases for continuing tenants to either a flat percentage or, more commonly, to all or a portion of the regional Urban Consumer Price Index (CPI-U)

- Limits the reasons a landlord may evict a tenant so standard Civil Code procedures cannot be used to create a vacancy that allows the landlord to increase rent to market rates, thereby subverting the rent increase limits
- Requirements that landlords pay relocation assistance for the non-fault eviction of a tenant
- Protections against retaliatory behavior by the landlord when a tenant invokes their rights under the tenant protection ordinances
- Habitability requirements for rental properties
- Mechanisms to ensure continued profitability for property owners in the face of rent regulations and the need to maintain the rental properties

Despite these broad commonalities, each set of ordinances and associated regulations reflect the specific needs and political will of each city, resulting in widely different tenant protection programs. For example, the cities of Berkeley and Santa Monica started their rent regulation programs before the limits imposed by Costa-Hawkins. These cities evolved from more traditional full rent control models and now have prescriptive ordinances and regulations enacted by elected or commissioned rent boards. Frequent reporting of rents being charged, and other terms of tenancy are required from landlords and the staff supporting each rent board calculate maximum allowable rents on a unit by unit basis.

The City of San Francisco has moderately prescriptive regulations but provides almost no oversight or tracking of actual rents beyond publishing the increases allowed each year. Enforcement of the rent limits and other violations of the ordinances are done on a complaint basis only.

### ***Research Cities***

For this study, Management Partners provides comparisons between Hayward and other cities with mature rent stabilization programs. While the rent stabilization programs carry many common characteristics, no two are exactly alike. Instead, each is tailored to reflect community needs and interests. Key housing statistics for the research cities are provided in Table 1. Hayward's vacancy rate is by far the lowest of the agencies surveyed at 1.8%.

Table 1. Summary of Occupied Units and Vacancy Rates in Rent Stabilization Cities for 2018

City	Population	Total Units	Occupied Units	Vacancy Rate
Alameda	78,863	32,987	30,957	6.2%
Berkeley	121,874	50,953	47,772	6.2%
East Palo Alto	30,917	7,891	7,272	7.8%
Hayward	162,030	49,913	48,994	1.8%
Los Angeles	4,054,400	1,483,697	1,382,970	6.8%
Oakland	428,827	172,170	162,763	5.5%
San Francisco	883,963	397,083	368,186	7.3%
San Jose	1,015,316	335,164	324,285	3.2%
Santa Monica	92,416	52,441	47,472	9.5%
West Hollywood	36,723	25,833	23,603	8.8%

Source: E-5 2018 Population and Housing Estimates for Cities, Counties, and the State

Cities with similar rent stabilization programs may have vastly different local rental and housing markets. Median rents and rent burden levels are presented in Table 2. It shows Hayward’s renter annual household income is lower than the average among agencies researched, while monthly gross rents are just slightly above the average. These two factors lead to the rent burden percentage being higher than the peer averages.

Table 2. Summary of Median Income and Median Rent in Peer Rent Stabilization Cities for 2017

Cities	Renter Annual Household Income	Monthly Gross Rent	Percent of Renters Spending at Least 30% of Income on Rent
Alameda	\$70,285	\$1,607	45.4%
Berkeley	\$44,769	\$1,523	56.1%
East Palo Alto	\$51,900	\$1,613	63.3%
Hayward	\$56,791	\$1,562	55.4%
Los Angeles	\$40,368	\$1,302	60.7%
Oakland	\$44,746	\$1,255	52.8%
San Francisco	\$76,386	\$1,709	40.5%
San Jose	\$96,662	\$1,822	52.7%
Santa Monica	\$72,341	\$1,669	47.5%
West Hollywood	\$59,252	\$1,490	48.4%
<b>AVERAGE</b>	<b>\$61,857</b>	<b>\$1,554</b>	<b>51.9%</b>

Source: American Community Survey Five-Year Estimates

Table 3 indicates the general profile of peer city housing inventories and distribution of units across housing structures for 2018.

Table 3. Summary of Housing Units in Peer Cities for 2018

City	Single Detached	Single Attached	Two to Four	Five Plus	Mobile Homes
Alameda	13,987	3,406	5,927	9,540	127
Berkeley	20,997	2,083	10,022	17,633	218
East Palo Alto	4,276	300	267	2,900	148
Hayward	25,898	4,878	2,935	13,880	2,322
Los Angeles	557,999	87,903	130,497	697,216	10,082
Oakland	74,315	6,941	32,661	57,698	555
San Francisco	65,848	59,605	81,513	189,515	602
San Jose	176,798	32,321	23,277	91,809	10,959
Santa Monica	9,734	1,832	5,291	35,380	204
West Hollywood	2,271	703	2,336	20,478	45

Source: E-5 2018 Population and Housing Estimates for Cities, Counties, and the State

Table 4 summarizes the rent regulations currently in place in the peer cities. The cities with longer-term programs can have complicated rent adjustment histories as ordinances or regulations were adjusted in response to court decisions or changes in legislation, including the enactment of the Costa-Hawkins Act. All research cities other than Alameda allow rent adjustments based on changes in the Consumer Price Index (CPI). CPI throughout California has averaged around 3% over the past five years.

Alameda, San Jose and Hayward are the only agencies among those researched that set a fixed percentage to guide allowable rent increases. Alameda is unusual compared to the others in that it does not set an annual allowable increase. Instead, for all rent increases above 5%, landlords must file a notice with the Housing Authority and all rent increases above 5% are subject to review by their Rent Review Advisory Committee.

Table 4. Rent Regulations in Peer Cities

Agency	Annual Allowable Increase	Maximum Allowable Increase
Alameda	Rent increases above 5% are subject to Rent Review Advisory Committee review	None
Berkeley	65% of CPI-U	None
East Palo Alto	80% of CPI	10%
Hayward	5% for controlled units; subject to arbitration if over 5%	None
Los Angeles	100% of CPI-U	8%

Agency	Annual Allowable Increase	Maximum Allowable Increase
<b>Oakland</b>	100% of CPI-U	10%
<b>San Francisco</b>	60% of CPI-U	7%
<b>San Jose</b>	5%	5%
<b>Santa Monica</b>	75% of CPI-U with several special surcharges possible in certain school areas and other municipal service-related issues	None
<b>West Hollywood</b>	75% of CPI-U	10%

Attachment B provides a more detailed overview of the rental stabilization programs for each of the peer cities.

### ***Individual Rent Increases and Vacancy Decontrol Provisions***

An important element found in each of the peer agency programs is a fair return on investment regulation, or the ability to make individual rent adjustments based on costs that are beyond control of the landlord or are otherwise needed to maintain profitability. Most programs have provisions to help landlords who have been charging very low rents for extended periods of time.

Hayward’s approach to allowing units to be permanently exempt from the rent stabilization provisions of the ordinance is unique among the agencies researched. The peer cities provide rent increase protections to ongoing tenants regardless of improvements unless the landlord can provide appropriate justification for larger rent increases as described below. All rents can be reset to market rate by the landlord upon voluntary vacancy under state law.

Pass-throughs for the costs of major property repairs when needed are defined in the program regulations for each of the research cities. All programs have slightly different capital improvement pass-through policies intended to support ongoing habitability of rental units or to encourage safety improvements to properties. For example, the cities of Santa Monica and San Francisco have specific incentives built into their capital improvement policies for making earthquake safety improvements.

What constitutes a capital improvement varies among the peer cities differs. Some allow replacement costs for specific housing amenities, such as laundry equipment, to be passed through. In such cases, a standard lifespan is assigned, over which the cost of new appliances may be prorated. In other cases, they may include costs for standard elements of the buildings such as roofs and parking lot pavement that are passed through to tenants, while others assume they are core business costs associated

with providing rental housing that must be reflected in the base rent. Those latter cities may allow the cost of new tenant amenities and improvements the city wishes to incentivize to be passed through, but not basic features of the rental property.

Other pass-through cost allowances include increases in property taxes due to the passage of bond measures or special taxes. Utility cost increases are frequently allowed where there are no separate meters. All programs allow 50% of the fees for the rent stabilization program to be passed on to the tenants on a monthly basis.

Los Angeles offers some unique relief to individual landlords (“Mom and Pop” landlords) in reduced relocation payments required for certain reasons such as converting a rental unit to occupancy by the owners or certain close family members. To qualify, landlords must own no more than four rental units and an additional single-family home in Los Angeles County.

### ***Just-Cause for Eviction***

State law allows a landlord to terminate a tenancy without cause at the end of a lease or other tenancy term by giving the tenant a 30- or 60-day notice. A just-cause for eviction ordinance retains the State’s noticing timelines, but also requires a landlord to provide written cause for the termination and evidence supporting the termination action. Typically, “just-cause” ordinances provide a limited range of allowable causes for eviction. One of the primary impacts of these programs is a shift in the burden of proof for an eviction from the tenant to the landlord, because failure to prove one of the allowable causes is an affirmative defense a tenant may use to contest the eviction.

Just-cause for eviction rules are often part of a strong rent regulation ordinance designed to protect tenants from a landlord’s ability to evict without cause under civil procedures to create vacancies to gain potentially significant rent increases pursuant to the Costa-Hawkins Act. However, just-cause ordinances can also become problematic for a landlord seeking to evict a tenant for reasons other than to increase the rent. Because legitimately evicted tenants may use the appeals processes to delay the eviction, many landlords believe just-cause ordinances make it more difficult to evict bad tenants.

While typically paired with rent control or stabilization, a just-cause ordinance can also be a stand-alone ordinance designed to protect tenants from unilateral landlord eviction decisions. They can apply to most tenants as well as to specific tenants, such as to tenants of rent stabilized

units only. For example, the just-cause sections of ordinances for Berkeley apply to the rent-controlled units as well as almost all other rental units.



## Analysis

Management Partners analyzed five specific areas as part of this project, and we have organized our analysis into the following components.

- **Assessment of the vacancy decontrol process.** An overview of the process and whether it is achieving the objectives of the ordinance.
- **Review of vacancy decontrol applications.** A detailed review of 30 applications randomly selected for review to determine adherence to the provisions of the ordinance.
- **City's role in the vacancy decontrol process.** Observations regarding how the City has historically viewed its role and reflections on what the City's proper role should be.
- **Evaluation of the improvement threshold.** A review of the existing improvement threshold's in terms of the definition of improvements and their values.
- **Other matters.** Other observations in our review of the ordinance and its impact on driving housing affordability and rent stabilization in Hayward.

### ***Assessment of the Vacancy Decontrol Process***

#### **Overview of the Process**

The current vacancy decontrol process is simple and inexpensive, but it is difficult for tenants and landlords to get and maintain certainty regarding the decontrol status of rental units. Section 8(a) of the Ordinance specifies that for a unit to be decontrolled from the City's rent control provisions, it must meet the following requirements:

1. The unit must be voluntarily vacated by the tenant;
2. The landlord must make specified improvements to the unit in amounts ranging from \$1,566.43 to \$3,132.86 depending on unit size;
3. The landlord obtains written certification from the City building official that the rental unit complies with the City's Housing Code and building security requirements; and

4. The landlord files a written document with the rent review officer within 30 days following subsequent rental of the unit that it has been decontrolled.

It is relatively simple for a landlord to file for rent decontrol once their unit has voluntarily been vacated. As a result, most rental units have been decontrolled over the last 36 years since the ordinance was introduced. The difficulty comes when the landlord (especially in the case of new property owners) or the tenant want City staff to confirm whether a unit has been decontrolled. Currently, they cannot easily get that confirmation, and typically go through a time-consuming arbitration process. City staff are currently updating the database, which should provide better transparency when this is done. See further discussion and recommendations about this matter in the section entitled the *City's Role in the Vacancy Decontrol Process* below.

### **Recent Transitions in Administration**

The recent transition of the vacancy decontrol application process and related disputes from the City Attorney's Office to the Housing Division is appropriate and should be maintained.

The City Attorney's Office had historically overseen the decontrol process, especially as it relates to disputes between landlords and tenants. In Fall 2017, the City transitioned the process from application to dispute resolution to the Housing Division. The City Attorney's Office is still involved in assisting in legal disputes, however day-to-day administration of the ordinance rightly belongs in the Housing Division.

### **Substantiation of Improvements**

Section 8(a)(2) requires the landlord to make improvements to the unit prior to renting it to a subsequent tenant upon decontrol. The ordinance is silent, however, with respect to the requirement that documentation in the form of receipts be provided to demonstrate that the monies have been spent in accordance with the ordinance's provisions.

We understand that the City's code enforcement officer is now requiring receipts to be provided; however, that was not the case in prior years. If the City maintains the vacancy decontrol ordinance provisions, the ordinance should be updated to reflect that substantiation is required for the City to verify that the improvement thresholds have been met. In some cases, property owners may want to provide quotes from contractors of the work proposed, however quotes should not be accepted as verification that the improvements were implemented. The best form

of substantiation is receipts that indicate the amounts were paid to the contractor by the property owner.

**Recommendation 1. Update Section 8(a)(1) of the Residential Rent Stabilization Ordinance to require that landlords provide receipts to substantiate that the improvements have been made and that the dollar thresholds have been met.**

**Recommendation 2. Update vacancy decontrol application forms to indicate requirements for receipts to accompany the application before the unit will be decontrolled.**

### **Substantiation of Voluntary Vacancy**

As indicated earlier, the ordinance indicates that the vacancy decontrol provisions only apply if a unit was vacated voluntarily. However, the ordinance is silent regarding the documentation required to allow City staff or the arbitrator to determine if the housing unit was vacated voluntarily. Staff rely on the application affidavit by the property owner that it met this (and other) requirements.

Property owners should be required to provide documentation to substantiate the voluntary vacancy of the rental unit before it is decontrolled. This could be in the form of written notice and/or communication between the landlord and prior tenant that the unit was vacated voluntarily. This information would need to be attached to the application to proceed.

**Recommendation 3. Require written documentation to accompany the vacancy decontrol application that supports the property owners' assertion that the rental unit was vacated voluntarily by the prior tenant.**

### **Cost Recovery of the Rent Stabilization Program**

Section 18 of the ordinance exacts a fee on property owners for the administration of the rent stabilization program. This fee is currently set at \$3.50 per unit and is based on expenditures incurred over two years prior. There has not been a cost recovery/fee study conducted in recent years to determine if the City is covering its future anticipated costs.

An updated cost recovery study would allow the true costs of administering the rent stabilization program. This would provide City Council with the data to establish a cost recovery policy. We believe the

City should establish a policy that seeks full cost recovery for the rent stabilization program from property owners.

**Recommendation 4. Conduct a cost recovery/fee study of the rent stabilization administrative fees charged to property owners and establish a policy that the fees will achieve full cost recovery.**

### ***Review of Vacancy Decontrol Applications***

#### **Overall Compliance with Ordinance Provisions**

As mentioned previously, Management Partners reviewed the decontrol applications of 30 rental units including 15 units where the decontrolled status was subsequently arbitrated. The units selected for testing and the results of our review are summarized in Table 5 below.

Table 5. Vacancy Decontrol Applications Selected for Testing

Street Number	Street Name	Unit	Application Date	Upgrades Done	Amount of Improvement	Appeal Date	Decision
26903	Huntwood Avenue	D	11/4/1999	No data - app only provided, date signed by applicant 12/17/87, City Attorney date stamp 11/4/99	Not provided	4/18/2017	Improperly decontrolled - rent restricted
250	West Jackson Street	49	8/28/1987	Carpets	\$759.50	9/28/2017	Decontrolled
250	West Jackson Street	29	8/10/1987	Refrigerator, Drapes, Carpets	\$812.63	10/18/2017	Decontrolled
250	West Jackson Street	31	5/8/1987	Cabinet Refinish, Drapes, Smoke Det	\$376.92	10/18/2017	Decontrolled
250	West Jackson Street	13	5/27/1986	Carpet, Refrigerator, Kitchen and Bath floors	\$1,219.90	10/18/2017	Decontrolled
250	West Jackson Street	45	8/23/1985	Refrigerator, Garbage Disposal	\$585.14	10/18/2017	Decontrolled
250	West Jackson Street	11	4/23/1998	Carpet, Range hood, Bath floor, Closet doors, Plumbing	\$679.00	10/18/2017	Decontrolled
250	West Jackson Street	27	8/23/1985	New carpet	\$461.00	10/18/2017	Decontrolled
21803	Thelma Street	5	9/11/1986	Bath fixtures, stove, refer, carpets, drapes	\$2,720.00	3/12/2018	Improperly noticed - decontrolled after correcting deficiency
1365	D Street	47	7/5/1989	No data - app only provided	Not provided	6/4/2018	Unit 47 was not properly decontrolled. The unit remains subject to the provisions of the Ordinance.
1365	D Street	7	5/8/1987	Drapes, floor	\$480.00	8/2/2018	Improperly noticed - decontrolled after correcting deficiency

Street Number	Street Name	Unit	Application Date	Upgrades Done	Amount of Improvement	Appeal Date	Decision
25538	Del Mar Avenue	7	7/16/1987	Carpet, Sink, Faucets, Tub, Smoke Det	\$1,482.00	9/9/2018	Improperly noticed - decontrolled after correcting deficiency
25538	Del Mar Avenue	2	5/28/1987	Carpet, kitchen sink, shower/bath floor tiles, paint, windows	\$1,962.52	9/13/2018	Improperly noticed - decontrolled after correcting deficiency
27069	Belvedere Court	1	1/14/1988	Carpet and pad, Drapes	\$1,273.96	11/16/2018	Improperly noticed - decontrolled after correcting deficiency.
25538	Del Mar Avenue	6	4/4/1989	Carpet, tile, locks, paint, Refrigerator, screens	\$2,009.70	N/A	Improperly noticed - decontrolled after correcting deficiency
25013	Whitman Street	9S	7/22/1985	Paint, carpet, drapes, "Dinette" fixture: bath sink	\$1,543.80	N/A	N/A
2527	Kelly Street	11	12/31/1985	Carpet, drapes, paint	\$1,061.95	N/A	N/A
25190	Cypress Avenue	324	1/3/1986	Refrigerator	\$300.00	N/A	N/A
24952	Muir Street	N/A	4/4/1986	Paint, drapes, carpets, flooring, front door	\$1,784.00	N/A	N/A
27920	Manon Avenue	7	4/28/1986	Vinyl, Refrigerator, heater, drapes	\$2,220.50	N/A	N/A
25190	Cypress Avenue	220	10/3/1986	Microwave	\$250.00	N/A	N/A
1137	Walpert Street	110	12/2/1987	Drapes	\$223.65	N/A	N/A
781	Fletcher Lane	219	10/5/1988	Carpet	\$875.00	N/A	N/A
27500	Tampa Avenue	100	11/2/1989	Paint, Refrigerator, light fixtures	\$885.00	N/A	N/A
822	W. A Street	114	11/1/1993	Paint, cabinet stain, drapes, refrigerator, kitchen sink	\$1,282.41	N/A	N/A
1180	E Street	501	5/1/1995	Carpets, blinds	\$1,115.00	N/A	N/A
22264	South Garden Avenue	204	3/20/2002	Carpet, stove, Refrigerator	\$1,467.03	N/A	N/A
339	Industrial Parkway	2	5/8/2002	Range	\$489.22	N/A	N/A

Street Number	Street Name	Unit	Application Date	Upgrades Done	Amount of Improvement	Appeal Date	Decision
<b>22313</b>	South Garden Avenue	N/A	8/11/2016	Carpet, stove, Refrigerator	\$1,467.03	N/A	N/A
<b>816</b>	W. A Street	9	5/17/2017	Not in the file. Letter by Deputy City Attorney to the landlord refers to information provided by the landlord but only the letter is on file.	Unknown	N/A	N/A

In general, the decontrol and arbitration processes were consistently applied and in compliance with the ordinance. Of the 15 units that were arbitrated, two were ruled as improperly decontrolled with rent increases disallowed by the arbitrator due to a problem with the applications and subsequent tenant notifications. In both cases over 18 years had passed between the date of the application and final decision. An additional six units had rent increases that were ruled as not in compliance with the ordinance because the tenants were not properly noticed as required by the ordinance. Those rent increases were authorized by the arbitrator once the landlord properly complied with the noticing requirements.

Records of several, but not all, of the units reviewed included letters from property managers, owners, or their attorneys indicating the housing unit had completed the decontrol process and declaring that the landlords consider the unit to be decontrolled. Noticing is required by the landlord to subsequent tenants under the ordinance, but there is not an expressed requirement that a copy of such notice be provided to City staff.

### **Tenant Noticing Requirements**

The landlord is required to provide the new tenant who moves in after decontrol with information that their unit was decontrolled. Landlords generally only notice the first tenant after decontrol. Future tenants often do not know whether their unit was decontrolled when they move in and can be surprised when they receive a large rent increase.

Based on our review of the application files, tenant noticing requirements of the ordinance are not being met by property managers and landlords. The judgements in six of the 15 cases in arbitration required the landlords to provide proper notification of the tenants prior to implementing a rent increase of more than 5%. Cities with active rent control programs are engaged in frequent outreach and education programs to ensure compliance with the ordinance, particularly noticing requirements. Effective outreach programs provide more effective compliance with the rent stabilization ordinances and ensure tenants know their rights under the statutes.

The arbitrators had been allowing rent increases following correction of inadequate noticing. However, advance notices are generally required by the peers to ensure tenants are aware of their rights and responsibilities at the time they begin their tenancy. This is intended to reduce subsequent disputes and abuses. A penalty fine or delay of rent increase for not complying with the noticing requirements would be an appropriate enforcement aid. Staff may be directed to develop forms and information brochures to facilitate compliance.



**Recommendation 5. Renew outreach efforts to inform current property managers and owners of their responsibilities to notify tenants of the notification requirements of the ordinance.**

**Recommendation 6. Develop a fine or penalty for failing to provide proper noticing of tenant rights at the beginning of tenancy.**

This lack of noticing also creates problems for landlords. Landlords sometimes come to arbitration thinking their unit is decontrolled based on old paperwork from the city, but they do not have a record that they told the current tenant that their unit was decontrolled. The arbitrator will often rule that the unit is not decontrolled because of this lack of noticing of the current tenant.

This situation needs to be rectified by requiring landlords to provide all future tenants with notice regarding a unit's status relative to the vacancy decontrol provisions, and the City needs to ensure that proper noticing is given to those tenants by requiring documentation from the landlord.

**Recommendation 7. Require landlords to notify future tenants that their unit is decontrolled, with copies provided to the City.**

## ***City's Role in the Vacancy Decontrol Process***

### **Recordkeeper Rather than Administrator**

The City's role in the vacancy decontrol process is not specifically addressed in the ordinance. This ambiguity has led City staff historically to interpret their role as primarily being one of recordkeeper to ensure property owners file the necessary applications and get the required inspections to be compliant with the provisions of the ordinance. The City has not audited decontrol applications, nor up until approximately two years ago did it require that property owners file receipts for improvements made to properties. No actions were taken by City staff to officially notice property owners or tenants that their properties were decontrolled.

The City's view of its role has led to a hands-off approach in offering any form of positive statement to applicant property managers or owners on compliance or non-compliance of the application with the ordinance. At time, this has resulted in arbitrations many years after the application process.

This ambiguity about the decontrol status of units was mentioned by many interviewees as a major issue. There is no publicly available list of units determined to be decontrolled. City staff are currently preparing a database of decontrolled units that have been documented, which will help in future questions regarding a unit's status.

Currently, tenants and landlords must use arbitration to find out if a unit is decontrolled. They must petition and have an arbitrator review the status of a rental unit to get confirmation of decontrol status. Requiring individual dispute resolution to determine a unit's decontrol status is frustrating, time consuming and expensive for tenants and landlords. For the benefit of both tenants and landlords, there needs to be a simpler, clear and transparent process for a landlord or tenant to get a definitive answer as to the decontrol status of their unit.

We believe City staff should issue an administrative decision on whether a unit is decontrolled and should complete and publish the database of decontrolled units. Requiring an arbitrator to make that determination should be discontinued. However, appeals of decontrolled status to an arbitrator should continue.

**Recommendation 8. Establish rules and processes for the rent review officer to issue a city administrative decision on whether a unit is decontrolled following review of the decontrol application.**

**Recommendation 9. Complete and publish the database of decontrolled units on the City's Housing Division website and keep it updated.**

### **Clarify Recordkeeping Responsibilities with Arbitrator**

In several of the arbitrator decisions reviewed, the arbitrator referred to documents that were not in the record packages that had material bearing on the arbitrator's decision. One of the record packages consisted solely of a letter from the City Attorney's Office to a property owner indicating the City could not dispute the owner's notion that most units in the complex were decontrolled given the documents provided by the landlord. The documents were not on file.

Staff members report that the documents provided in arbitration are maintained by the City's arbitration contractor. Given the decades-long history between decontrol applications and subsequent arbitrations, the City record packets should include all documents related to the decontrol and the arbitrations.

Management Partners does not advise assigning records management to the contractor since such contractors may not be used consistently over time. It is a best practice for the City to maintain the long-term records when such records are significant to the interests of its residents and businesses.

**Recommendation 10. Assign full recordkeeping responsibility for rent stabilization and decontrol applications, including arbitration decisions, to the City.**

**Recommendation 11. Obtain and retain copies of all supporting documentation and final determinations by the arbitrator for each property for which they have been assigned for review and decision.**

### **Public Information Regarding Vacancy Decontrol and the Arbitration Process**

The current information about decontrol on the City's website is in several different places and is quite general. The website should help both landlords and tenants determine the decontrol status of their unit. For example, it should inform landlords of the questions they should ask about decontrol status before they buy rental units in Hayward.

The website too frequently asks people to contact the Rent Review Office when links could be created to lead to more detailed, helpful information. Updated, comprehensive and centralized information will help tenants and landlords understand their rights and responsibilities. Detailed information should be provided for both parties about the questions they should ask before they lease or buy rental units in Hayward.

**Recommendation 12. Enhance the online presence regarding rent stabilization on the City's website with more comprehensive, updated and easy-to-understand information in one location.**

Our interviews with staff and Project Sentinel, our review of arbitration records, and our review of the City's website suggest that most tenants do not know about the arbitration process. Given the lack of reliable information and noticing on whether a unit has been decontrolled, tenants need to understand how they can confirm the status of their unit.

Tenants often do not know that they can petition and have an arbitrator review the decontrol status of their unit. When tenants do petition, it is a more efficient arbitration process if tenants in a rental complex consolidate petitions. Their decontrol history is frequently similar.

Currently, Project Sentinel, who manages the arbitration process, is not allowed to inform other tenants in a rental complex when a tenant petition is filed by one or more units in their complex. This results in some tenants in a complex having large rent increases voided because the arbitrator found their units were not decontrolled and other tenants with similar histories receiving large increases.

We have several recommendations in this area that will improve the ability for tenants to understand their rights relative to the rent stabilization ordinance and its provisions concerning a unit's decontrolled status.

**Recommendation 13. Develop standard language required in notices from landlords to tenants about their right to petition and have an arbitrator review their unit's vacancy decontrol status.**

**Recommendation 14. Require landlords to notice new tenants at the time of lease execution based on the updated noticing requirements.**

**Recommendation 15. Allow the arbitrator to notice all tenants in a rental complex upon completion of an arbitration in the same complex when the arbitrator believes that other units may have a similar history of the property's decontrol status.**

**Recommendation 16. Update the City's website with information regarding the tenant's ability to have an arbitrator review their vacancy decontrol status and when noticing provisions change.**

### ***Evaluation of the Improvement Threshold***

#### **Low Threshold for Achieving Permanent Exemption from Rent Stabilization**

The ordinance was introduced in 1983 and established limits on rent increases. It also provided a low-cost way for a landlord to decontrol a rental unit when the unit was voluntarily vacated. Some interviewees observed that the ordinance was probably intended to become obsolete as landlords made improvements when units became vacant and the ordinance was not intended to commit to having rent-stabilized units in perpetuity. Others indicated that the ordinance was intended to encourage property owners to make sufficient improvements to their property that would justify rent increases above what was previously

being charged before a unit became voluntarily vacant. Interviewees noted the ordinance helps stabilize rents for those tenants still subject to rent control.

In our experience, cities will typically adopt limitations on rent increases for apartments occupied between roughly 1978 and 1995 (i.e., based on the provisions of the Costa-Hawkins Act). Rent increases are typically authorized without petition for additional increases based on a flat 5% to 8% allowed or when the increase is within a high percentage of the regional CPI-U up to 100% of CPI-U. Additional increases can also be granted by the regulating city program in cases where the property owner cannot maintain a reasonable profit and when the property owner makes substantial capital improvements to the rental property.

The City's ordinance is not constructed like any peers in California, so good parallel practices are not available. Certainly, the improvement threshold remains very low, defined at a level that offers minimal benefit to tenants or improvements in housing stock in exchange for permanent lifting of rent controls. The consensus among staff, arbitration representatives, and tenants is that the improvement threshold is too low.

The capital improvement programs of typical rent stabilization programs in the state can provide some ideas on determining an appropriate level. All the peer city programs allow landlords to raise rent above the controlled levels if the landlords make improvements that provide substantial new benefits to the tenants or are necessary to maintain habitability. The costs are then passed to the tenants on a pro-rata basis over a reasonable lifespan of the asset. The recommendations above focus on changes to the definitions to align the authorized improvements with the philosophies of peer cities in defining allowable capital cost pass-throughs.

As indicated earlier, a current one-bedroom apartment owner could simply purchase a modern energy-efficient refrigerator and be done with rent control on their property permanently. The question becomes what is considered a sufficient investment in rental property to justify rent control to be permanently decontrolled for a housing unit.

City leaders must consider policy interests of fairness and equity among existing property owners, protection of the remaining 1,600 rent stabilized units, and improvement to the housing inventory. We believe an increase of up to ten times existing amounts (i.e., \$15,600 for a one-bedroom unit or \$31,300 for a three-bedroom unit) can easily be justified as a substantial improvement warranting permanent exemption from the rent stabilization provisions concerning rent increases.

If the City were to lift the moratorium on vacancy decontrol, we believe it should transition to a higher improvement threshold through an increase of at least five times the current thresholds should form the basis of any improvements required. This would equate to approximately \$8,000 for a one-bedroom unit, and approximately \$16,000 for a three-bedroom unit. Such improvements at these levels would equate to a bathroom remodel, replacing/implementing hardwood floors in living spaces, energy-efficiency changes (e.g., insulation, weatherproofing, replaced heating and air conditioning units,), or three to six window replacements within the unit.

**Recommendation 17. Increase the improvement threshold a minimum of five times their current levels to align the ordinance with broader policy interests relative to housing costs and condition of remaining rental properties.**

### **Definition of Improvements**

The ordinance defines several improvements that may be included in the total and a list that describes routine improvements whose costs cannot be included in the total to support decontrol of the unit. Most of the capital improvement allowances in other cities' rent stabilization programs describe such a division in allowable and unallowable expenses.

There are several weaknesses in the City's definitions relative to other ordinances. Section 8(f)(1)(x) allows the cost of unscheduled painting of all painted surfaces to make the unit rentable. Section 8(f)(2)(vi) prohibits "Painting interior walls." There is no definition of "unscheduled painting" in the ordinance.

Almost every application reviewed by Management Partners included painting in justification of decontrol with no information about whether the painting was scheduled or unscheduled. Regardless, most capital improvement policies in peer cities disallow all painting, which is seen as a routine maintenance activity that is to be expected and included in the income and expense structure of a rental business. Even if other routine maintenance items are to be allowed, painting should be removed from authorized list of improvements to avoid confusion.

**Recommendation 18. Modify the ordinance and remove painting from the list of authorized expenses under Section 8(f)(1).**

In addition to the conflicts in painting, several other routine maintenance items are assumed to part of the rental business cost structure under peer rent stabilizations including floor material replacement and maintenance, drapes, and wall coverings. In addition to painting, these are the most common expenses claimed in the records reviewed. All such maintenance has a limited lifetime but are used support a permanent exemption from rent stabilization. It is certain that units repainted or had floors replaced in the 1980s to 1990s have long since required such work to be redone several times. It is not clear that any long-term habitability goals can be met with such incentives.

**Recommendation 19. Define the items included in Section 8(f)(1)(iii-iv) as routine maintenance to encourage improvements that provides long term benefits on habitability.**

Section 8(f)(1)(ix) defines remodeling costs as allowable. Remodeling rooms, walls, closets or ceilings are allowed “to improve the living space” of the unit. There is no definition of what such improvements must accomplish “to improve the living space.” Rent stabilization programs that allow pass-through of capital costs often require any such improvements add a new housing service. Window replacements often must be more energy efficient. All such improvements typically require permits. Although the routine building ordinances require such permits, adding the requirement to the ordinance would aid in enforcement.

In addition, Building Division staff commented that improvements such as new kitchen or bathroom cabinets as described in Section 8(f)(1)(vi) are generally low-quality cabinets made from particle board that degenerates in a few years, leaving the physical condition of the kitchens and baths in rental units in worse conditions in just a few years. Building staff members are interested in providing their expertise to add such definitions and improve the habitability of City housing stock.

**Recommendation 20. Create an interdepartmental staff task force that includes Housing Division staff, building inspectors, and planners to develop greater specificity on the level of improvements required under Section 8(f)(1).**

## ***Other Matters***

### **Reframing Vacancy Decontrol**

The term “vacancy decontrol” in rent stabilization programs both in California and other states has a particular common use referring to landlords’ rights to set rents at market level following any voluntary

vacancy. The state's Costa-Hawkins Act reflects common usage in its requirement to allow rent decontrol following all voluntary vacancies.

It may be more accurate to entitle the City's decontrol mechanism as "improvement decontrol" to avoid confusion between common usage, state mandates, and the decontrol mechanism to the City's Ordinance. This will properly set in landlord, tenants, City staff, and other stakeholder's minds the intent of this section of the Ordinance.

**Recommendation 21. Modify the title of Section 8 in the City's ordinance as *improvement decontrol* to be consistent with best practices and state law.**

### **Comprehensive Housing Affordability Strategy**

The City is facing significant pressure from tenant constituencies to address affordable housing matters. The vacancy decontrol provision in the ordinance was the subject of this study, however it is but one small component in the overall set of policy choices that the City Council faces in addressing the affordable housing issue.

Housing affordability is a complex policy issue for the City and should be considered through a comprehensive approach. Such an approach would consider affordability that includes local and regional partnerships and policy setting to address the needs of both tenants and property owners in the community. We know that the City Council and staff are focused on this matter and believe that the comprehensive approach would better suit the needs of the community rather than merely adjusting the vacancy decontrol provisions of the Ordinance in a vacuum.

**Recommendation 22. Establish a comprehensive set of housing policies that equitably address affordability and the needs of tenants and property owners.**



## Conclusion

City leaders face difficult choices in balancing the needs of property owners and tenants in rental housing. The rampant increases in housing costs in the Bay Area place significant pressure on tenants to afford to live, work and play in communities such as Hayward. The City has a history of rent stabilization efforts through the ordinance enacted nearly 40 years ago. However, due to a low improvement threshold that was implemented when the vacancy decontrol section of the ordinance was introduced, it became far too easy for landlords to meet the improvement thresholds and have their units decontrolled with little long-term benefit to the community. The City now has only as many as 1,600 units that remain controlled. The City Council must decide whether remaining housing units subject to the rent control provisions of the ordinance should be maintained or if a comprehensive housing affordability strategy should be developed.

However, if the City Council wishes to maintain the vacancy decontrol provisions related to improvements made to existing rent-controlled units, we recommend several actions. These include updating the vacancy decontrol provisions by increasing the improvement threshold that would allow a landlord to decontrol its housing units, clarifying the types of improvements that would qualify for decontrol, improving the noticing requirements to ensure that landlords and tenants are clear about whether units are still subject to the rent control provisions of the Ordinance, and improving the public information available to current and prospective property owners and tenants to inform them of their rights and status of the property they wish to lease. While these modifications will improve the administration of the vacancy decontrol provisions, they will not provide long-term policy goals such as maintaining affordability or ensuring habitability of the rental inventory.

## Attachment A – List of Recommendations

- Recommendation 1. Update Section 8(a)(1) of the Residential Rent Stabilization Ordinance to require that landlords provide receipts to substantiate that the improvements have been made and that the dollar thresholds have been met.
- Recommendation 2. Update vacancy decontrol application forms to indicate requirements for receipts to accompany the application before the unit will be decontrolled.
- Recommendation 3. Require written documentation to accompany the vacancy decontrol application that supports the property owners' assertion that the rental unit was vacated voluntarily by the prior tenant.
- Recommendation 4. Conduct a cost recovery/fee study of the rent stabilization administrative fees charged to property owners and establish a policy that the fees will achieve full cost recovery.
- Recommendation 5. Renew outreach efforts to inform current property managers and owners of their responsibilities to notify tenants of the notification requirements of the ordinance.
- Recommendation 6. Develop a fine or penalty for failing to provide proper noticing of tenant rights at the beginning of tenancy.
- Recommendation 7. Require landlords to notify future tenants that their unit is decontrolled, with copies provided to the City.
- Recommendation 8. Establish rules and processes for the rent review officer to issue a city administrative decision on whether a unit is decontrolled following review of the decontrol application.
- Recommendation 9. Complete and publish the database of decontrolled units on the City's Housing Division website and keep it updated.
- Recommendation 10. Assign full recordkeeping responsibility for rent stabilization and decontrol applications, including arbitration decisions, to the City.
- Recommendation 11. Obtain and retain copies of all supporting documentation and final determinations by the arbitrator for each property for which they have been assigned for review and decision.
- Recommendation 12. Enhance the online presence regarding rent stabilization on the City's website with more comprehensive, updated and easy-to-understand information in one location.
- Recommendation 13. Develop standard language required in notices from landlords to tenants about their right to petition and have an arbitrator review their unit's vacancy decontrol status.
- Recommendation 14. Require landlords to notice new tenants at the time of lease execution based on the updated noticing requirements.
- Recommendation 15. Allow the arbitrator to notice all tenants in a rental complex upon completion of an arbitration in the same complex when the arbitrator believes that other units may have a similar history of the property's decontrol status.

Recommendation 16. Update the City’s website with information regarding the tenant’s ability to have an arbitrator review their vacancy decontrol status and when noticing provisions change.

Recommendation 17. Increase the improvement threshold a minimum of five times their current levels to align the ordinance with broader policy interests relative to housing costs and condition of remaining rental properties.

Recommendation 18. Modify the ordinance and remove painting from the list of authorized expenses under Section 8(f)(1).

Recommendation 19. Define the items included in Section 8(f)(1)(iii-iv) as routine maintenance to encourage improvements that provides long term benefits on habitability.

Recommendation 20. Create an interdepartmental staff task force that includes Housing Division staff, building inspectors, and planners to develop greater specificity on the level of improvements required under Section 8(f)(1).

Recommendation 21. Modify the title of Section 8 in the City’s ordinance as *improvement decontrol* to be consistent with best practices and state law.

Recommendation 22. Establish a comprehensive set of housing policies that equitably address affordability and the needs of tenants and property owners.

## Attachment B – Rent Stabilization Provisions of Comparative Agencies

See Attachment starting on the next page.

Data Category	Data Point	Berkeley	Santa Monica	East Palo Alto	Los Angeles	San Jose	West Hollywood	Oakland	San Francisco	Alameda
Overview of Program	Population	121,000	92,000	29,137	3,957,022	1,030,000	37,000	420,000	870,000	79,000
	Elements of Rent Stabilization Program*	Rent Stabilization, Just Cause, Anti-Retaliation, and Ellis Act	Rent Stabilization, Just Cause, Anti-Retaliation, and Ellis Act	Rent Stabilization, ARPO, and Condo Conversion. Also Fair Return and Adjustment for maintenance and repairs	Rent Stabilization, Just Cause, Anti-Retaliation, and Ellis Act	Rent Stabilization, Just Cause, Anti-Retaliation, and Ellis Act	Rent Stabilization, Just Cause, Anti-Retaliation, and Ellis Act	Rent Stabilization, Just Cause	Rent Stabilization, ARPO, and Condo Conversion. Also Fair Return and Adjustment for maintenance and repairs	Rent Stabilization, Partial Just Cause, Ellis Act, Requirement to offer Year long lease
	Authorization by Charter or Ordinance	Ordinance	Charter	City Council Ordinance for rent stabilization 1988. Just Cause by voter referendum 2010.	Ordinance	Ordinance	Ordinance	Ordinance	Ordinance	Ordinance
	Municipal provided Services	Arbitration and Mediation	Arbitration and Mediation	Arbitration and Mediation	Arbitration and Mediation	Arbitration and Mediation	Arbitration and Mediation	Arbitration and Mediation	Arbitration and Mediation	Mediation
	Annual Allowable Increase	65% of CPI	75% of CPI-U	80% of CPI up to 10% max	3-8% tied to CPI, 100% of CPI-U	5% (Interim Ordinance currently in place)	75% of CPI-U to 5.5%	100% of CPI-U with Banking cannot exceed 10%. Banked increases cannot exceed CPI-UX3	60% of CPI-U up to 7%	5% non-binding arbitration on Costa-Hawkins exempt units, binding on non-exempt
	Allowable Pass-Through	Utilities, earthquake or other major damage to property. MNOI assessment.	Local taxes, utilities where paid by landlord. Capital pass-through in many cases	Utilities and other operating expenses above base year plus increases. Capital expenses.	Capital pass through at 50%, cannot raise rent more than \$55/mo. Rehab at 100%. 10% increase for major system. "Just and reasonable" cost recovery.	Under development. Staff will be recommending operating cost and capital pass-throughs based on MNOI assessment	MNOI assessment on income minus operating costs defined in the ordinance. Well defined exclusions from consideration.	Operating costs, capital improvements.	Capital improvements and utilities.	Capital improvements (under a general rent increase petition) and utilities.
	Relocation Assistance	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes, no temporary except government ordered
	Just Cause for Eviction	Yes	Yes	Yes	Yes	Stabilized units only proposed	Yes, covers all rental units	Yes	Yes	Partial just cause. Up to 10% of the total units open to "No Cause" evictions in a month, 25% of total in a year.
	Voluntary or Mandatory Mediation	Both, 1000 consultations/month. 150 each leading to mediation and arbitration	Voluntary with all petitions prior to a hearing, also available to resolve misc. disputes		Referrals to various support agencies for miscellaneous disputes.	Arbitration and mediation by hearing officers based on the type of dispute.	Mediation appeals to Board	Mediation available for misc. disputes	Mediation, appeal to arbitration then to rent control board	Non-binding mediation less than 5% and public hearing with binding decision by RRAC, appeal to City Council
	Decision making body for dispute resolutions (rent board, hearing officer, other)	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Administrative Law Judges	Ordinance defines roles for "hearing officers" but the majority of cases are mediated by staff and decisions made by the RRAC after public hearing.
	Who rules appeals?	Rent Stabilization Board	Rent Stabilization Board	Rent Stabilization Board	Rent Stabilization Board	Courts	Rent Commission	Rent Stabilization Board	Rent Stabilization Board	City Council may make a non-binding recommendation to RRAC after review, otherwise the courts.
	Regulation of condominium conversions?	Yes. Relocation program.	Yes. Relocation program.	Yes. Relocation program.	Yes. Relocation program.	Normal development control. Relocation protections under development.	Yes. Relocation program.	Yes. Relocation program.	Yes. Relocation program.	Promoted in housing element
	Regulation (i.e., permit, public review, etc.) of the demolition of rental units?	Yes	Yes	Yes	Yes			Yes	Yes	
Budget Data	Program Budget	\$4,550,000	\$5,026,553	\$485,300	\$22,347,942	Under development.	\$1,900,000	\$2,950,000	\$6,942,409	\$1,939,248
	Funding sources (General Fund, Special Fund, Fees, Other)	Fees and grants	Fees and interest on fund balances	Fees and general fund	Rent Stabilization Fund \$9,698,533 ARRA EECBG \$93 ARRA Energy Efficiency \$8725	San Jose's program in undergoing major changes and expansion of services. Fees not yet updated.	Fees and other funds (Rent control part of larger housing dept. services)	Fees and other funds	Fees and grants	General fund, fee under development
	Fees (Controlled Units)	\$234.00	\$174.96	\$234.00	\$24.51		\$120.00	\$30.00	\$360.00	
	Fees (non-controlled units)									
	Predicted Income from Unit Fees	\$4,467,762	\$4,818,748	\$544,050	\$14,706,000	\$0	\$2,019,840	\$1,950,000	\$6,228,000	
	Who pays fees (provide exemptions as well)?	Landlord	Landlord/Tenant	Landlord/tenant	Landlord		Landlord/Tenant			Landlord
	Are pass through fees allowed?	Up to \$8/mo. increase in certain cases may be passed through. May be reimbursed by the city to low income tenants.	50%	50%	50%	Policy not yet developed	50%	50%	50%	Policy not defined in ordinance
	Number of rent stabilized Units	19,093	27,542	2,325	600,000	46,000	16,832	65,000	173,000	13,037
	Number of units subject to just cause for eviction	24,306	40,935	All rental units	All rental units	46,000	Most rental units	All rental units	Rent controlled units only	Combination of just cause on rent-controlled units and other restrictions generally

Data Category	Data Point	Berkeley	Santa Monica	East Palo Alto	Los Angeles	San Jose	West Hollywood	Oakland	San Francisco	Alameda
Workload Data	Approximate total customer interactions (drop-ins, phone calls, emails) for last year?	12,000	35,000				13,696		42,806	
	Average annual number of hearing cases	150	55				105		2,000	
	Average annual number of mediation cases	150	78				520			
	Average annual number of petitions cases	141	104				1,040		2,000	
	Section 8 Exemptions		707							
	Ellis evictions		86				706 units		2304	
	Average annual number of notices									
Database Overview	What information is collected about rent stabilized units, tenants and landlords?	Rent Registry	Rent Registry	Rent Registry	Rent Registry as of Jan 2017	Rent Registry	Unit Registry	Unit Registry	None, managed by complaint only	Unit registry
	How does program collect information**	Web and typical contact methods	Web and typical contact methods		Web mostly	Web and typical contact methods	Web and typical contact methods	Web and typical contact methods	Web and typical contact methods	
	What product is used for database?	Web Methods	Proprietary	PC Tools	3Di and Internal staff	Salesforce	Proprietary	Proprietary	Proprietary	Proprietary
	Who maintains database?	Clerical staff		Staff	Staff	Staff				
	Approximate cost to implement database				\$1,500,000	\$100,000 estimate				
	Approximate annual cost of program database maintenance	Minimal currently, but application is dated				Roughly \$35,000				
What database information is made public?	Misc. performance reports, yearly report	Misc. performance reports, yearly report		Performance goal summaries	Misc. performance reports more on broader t	Yearly program report	Misc. performance reports	Misc. performance reports	Monthly reports	
Outreach	How do you reach out to the public, landlords and tenants (i.e., direct mail, email, public meetings, media)?	Website, publications, direct assistance, public education events	Website and 5 landlord outreach events/yr.	Website, publications	Website, remote service stations, publications, educational events	Website and landlord, tenant, and general public outreach events	Website, annual outreach events, public meetings	Website, annual outreach events, mass mailings	Website, publications, educational events	Website, brochures
	*Elements include: limits on annual rent increases, limits on rent increases over multiple years, prescribed ranges for allowable rents, procedures for evictions, procedures for complying with Ellis Act, limits on condo conversions, and other.									
Staffing	<b>Positions</b>					Proposed				
	Director	1	1		1		0.33	0.15	1	
	Manager	1	2		3		1	1	2	
	Attorney	3	3	1	2	2			13	
	Other Legal	1	1	1		1			1	
	Supervisor	1	2	1	11	3	1		1	
	Housing Coordinator/Analyst/Investigator	6	7		37	9	6	4	12	
	Junior Analyst		1			1			1	
	Senior Administrative	1.75			3	1	1		1	
	Administrative	5	4		26	2	3	3	6	
	IT	1	3			1.5				
	<b>City Staff Subtotal</b>	<b>20.75</b>	<b>24</b>	<b>3</b>	<b>83</b>	<b>21.5</b>	<b>12.33</b>	<b>8.15</b>	<b>38</b>	<b>38</b>
Hearing Officers		1.9	0.1	3	13		4			