

ORDINANCE NO. 18-

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD ENACTING A MORATORIUM ON THE DECONTROL OF RENTAL UNITS PURSUANT TO SECTION 8 OF THE CITY OF HAYWARD'S RESIDENTIAL RENT STABILIZATION ORDINANCE

THE CITY COUNCIL OF THE CITY OF HAYWARD hereby ordains as follows:

SECTION 1. Findings.

A. Pursuant to Article XI, Section 7 of the California Constitution and Government Code Section 36937, the City of Hayward ("City") may make and enforce all regulations and ordinances using its police powers. Further, pursuant to the City Charter, Section 617, the Council may declare an ordinance to be necessary as an emergency measure for preserving the public peace, health and safety.

B. The City has one of the least affordable housing markets in California and the United States, which exacerbates the City's shortage of decent, safe, affordable, and sanitary rental housing.

C. Renters occupy about 47.6 percent of the City's housing stock and 57 percent of renters are cost burdened under the federal definition, meaning they spend more than 30 percent of their income on housing.

D. Through the City's Fall 2017 and Winter 2018 Community Outreach on Housing, the City received extensive public testimony about the exorbitant costs and scarcity of Rental Units.

E. Given the housing cost burden faced by many City residents, excessive rental increases threaten the public health, safety, and welfare of City residents, including seniors, those on fixed incomes, those with low and moderate-income levels, and those with other special needs to the extent that such persons may be forced to choose between paying rent and providing food, clothing, and medical care for themselves and their families.

F. Housing insecurity and excessive rent increases could result in homelessness and displacement of low-income families.

G. The City currently regulates rent increases and evictions for residential housing covered under its Residential Rent Stabilization Ordinance.

H. Of the approximately 22,237 Rental Units in Hayward, at most 14,941 units were originally covered under the City's Residential Rent Stabilization Ordinance, approximately 5,435 single family residents would be exempt from the rent increase limitations of the ordinance and only approximately 1,000 to 1,600 units remain subject to the City's regulations on rent increases.

I. Section 8 of the City's Residential Rent Stabilization Ordinance currently permits landlords, upon satisfaction of prescribed conditions, to decontrol a Rental Unit covered under the Ordinance and thereafter to increase any initial rent and any subsequent rent increase beyond the Ordinance's five percent (5%) per annum maximum.

J. The City Council finds and determines that a Moratorium on the decontrol of Rental Units pursuant to Section 8 of the City's Rent Stabilization Ordinance is necessary to protect the access of Hayward residents, particularly low-income and working people, to affordable housing in the city while the City evaluates the decontrol process.

K. Based upon the above-described facts and circumstances, and for these same reasons, the City Council finds that this ordinance is necessary as an emergency measure for preserving the public peace, health and safety, and therefore it may be introduced and adopted at the same meeting and shall take effect immediately if passed by at least five (5) affirmative votes.

L. This Ordinance prohibits Rental Units covered under the City's Residential Rent Stabilization Ordinance from being decontrolled pursuant to Section 8 of the Residential Rent Stabilization Ordinance during the Moratorium Period.

SECTION 2. Definitions.

A. City Council. The Hayward City Council.

B. Housing Services. Housing Services include, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades, and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, Utility Charges that are paid by the Landlord, refuse removal, furnishings, telephone, parking, the right to have a specified number of occupants, the right to have pets, and any other benefit, privilege, or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.

C. Initiated Improvements. Initiated Improvements include, one or more of the following three actions by a landlord prior to the effective date of this Ordinance: (1) obtained a building permit issued by the City of Hayward for improvements to a Rental Unit as required by the Hayward Municipal Code; (2) executed a contract for

improvements to a Rental Unit consistent with the amounts necessary for decontrol under Section 8(a)(2) of the Residential Rent Stabilization Ordinance; or (3) obtained receipts/documentation evidencing improvements to a Rental Unit consistent with the amounts necessary for decontrol under Section 8(a)(2) of the Residential Rent Stabilization Ordinance.

D. Landlord. An owner of record, lessor, sublessor, or any other person, entity or non-natural person who receives or is entitled to receive rent for the use and occupancy of any Rental Unit or portion thereof in the City of Hayward, and the representative, agent, or successor of such owner, lessor, sublessor, entity or non-natural person.

E. Moratorium Period. From the effective date of this Ordinance and continuing for a period of eighteen (18) months (unless extended), no housing provider shall initiate the decontrol of a Rental Unit covered under the City's Residential Rent Stabilization Ordinance.

F. Property. All Rental Units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.

G. Rent. The total consideration, including any bonus, benefit, or gratuity, demanded or received by a landlord for or in connection with the use or occupancy of a Rental Unit, or the assignment of a lease for such a unit, including housing services or subletting, but excluding any amount demanded or received by a landlord as a security deposit.

H. Rent Increase. Any additional rent demanded of or paid by a tenant for a Rental Unit including any reduction in housing services without a corresponding reduction in the amount demanded or paid for rent.

I. Rental Unit. Any residential dwelling unit, other than a mobile home unit, and all housing services provided with such unit that is located in the City of Hayward and used or occupied by the payment of rent, provided that such residential dwelling unit is one of at least five (5) residential dwelling units, whether located on the same or different parcels of land within the City, which are under common ownership. For purposes of this definition, common ownership shall be deemed to exist whenever a single individual or entity has any kind of ownership interest whether as an individual, partner, joint venture, stock owner, or in some other capacity, in five (5) or more nonmobile home residential dwelling units located within the City of Hayward and reports to the Internal Revenue Services any income received or loss of income resulting from such ownership or claims any expenses, credits, or deductions because of such ownership.

J. Voluntary Vacancy. A voluntary vacancy is any vacancy other than a vacancy that occurs when the tenancy has been terminated by the landlord by notice pursuant to California Civil Code section 1946 or has been terminated upon a change in the terms of the tenancy noticed pursuant to California Civil Code section 827, except a change

permitted by law in the amount of rent or fees.

For purposes of this subsection, the landlord's termination or nonrenewal of a contract or a recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, shall be construed as a change in the terms of the tenancy pursuant to Civil Code section 827.

An otherwise voluntary vacancy under this subsection shall be considered nonvoluntary if (i) the Rental Unit has been cited in an inspection report by the appropriate governmental agency as containing any of the conditions described in section 17920.3 of the Health and Safety Code, excluding any caused by a disaster, (ii) the citation was issued at least 60 days prior to the date of the vacancy; and (iii) the cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time.

To evidence voluntary vacancy Landlords shall provide to the City of Hayward's Housing Division a declaration by the previous tenant that the unit was voluntarily vacated or a declaration under penalty of perjury by the Landlord that the unit was voluntarily vacated, and the previous tenant was asked to sign the declaration but is unavailable or has refused to sign.

K. Tenant. A Tenant, subtenant, lessee, sublessee, or a person entitled to the use or occupancy of a Rental Unit.

SECTION 3. Imposition of Moratorium on the Decontrol of Rental Units.

A. During the Moratorium Period, no Landlord shall decontrol any Rental Unit covered under the City's Residential Rent Stabilization Ordinance. This Moratorium shall not apply to any Landlords whose tenant Voluntarily Vacated the unit and who Initiated Improvements after the Voluntary Vacancy but prior to the effective date of this Ordinance, and who submitted records evidencing the Voluntary Vacancy and Initiated Improvements to the City of Hayward's Housing Division with an application for decontrol.

B. Exemptions.

The following Rental Units are exempt from the entirety of the Moratorium established under this Ordinance:

- 1) Accommodations in any hospital, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by either an educational institution or a private organization which offers spaces in rooms for rent in conjunction with the providing of services such as meals, cleaning services and social programs;

- 2) Dwelling units in multi-family housing projects currently financed or insured by a federal, state, or local agency or receiving rent subsidy assistance therefrom if the units are subject to rent controls because of such financing, insurance, or subsidy;
- 3) Dwelling units located in a structure for which a certificate of occupancy is first issued after July 1, 1979;
- 4) Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding housing; provided that such accommodations are not occupied by the same tenant for thirty (30) or more continuous days; and
- 5) Dwelling units in a nonprofit cooperative that is owned, occupied, and controlled

C. Initial Rents. This Moratorium does not regulate the initial Rent at which a Rental Unit is offered.

D. Affirmative Defense. In any action by a Landlord to recover possession of a Rental Unit, the Tenant may raise as an affirmative defense any violation of or noncompliance with any of the provisions of this Ordinance.

E. Fair Return Determinations. This Moratorium, unless extended, is only effective for the Moratorium Period as defined herein. Given that the City's rent increase limitation under Section 3 of the City's Residential Rent Stabilization Ordinance allows for a rent increase of 5 % per annum and provides standards of review for increases that exceed 5% per annum, the City Council finds that this Moratorium does not deny any owner a fair and reasonable return on their investment.

F. Petition for Relief from Moratorium. If during this Moratorium Period a property owner believes the application of this Moratorium's limitation on the Decontrol of a Rental Unit would deprive the owner of the ability to receive a just and reasonable return on their investment, the owner may petition the City Manager for authorization to Decontrol said Rental Unit. The city manager shall establish a procedure for reviewing such petitions.

SECTION 4. Enforcement Procedures

The City, at its sole discretion, may choose to enforce the provisions of this ordinance through administrative fines and any other administrative procedure set forth in Hayward Municipal Code Chapter 1, section 1-3.00. Violations of the provisions of this ordinance may be subject to fines, or imprisonment, or both, not to exceed the limits set forth in California Government Code, section 36901. The City's decision to pursue or not

pursue enforcement of any kind shall not affect a tenant's rights to pursue civil remedies.

SECTION 5. Civil Remedies.

A Tenant may bring a civil suit in the courts of the state alleging that a Landlord has violated any of the provisions of this Ordinance or any regulations promulgated hereunder including that the Landlord has demanded, accepted, received, retained a payment or payments in excess of the maximum five percent (5%) Rent increase permitted for Rental Units covered under the City's Residential Rent Stabilization Ordinance, failed to maintain a Rental Unit in compliance with applicable health and safety and building codes, including but not limited to Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10, or decreased Housing Services. In a civil suit, a Landlord found to violate this Ordinance shall be liable to the Tenant for all actual damages, including but not limited to the damages described in this Section. A prevailing Tenant in a civil action brought to enforce this Ordinance shall be awarded reasonable attorneys' fees and costs. Additionally, upon a showing that the Landlord has acted willfully or with oppression, fraud, or malice, the Tenant shall be awarded treble damages. No administrative remedy need be exhausted prior to filing suit pursuant to this Section.

SECTION 6. Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 7. Effective Date and Expiration Date.

This ordinance shall take effect immediately following its adoption and shall continue for a period of eighteen (18) months (unless extended). The City Clerk shall publish a notice indicating the adoption of the emergency ordinance, including the title; subject matter index; the date, time, and place of its introduction and adoption, and the vote thereon, within one week after the emergency ordinance is adopted.

SECTION 8. Environmental Determination.

The City Council finds that the adoption and implementation of this Ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061 (b)(3) in that the City Council finds there is no possibility that the implementation of this Ordinance may have significant effects on the environment.

INTRODUCED at a regular meeting of the City Council of the City of Hayward,
held the ____ day of ____, 2018, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the
____ day of ____, 2018, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward