



DATE: April 18, 2019

TO: Homelessness-Housing Task Force

FROM: Deputy City Manager

SUBJECT: Provide Direction on Recommended Amendments to the Residential Rent Stabilization Ordinance, including Review of Community Input from April 6th Community Open House.

RECOMMENDATION

That the Homelessness-Housing Task Force (HHTF) provide direction on recommended amendments to the Residential Rent Stabilization Ordinance (RRSO).

SUMMARY

The purpose of this report is to solicit feedback from the HHTF regarding recommended amendments to the RRSO that have been developed based on the direction provided by the City Council at the February 19, 2019 meeting, and input provided at the Community Open House and related online surveys, including:

1. Creation of a mandatory mediation with binding arbitration program;
2. Addition of provisions to prevent income discrimination that will prevent discrimination based on receipt of housing subsidies, such as Section 8 vouchers;
3. Addition of provisions to require filing with the City rent increase notices and notices terminating tenancy; and
4. Addition of tenant retaliation protection provisions.

Elimination of the vacancy decontrol provisions in the current RRSO is still under consideration, depending on the conclusion of the report by Management Partners, which will come back to the HHTF for review and direction at a May meeting.

Based on substantial landlord opposition, concerns, and questions regarding the tenant relocation program, staff is not recommending this program at this time and would like to receive additional direction from the HHTF before finalizing a recommendation. However, staff did propose in this report for discussion purposes a description of a potential tenant relocation assistance program.

The community open housing and related online surveys resulted in feedback regarding the proposed measures. Additionally, there was one major theme that was supported by all stakeholders across all topics. Collectively, both landlords and tenants expressed the need for more information on tenant and landlord rights and responsibilities and further education on policies.

Staff will continue to work with stakeholders and the Task Force to develop proposed legislation during a May meeting and anticipate returning to City Council with proposed legislation on May 21, 2019.

BACKGROUND

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

On January 31, 2017¹, the City Council convened a work session to review housing affordability strategies and resources in Hayward and Alameda County. Subsequently, stakeholder meetings were hosted in early 2018, follow-up City Council work sessions were held on February 6, 2018², March 27, 2018³, and legislation was enacted to on May 29, 2018⁴ to place a moratorium on vacancy decontrol provisions of the RRSO to allow staff time to evaluate the ordinance without losing additional units to decontrol. On February 19, 2019⁵,

¹ January 31, 2017 Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=2947412&GUID=7B833FA7-2B44-404D-86D2-031C37926B34&Options=&Search=>

² February 6, 2018 Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=3335549&GUID=DDD8866E-BAEB-44BF-8EBB-2F716A750170&Options=&Search=>

³ March 27, 2018 Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=3458584&GUID=A516B525-DC67-41CD-A8FF-C4779E6B8FE9&Options=&Search=>

⁴ May 29, 2018 Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=3512726&GUID=CC5F9A5F-1885-4AD7-81B1-BFA7C9A88C41&Options=&Search=>

⁵ February 19, 2019 Staff Report and Attachments:

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

the City Council convened a work session that defined the parameters for an approach to amend the City of Hayward RRSO. Based on preliminary Council direction, staff has identified the following key actions:

- Develop a mandatory mediation program with binding arbitration that would be available to tenants upon rent increases greater than five percent and applicable to all pre-1979 units except single family homes and condominiums consistent with State law;
- Consider elimination of the vacancy decontrol provisions (Section 8) of the RRSO, considering recommendations from a pending report from the City's consultant, Management Partners.
- Create provisions to protect Section 8 voucher holders from discrimination;
- Require that landlords file rent increase notices and eviction notices with the City to obtain accurate data about rental housing activity;
- Explore with the HHTF retaliation provisions and a tenant relocation assistance program; and
- Extend eviction for cause protections to all residential rental properties, including single family homes and condominiums, which was enacted by Council action on March 5, 2019.

On April 6, 2019, staff hosted a Community Open House at Glad Tidings International Church on W. Tennyson Road and disseminated a related online survey for people who could not attend. The purpose of this event was to: 1) solicit public feedback on the specific proposed policy changes; and 2) provide an opportunity for the public to have an open dialogue with staff to ask questions or get more information on the proposed policies. Attachment II includes the presentation materials used at the Community Open House. Community members and industry professionals provided their feedback at the event by completing comment cards or communicating comments to staff who documented their point of view. Additionally, staff collected responses via email, by phone, and through an online survey. Attachment III provides comments received from community members and industry professionals.

DISCUSSION

The purpose of this report is to solicit feedback from the HHTF relating to detailed recommendations regarding amendments to the RRSO that have been developed based on the direction provided by the City Council at the February 19, 2019 meeting and on input provided at the Community Open House and related online surveys. Staff recommends a comprehensive amendment to the RRSO that would include:

1. Creation of a mandatory mediation with binding arbitration program;
2. Additional provisions to prevent income discrimination that will prevent discrimination based on receipt of housing subsidies, such as Section 8 vouchers;
3. Additional provisions to require filing with the City rent increase notices and notices terminating tenancy; and

4. Additional tenant retaliation protection provisions.

Additionally, this report discusses the tenant relocation program and community feedback, the next steps for the moratorium on vacancy decontrol, analysis of other recommendations from stakeholders, and a discussion of the major themes communicated by community members.

Mandatory Mediation with Binding Arbitration

City Council provided direction to create a mandatory mediation program with binding arbitration to improve communication between tenants and landlords. There was consensus amongst Council for a mediation program with binding arbitration that would be available to tenants upon rent increases greater than five percent (including all charges) and applicable to all pre-1979 units except single family homes and condominiums consistent with State law. The change will make it easier to identify units covered under the ordinance and will provide protection to approximately 9,500 units from large rent increases that could cause displacement. A threshold of 5% was recommended by staff because it represented a compromise between tenant and landlord groups. Staff also recommends improving the existing mediation/arbitration process to: 1) update the mediation/arbitration process based on current mediation standards and to improve effectiveness; and 2) clarify under what circumstances a landlord can issue a rent increase above 5%. Attachment IV provides a more detailed description of proposed changes.

Summary of Comments. Comments from the Community Open House and online survey both supported and opposed the proposal for mandatory mediation with binding arbitration. Some community members that supported the proposed measure thought the 5% rent increase was fair while others thought the 5% threshold was arbitrary and wanted further information on how the City determined this amount. There were five major themes in opposition to the proposal that included concern that the measure would be detrimental to future real estate development, that it infringed on a property owner's rights, that it punished landlords who kept their rents below market prices, that landlords would not be able to increase rents to offset rising costs, and that tenants do not understand a landlord's responsibilities and the reason for rent increases. Some of these concerns highlighted by community members are addressed by the proposed program and staff will keep these comments in mind while drafting the corresponding legislation.

Recommendation. Staff has recommended this mediation/arbitration program as a compromise between strict rent control and the escalating rents that have been making housing unaffordable to Hayward residents. Staff recommends these measures to help minimize the potential impacts of significant rent increases on renters in Hayward.

Income Discrimination Protection for recipients of rental assistance such as Section 8 Housing Choice Voucher Holders

On February 19, 2019, the City Council expressed support for prohibiting discrimination against Section 8 Housing Choice Voucher Holders. Voucher holders receive a subsidy from

the U.S. Department of Housing and Urban Development (HUD) that covers the difference between a tenant's required rental payment and the fair market rents. Federal law does not prohibit landlords from rejecting applicants that receive rental subsidies. To prevent this from occurring, local governments have enacted laws that prohibit discrimination based on the sources of income used to qualify for a housing unit. This prohibition would not impact landlords' ability to charge market rent for their units or prevent a landlord from rejecting an applicant based on other factors such as rental or credit history. It would, however, prevent a landlord from rejecting an applicant merely because of the housing choice voucher or from stating in advertisements that a tenant who receives assistance is not welcome to apply for the housing unit. Landlords who participate in the housing choice voucher program are required to sign a contract with the local housing authority and the property would be subject to annual housing quality inspection.

Recommendation. Staff recommends inclusion of provisions in the RRSO to prevent this type of income discrimination. These provisions would:

1. Define sources of income to include lawful source of income and rental assistance, homeless assistance, security deposit assistance, or housing subsidy programs including but not limited to Housing Choice Voucher Program;
2. Require that financial and income standards include all sources of income to qualify an individual for rental housing; and
3. Prevent discriminatory practices based on sources of income such as immediate dismissal of application.

Filing Rent Increase Notices and Notices of Termination of Tenancy.

On February 19, 2019, the City Council expressed support for requiring landlords to file rent increase notices and notices terminating tenancy. Requiring landlords to file notices with the City will allow the City to collect data related to rent increases and reasons for potential evictions. More data will help the City identify and address rental housing issues more effectively, as well as propose potential solutions to address these issues. Data derived from the notices may result in the City adopting new or updated policies and/or investing funds in programs to help address rental housing issues in the City that become more evident as the result of data collection and analysis.

Summary of Comments. Comments from the Community Open House and related online survey both supported and opposed the measure. Comments in support did not specify any reasoning for their support. Comments in opposition identified concerns that the policy violated private property rights, the implementation would be expensive and cause rents to increase, and it would discourage future development.

Recommendation. Staff recommends amending the RRSO and the Just Cause for Tenant Eviction Ordinance to require landlords to file notices with the City. Staff will work with the City Attorney's Office to ensure that private property rights are not violated and identify cost effective and efficient ways to file rent increase notices.

Tenant Retaliation Protections

A tenant retaliation protection policy provides tenants with legal rights if they are harassed or retaliated against by landlords and provides civil remedies to tenants, if the policy is violated. While California Law protects a tenant from retaliation by a landlord if the tenant has lawfully exercised their rights and also makes it unlawful for landlords to attempt to influence a tenant to move, local tenant retaliation protections provide more specificity regarding the types of bad business practices that are considered harassment. Additionally, tenant retaliation protection policies can set a minimum civil penalty amount and/or establish increased penalties for vulnerable populations, such as seniors or disabled persons. Penalties for other jurisdictions start at \$1,000. A tenant retaliation protection policy would specifically define harassment and provide tenants protection from bad business practices that:

- Reduce, interrupt, or withhold any services or amenities required by contract or law, or threaten to do so;
- Fail to perform repairs and maintenance required by contract or law, or threaten to do so;
- Fail to exercise due diligence in completing repairs and maintenance once undertaken; or fail to follow appropriate industry health and safety protocols;
- Disrupt, reduce, or withhold services to rental units;
- Use lies, threats, or violence to make a tenant vacate a rental unit, including threats regarding immigration status;
- Fail to accept or acknowledge receipt of a tenant's lawful rent; or refuse to cash a rent check for over 30 days unless a written receipt for payment has been provided to the tenant;
- Interfere with a tenant's right to privacy; and
- Interfere with a tenant's right to quiet use and enjoyment of a rental housing unit as that right is defined by California law.

Summary of Comments. Comments from the Community Open House and related online survey both supported and opposed the measure. Community members that expressed support of the measure also expressed concern that the identified bad business practices did not address their specific concern. Community members in opposition indicated that state law is sufficient to protect tenants from the bad business practices identified. One suggestion that requires further exploration is to include penalties for false accusations.

Recommendations. Staff recommends inclusion of provisions to address tenant retaliation and harassment to provide clarity to landlords regarding unacceptable business practices and establish defined penalties for landlords that violate the provisions. While not part of the proposed legislation, staff recommends promotion of the California Apartment Association Code of Ethics and Code for Equal Housing Opportunity to foster good relationships between tenants and landlords. The code of ethics and equal housing opportunity would be promoted on the City's website and through workshops hosted by the City.

Tenant Relocation Assistance

Under a tenant relocation assistance program, tenants would be eligible for and entitled to relocation assistance for permanent relocation due to evictions that are due to no fault of the tenant, such as removing a unit from the rental housing market, owner move-in or displacement caused by code enforcement order that determine a unit to be substandard, and temporary relocations due to unit improvements. There would be a separate criterion for permanent and temporary relocation assistance and different relocation payment standards. The assistance would be paid by the landlord to the tenant. Attachment V provides a more detailed description of proposed program; however, staff is not recommending the program at this time.

Summary of Comments. Comments from the Community Open House and related online survey both supported and opposed the measure. Tenants indicated support of the program. However, tenants raised concern that there was no enforcement mechanism to make sure that landlords followed through with the reason that justified the eviction. Some expressed concern that the proposed assistance amount was not enough due to the high cost of replacement housing and others indicated that additional time may be more beneficial than money. There was substantial opposition to this proposal from landlords. There was concern expressed that landlords should not have to be responsible for relocation assistance even for no-fault evictions, that it would penalize landlords who maintained their rents below market prices, and that the policy was one-sided. There were also suggestions to add exemptions related to natural disasters, sale of the rental unit, single family residences, landlord hardship, and units that charge less than the fair market rents.

Recommendation. Based on substantial opposition, concerns, and questions regarding the tenant relocation assistance program, staff is not recommending this program at this time and would like to receive additional feedback from the HHTF before finalizing any recommendation. For discussion purposes, a description of a potential tenant relocation assistance program is included as Attachment V. .

Moratorium on Vacancy Decontrol (Section 8 of the RRSO)

On May 29, 2018, the City Council adopted a moratorium on vacancy decontrols to provide staff time to evaluate the vacancy decontrol process while protecting units protected by the rent increase limitations of the RRSO. Under the vacancy decontrol provisions of the RRSO, a unit will no longer be subject to the rent increase limitations once a tenant voluntarily vacates the unit and the landlord makes an investment in the unit in an amount greater than the City's established improvement value (between \$1,500 and \$3,100 depending on the number of bedrooms in the unit).

Summary of Comments. Comments from the Community Open House and related online survey both supported and opposed the elimination of vacancy decontrol. Comments in opposition were concerned that property owners would be disincentivized from investing in their properties, and that elimination of these provisions was unjust to landlords that have maintained rent-controlled units all these years. There was also a proposal to maintain the vacancy decontrol provisions, but increase the decontrol threshold. Comments also indicated that the proposed elimination of Hayward's vacancy decontrol was not completely

understood. Some comments seem to indicate that community members thought the City was proposing to eliminate a property owner's right to raise the rents to market rate upon vacancy.

Return with Recommendations. On February 19, 2019, the City Council expressed support for eliminating vacancy decontrol (Section 8) from the RRSO; however, there was also support for waiting for the findings from the consultant hired to evaluate the vacancy decontrol process, which is anticipated in May 2019. Staff will make a recommendation to the HHTF on this topic after receipt of the full report from Management Partners in early May.

Analysis of Prior Stakeholder Recommendations

The landlord community has proposed solutions to mitigate concerns with housing instability and improving the quality of housing. These include:

1. Requiring extended noticing periods;
2. Suspending rent increases where there are open maintenance issues as identified by code enforcement; and
3. Requiring mandatory leases

Longer Noticing Periods. Staff has reviewed these suggestions and it has been determined that the City cannot require longer noticing periods because noticing periods are set by State law and the City does not have the authority to create a different local requirement.

Suspending Rent Increases/Code Enforcement. Staff has incorporated into the mediation/arbitration program the suggestion to suspend a rent increase, if a property has open maintenance issues as identified by code enforcement. The City does not have the authority to suspend rent increases on units not subject to the provisions of the mediation/arbitration program.

Mandatory Leases. Staff continues to research mandatory leases at application and renewal. Palo Alto requires landlords to offer one-year leases upon application and renewal. However, a written rental agreement for an extended fixed term—the “lease”—has advantages and disadvantages for both landlords and tenants. If clearly written, a lease defines the roles and responsibilities of both the tenant and the landlord. A lease provides predictable revenue for the landlord for a fixed term. It provides tenants the security of knowing what their rent will be for the term of the lease; however, rents can be increased at the end of the term which limits the security benefit. A lease provides tenants protection against unexpected termination of tenancy, particularly where there is no just cause protection; however, there may be penalties if either party needs to terminate the lease early.

Requiring a landlord to offer a one-year lease upon application and renewal may provide short term housing stability to tenants that live in units not subject to the mediation/arbitration program. Having a lease is generally a good idea especially because it identifies the roles and responsibilities of each party, which helps to resolve disputes. Staff recommends exploring provisions requiring mandatory leases to determine enforceability of such a policy and possible inclusion in the RRSO.

Additional Major Themes from the Community Open House

Across all topics, there was one major theme that was supported by various stakeholders. Collectively, both landlords and tenants expressed the need for more information on tenant and landlord rights and responsibilities and further education on the proposed policies. Specific suggestions include:

1. Provide more information on the City's website;
2. Provide educational trainings and workshops; and
3. Provide information in various language to reach a wider range of tenants and landlords.

Once amendments to the RRSO have been adopted by City Council, staff will work to create plain language information for both tenants and landlords that can be available in the office and online. These materials can be provided in multiple languages. Additionally, staff can incorporate an education program into efforts to implement rent stabilization policies.

Residential Rent Stabilization Database.

The first phase of a database to administer the RRSO is under development. The current efforts to develop a database will analyze public records to identify units that are covered by the ordinance, identify units with decontrol applications on file, and manage petition workflow. On the website, the public will have access to information about the units covered by the ordinance, summary information such as number of petitions and complaints filed, access to decontrol applications received, and access to public information. Property owners will be able to notify the City regarding changes of ownership to maintain accurate information regarding responsible parties and units covered by the ordinance. Staff anticipates that this first round of information will be available to the public later this year. Subsequently, staff will undergo a second phase and continue to refine, improve, and expand the database with information, not readily available in public records, that is obtained from and provided by property owners. Staff will provide a report regarding the database to the HHTF at the May meeting and request feedback on how else to improve and expand development of a second phase of the database.

FISCAL IMPACT

City staff is conducting a fiscal impact analysis on the budget impacts of administering and enforcing all the proposed amendments to the RRSO that resulted from the February 19, 2019 work session, including the expansion of the just cause provisions to all rental units in the City. However, costs associated with the RRSO are recovered through the Rent Review Administration Fee. Consequently, the amount of the fee will also be updated to cover these expenses and will need to increase from its current amount due to these proposed changes. The fee is paid by the landlord and half of the fee can be passed through to the tenant. Staff will provide an estimated budget for the program along with any proposed legislation.

STRATEGIC INITIATIVES

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

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

Objective 1: Centralize and expand housing services.

Objective 3: Conserve and improve the existing housing stock.

PUBLIC CONTACT

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

On April 6, 2019, staff hosted a community open house to provide information about proposed changes to the RRSO and to solicit community feedback. At least 57 people/households attended based on the sign in information. Of these, 20 identified themselves as tenants, 10 identified themselves as landlords, 7 as industry professionals, 3 as other, and the balance did not disclose the information.

NEXT STEPS

Over the next month, staff will draft legislation based on the HHTF's feedback. At the May HHTF meeting, staff will provide a description of the rent stabilization database and report on the findings from Management Partners related to vacancy decontrol. Staff will then return to the City Council with proposed legislation at the May 21, 2019 Council Meeting.

Table 1. Rent Stabilization Ordinance Amendment Timeline

| Meeting | Topic | Date |
|---------------------------------|---|--------------------------|
| Homelessness-Housing Task Force | Rent Stabilization Database Moratorium on Vacancy Decontrol Recommendations | May 2019 (TBD) (6:00 pm) |
| City Council | Proposed Rent Stabilization Legislation to Amend RRSO | May 21, 2019 (7:00 pm) |

Prepared by: Christina Morales, Housing Division Manager

Recommended by: Jennifer Ott, Deputy City Manager

Approved by:



Kelly McAdoo, City Manager