

**CITY COUNCIL MEETING  
TUESDAY, JUNE 18, 2019**

**PRESENTATIONS**

**ITEM 6 – LB 19-029**

**APPROVAL OF ROUND 1, TIER 2 COMMERCIAL  
CANNABIS PERMIT FOR ALWAYS ON TIME  
CONSULTING AND PRECISION APOTHECARY**

# **Commercial Cannabis Permit Program**

Approval of Round 1, Tier 2 Cannabis Businesses  
Always On Time Consulting & Precision Apothecary

John Stefanski, Management Analyst II  
June 18, 2019

# Recommendation

That the City Council adopt a resolution issuing a Commercial Cannabis Permit to the following cannabis companies:

Applicant Name	Proposed Business Type
Always On Time Consulting	Microbusiness
Precision Apothecary	Microbusiness

# Background

- The City adopted Cannabis Regulations in October 2017
  - Ordinance 17-13 outlined the Request for Proposal process by which the City would select cannabis businesses
- Established a four-stage Request for Proposal process
  - Proposals requested information on the applicant's:
    - Business and Operating Plan
    - Management Team Experience
    - Safety and Security Plan
    - Proposed Community Benefits
    - Product Testing and Safety Plan
    - Environmental Plan
    - Labor and Employment Practices

# Discussion

- **Summer 2018:** City Council approves 15 first round cannabis businesses.
- **January 2019:** City Council authorizes review of second tier of first round.
  - Expanded score threshold for interviews to 500.
  - 13 second tier businesses eligible.

Business Type	Score Range	Score Threshold	Advancing Applicants
Cultivation	239-798	500	1
Manufacturing	385-798	500	4
Distribution	578.5-890	500	3
Microbusiness	170-755	500	4
Delivery	349-702	500	1

# Discussion

- Second Tier Interviews took place in April 2019
  - Panel included staff from Hayward Fire, Police, and Development Services Departments, as well as City consultant ICF.
  - Of 13 Tier 2 applicants, three withdrew from consideration.

Applicant Name	Business Type	Interview	Recommendation
Baldwin Partners LLC	Distribution	No Interview	Withdrew
Hayward Industrial Operations	Distribution	No Interview	Withdrew
Doja Dash	Microbusiness	No Interview	Withdrew
BAS Research	Manufacturing	03/25/2019	Awarded
Empress Extracts	Manufacturing	03/25/2019	Awarded
Gurpreet Singh	Manufacturing	03/25/2019	Awarded
CBRA, Inc.	Delivery	03/26/2019	Awarded
Meristematic, Inc.	Cultivation	03/26/2019	Awarded
Mijosa, LLC	Distribution	03/26/2019	Awarded
Always On Time Consulting	Microbusiness	04/02/2019	Award Permit
Precision Apothecary	Microbusiness	04/02/2019	Award Permit
Cypress Ventures	Manufacturing	03/25/2019	No Permit
MDLM Consulting	Microbusiness	04/02/2019	No Permit

# Proposal Summaries (1/2)

## Precision Apothecary—Microbusiness

- *Note: Precision Apothecary is now a wholly-owned subsidiary of Juva Life, which also has a material business relationship with applicant Always on Time Consulting.*
- Applicant's stated intention is for Hayward to become the base of its overall corporate headquarters for Juva Life. Precision Apothecary (to be rebranded as "Juva Labs") would be a sub-business of Juva Life, focused on R&D related testing and refining the medical efficacy of various cannabis extractions and developing pharmacy grade products.
- Applicant has identified a 20,000 sq. ft. facility for this business at 25571 Clawiter Rd.
- Applicant's proposed community benefits activities include: participating in community cleanups, contributing to local food drives and blood drives, and providing support for Hayward organizations and charities to be recommended by the Community Service Commission.

# Proposal Summaries (2/2)

## Always on Time Consulting—Microbusiness

- *Note: Always on Time Consulting has entered into a (pending) agreement to be acquired by Juva Life, which is the parent company of applicant Precision Apothecary.*
- Always On Time Consulting proposes to focus on broader cannabis cultivation, manufacturing, distribution, and retail operations. Applicant has identified a potential site at 3363 Enterprise Ave., adjacent to the proposed Precision Apothecary facility (above), but may seek a different location.
- Applicant's proposed community benefits activities include: participating in community cleanups, contributing to local food drives and blood drives, and providing support for Hayward organizations and charities recommended by the Community Service Commission.

# Allegations against Doug Chloupek (1/2)

- On May 6, the City received an email with screenshots of Mr. Chloupek's personal, public Facebook profile.
  - Screenshots documented posts referencing cannabis operations in Hayward from 2016 through 2018.
- On May 16 the Hayward Police Department met and interviewed Mr. Chloupek at his building in Hayward
  - Found the building had no appearance of recent cannabis activity.
  - Mr. Chloupek claimed he was a consultant assisting a client with the posts and that activity took place as allowed through Prop. 215.
  - Mr. Chloupek has no prior investigations related to drug activity.

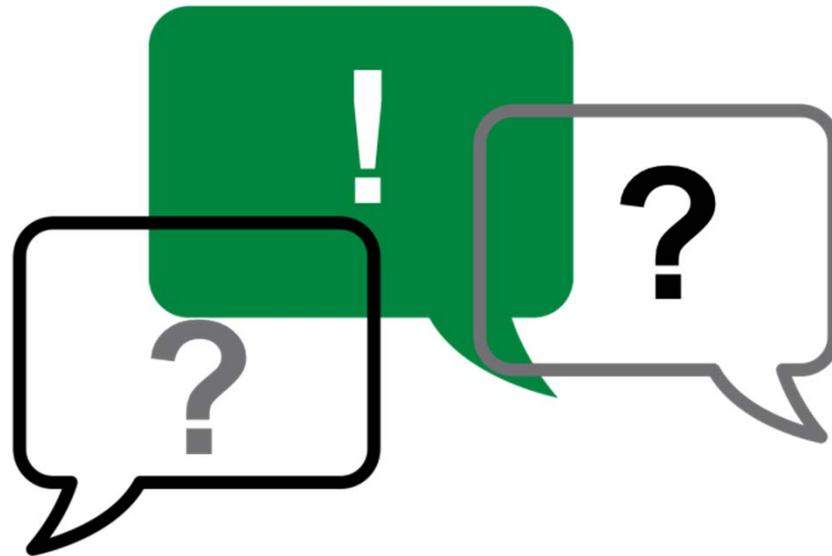
# Allegations against Doug Chloupek (2/2)

- The City Manager's Office, City Attorney's Office, and Hayward Police Department concluded there is not enough evidence to substantiate the claims made against Mr. Chloupek.
- Therefore, staff is recommending the City Council issue a Commercial Cannabis Permit to Always On Time Consulting and Precision Apothecary.

# Next Steps

- If approved, staff will process these applications and confirm that status with the State Bureau of Cannabis Control.
- Approved firms will have 180 business days to submit an application for their land use approvals.

# Questions & Comments?



**ITEM 7 – LB 19-031**

**INTRODUCTION OF AN ORDINANCE ADDING CHAPTER [X] OF THE HAYWARD MUNICIPAL CODE TO ADOPT A NEW RESIDENTIAL RENT STABILIZATION AND TENANT PROTECTION ORDINANCE TO MITIGATE DISPLACEMENT OF HAYWARD RESIDENTS, INCLUDING AN ASSOCIATED BUDGET ALLOCATION AND UPDATED RENT REVIEW FEE TO ADMINISTER THE PROGRAM, AND TO REPEAL THE EXISTING RESIDENTIAL RENT STABILIZATION ORDINANCE NO. 83-023 AND THE EMERGENCY ORDINANCE REQUIRING JUST CAUSE FOR EVICTION ORDINANCE NO. 19-04**



# Residential Rent Stabilization and Tenant Protection Ordinance (RRSO)

Christina Morales, Housing Division Manager | Tuesday, June 18, 2019

# Purpose of the New RRSO



- **Provide relief to residential tenants** by stabilizing rent increases for tenants in covered units via a mediation and arbitration program.
- **Increase tenant protections** to alleviate hardship and displacement caused by a serious housing shortage.

Balanced with provisions to:

- **Encourage investment** in new residential rental property in the City.
- **Assure landlords rental income** sufficient to cover the costs of operation.
- **Assure landlords a fair return** on their property.

# Presentation Focus

Summarize key provisions of the Residential Rent Stabilization and Tenant Protection Ordinance (RRSO).

1. Repeal existing RRSO.
2. Replace with proposed RRSO.
3. Reincorporate Just Cause provisions to create comprehensive set of housing policies.

Discuss the costs and fee revenue associated with implementation of the proposed RRSO.

# Recommendations

That the City Council:

1. Introduces the proposed Residential Rent Stabilization and Tenant Protection Ordinance (RRSO);
2. Approves an increased budget allocation to administer the RRSO and the Mobile Home Space Rent Stabilization Program to cover the cost of the expanded scope of the new RRSO; and
3. Approves an increase in the Rent Review Fee to cover the cost of administration of the Ordinances.

# Correction to Proposed Ordinance

## Revise Section 11

**Delete:** As communicated to stakeholders, delete requirement to pay annual interest on Security deposits.

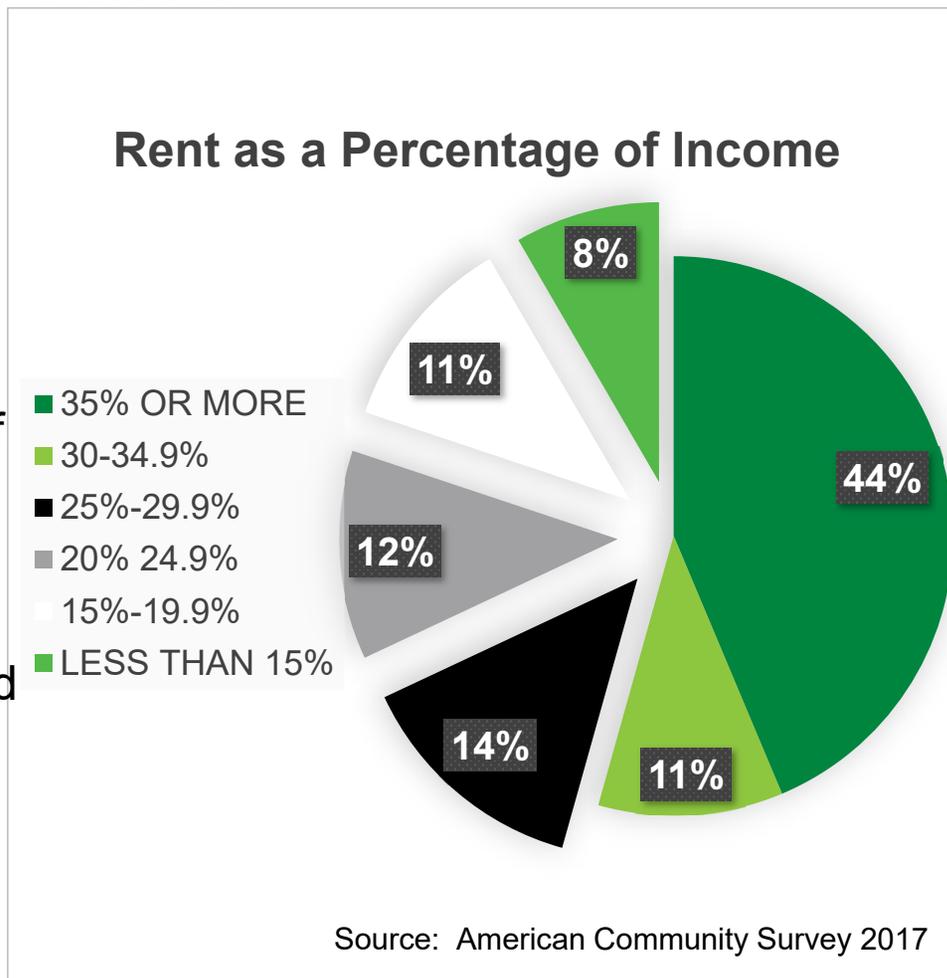
**Add:** Security Deposits shall be collected by the Landlord and administered in accordance with state law.

# Correction to Proposed Ordinance

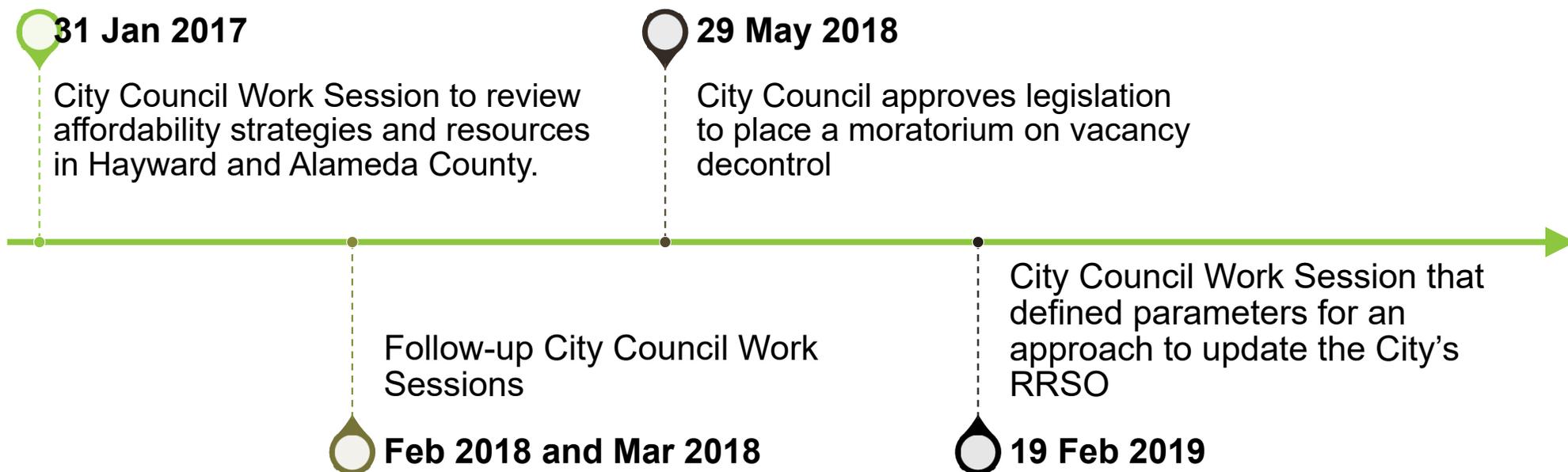
Section	Corrections	Language Changes
Section 7(b)	Corrected incorrect section reference in second paragraph.	5(b)(2) to 7(b)(2) 5(b)(3) to 7(b)(3)
Section 7(j)(6)	Correct ambiguity related to burden of proof placing burden solely on landlords	
Section 10	Corrected incorrect section reference.	5(b)(2) to 7(b)(2) 5(b)(3) to 7(b)(3) 5(b)(1) to 7(b)(1) 5(b)(4) to 7(b)(4) 5(b)(5) to 7(b)(5) 5(b)(6) to 7(b)(6) 5(b)(7) to 7(b)(7)
Section 11	As communicated to stakeholders, delete requirement to pay annual interest on Security deposits.	Security Deposits shall be collected by the Landlord and administered in accordance with state law.

# Background

- Housing production has not kept pace with population growth
- 55% of Hayward renters experience a housing cost burden—spending more than 30% of their income on housing
- Between 2013 and 2017, rents increased in the City by 46% while the median income of renters only increased 25%
- From the most recent point-in-time count, the number of people who experience homelessness in Alameda County increased by 43% from 2017 to 2019.
- Regional policy suggestions recommend tenant protections to address cost burden, displacement, and prevent homelessness.



# Background Timeline



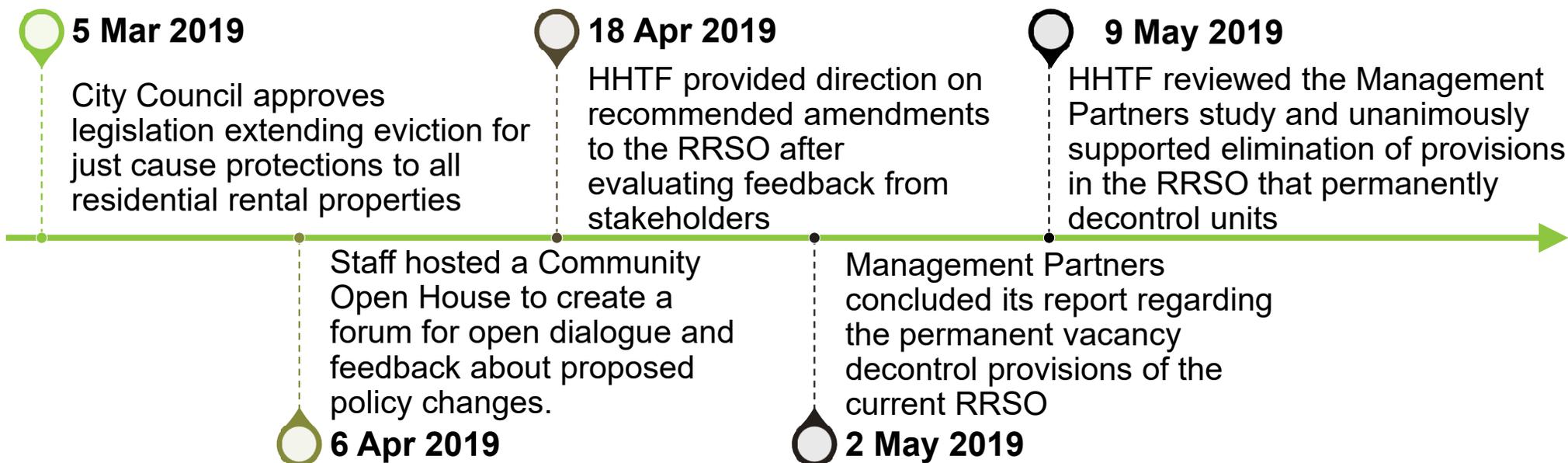
# Council Direction February 19, 2019

- Create a mandatory mediation with binding arbitration program
  - Mediation available to all pre-1979 rental units except single family homes and condominiums
  - Mediation available to rent increases above 5% (including all fees)
- Consider elimination of the permanent vacancy decontrol provisions based on Management Partners report
- Create provisions to protect Section 8 voucher holders from discrimination

# Council Direction February 19, 2019

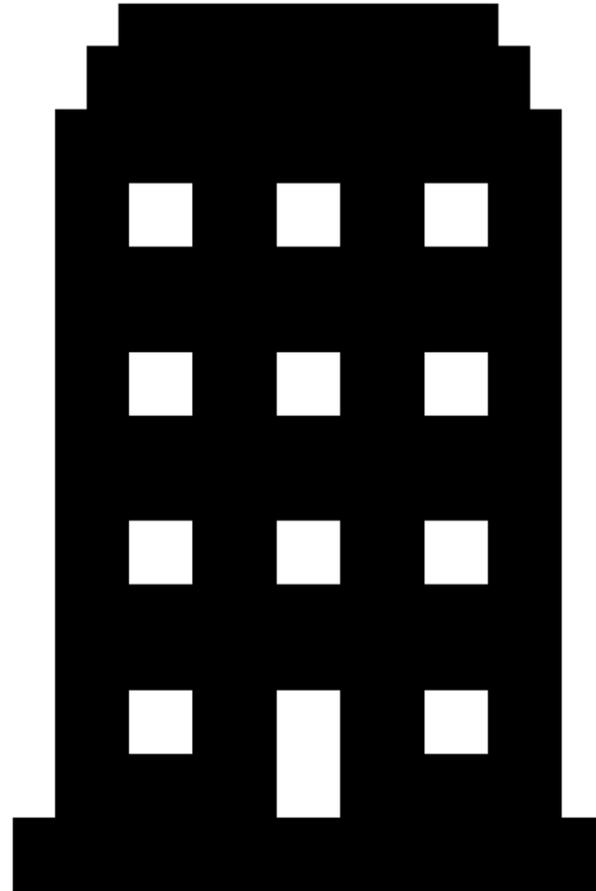
- Require landlords to file rent increase notices and eviction notices with the City to obtain accurate data about rental housing activity;
- Explore with the HHTF retaliation provisions and a tenant relocation assistance program; and
- Extend eviction for cause protections to all residential rental properties (adopted March 5, 2019),

# Background Timeline



# Summary of the Residential Rent Stabilization and Tenant Protection Ordinance

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# Development of the New RRSO

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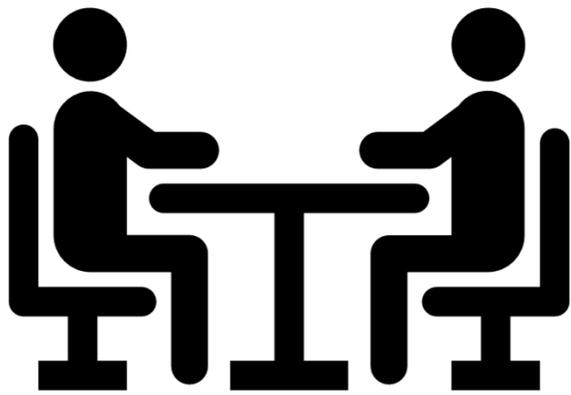
Staff has developed a comprehensive and multi-faceted set of housing policies based on:



1. Direction from City Council
2. Homelessness-Housing Task Force (HHTF) feedback
3. Stakeholder feedback
4. Management Partners study
5. Review of draft ordinance with stakeholders

# Key Provisions of the New RRSO

- Mandatory mediation program with binding arbitration;
- Provisions to protect Section 8 voucher holders from discrimination;
- Requirements that landlords file rent increase notices and eviction notices with the City;
- Tenant retaliation protection provisions; and
- Reincorporation of the Just Cause for Tenant Evictions into a single comprehensive housing policy.



# Mandatory Mediation with Binding Arbitration

# Mandatory Mediation with Binding Arbitration

## Overview

### Applicability

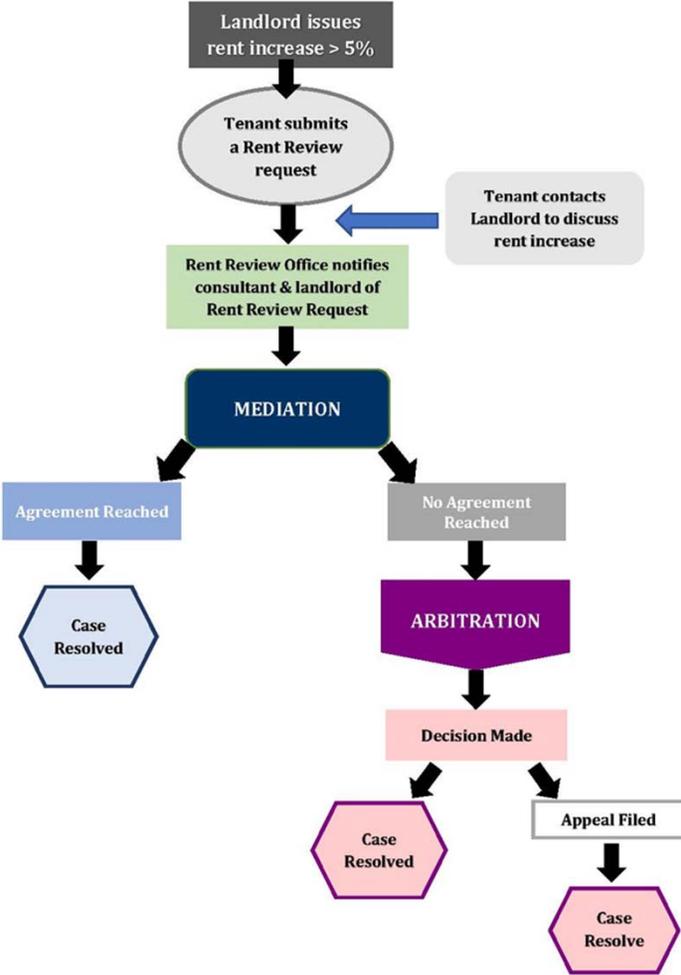
- A. Threshold:** Increases > 5%, including all charges except utility charges passed through to tenant per terms of lease
- B. Applies to:** All pre-1979 units
- C. Exceptions:** Single family homes and condominiums (Costa Hawkins)

### Description

- 1. Improves communication** between tenants and landlords.
- 2. Provides protection to ≈ 9,500 units** from large increases that could cause displacement or increase overcrowding in rental housing.

# Tenant Petition Process

## Proposed Mediation and Binding Arbitration Process



# Mandatory Mediation with Binding Arbitration

## Rent Increase Threshold

### Rent Increase

- A. Does not include utility charges passed through to the tenant per the terms of the lease, but RRSO does include protection from unsubstantiated utility charges
- B. Can exceed the 5% threshold for:
  1. Capital improvements up to an additional 5% annually;
  2. Banked Rent increases (years a rent increase was not imposed) up to an additional 5% annually.
  3. Ensuring a fair return on investment

# Mandatory Mediation with Binding Arbitration

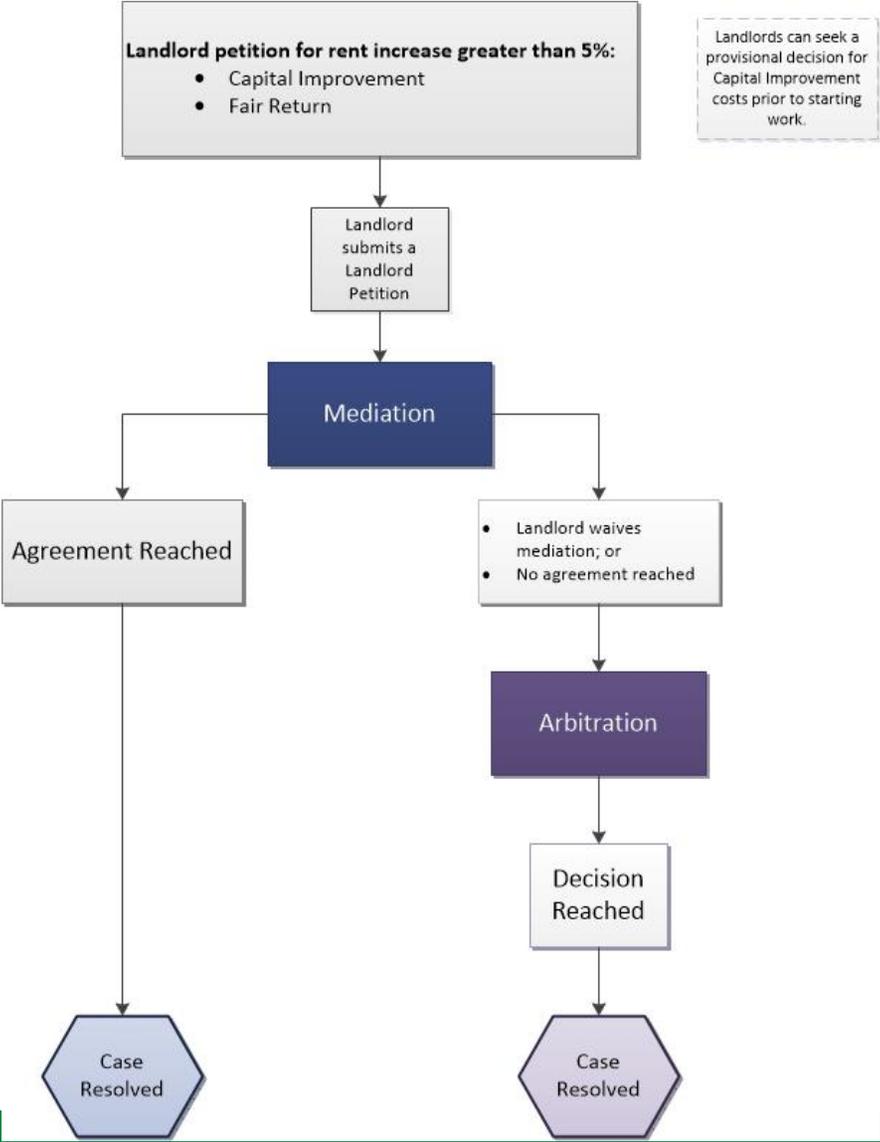
## Landlord Right to File a Petition

### **A. Landlord may file a petition to:**

- i. Request a rent increase to obtain a fair return; and/or
- ii. Request pass-through of capital improvement costs.

1. **Landlord** may file a petition for a rent increase in order to obtain a fair return at any time.
2. **Landlord** must file petition to pass through capital improvement costs within two (2) years of work completion
  - i. **Provisional Decision (optional)**  
– submitted prior to start of work
  - ii. **Final Decision (required)** –  
submitted after work is complete

# Landlord Petition Process





# Provisions to Protect Section 8 Voucher Holders

# Provisions to Protect Section 8 Voucher Holders

## Prohibition Of Discrimination Related To Source Of Income

**Applies to: All rental units (≈ 22,200 units)**

1. Define sources of income to include lawful sources of income and rental assistance, homeless or security deposit assistance, or housing subsidy programs
2. Require that finance and income standards include all sources of income to qualify an individual for rental housing
3. Prevent discriminatory practices based on sources of income such as immediate dismissal of application

# Provisions to Protect Section 8 Voucher Holders

## Prohibition Of Discrimination Related To Source Of Income

### This provision **WOULD NOT**:

- Impact landlords' ability to charge market rent for their units
- Prevent a landlord from rejecting an applicant based on other factors such as rental or credit history

### This provision **WOULD**:

- Prevent a landlord from rejecting an applicant because of the housing choice voucher
- Prevent a landlord from stating in advertisements that tenants who receive rental assistance are not welcome to apply for a housing unit



# Filing Rent Increase and Termination Notices with the City

# Filing Rent Increase and Termination Notices with the City

**Applies to:** All rental units ( $\approx$  22,200 units)

## **Allows the City to collect data that will:**

- i. Identify and address rental housing issues more effectively
- ii. Propose solutions such as adopting/updating policies and/or investing in programs that specifically address those issues that are evidenced by data.



# Tenant Retaliation Protections

# Tenant Retaliation Protections

**Applies to: All rental units (≈ 22,200 units)**

- 1. Provide tenants with legal rights** if they are harassed or retaliated against by landlords.
- 2. Provide civil remedies** if policy is violated.
- 3. Provides more specificity** than State law regarding the types of bad business practices considered harassment in Section 12(b) of proposed ordinance.

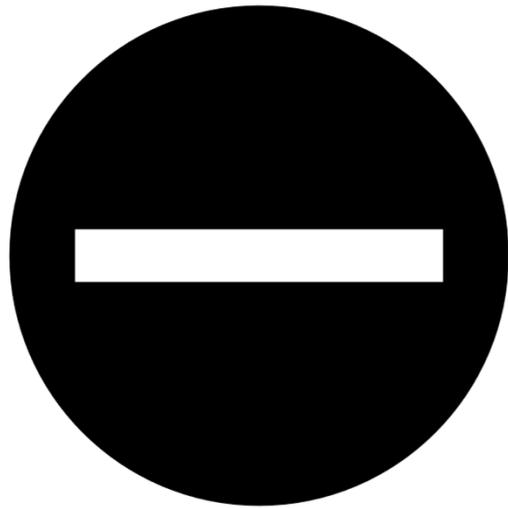


# Reincorporate Just Cause for Tenant Evictions

# Reincorporate Just Cause for Tenant Evictions

**Applies to:** All rental units ( $\approx$  22,200 units)

1. **March 5, 2019:** approved and extended to all rental units.
2. **Objective:** stabilize rent increases, provide tenant protections, prevent displacement and homelessness.
3. **Reincorporate into proposed new RRSO** to create comprehensive set of rental housing policies in a **single ordinance**.



# Excluded Provisions

# Excluded Provisions

## Provision

### **A. Tenant Relocation Assistance Program**

- i.** Tenants would be eligible for an entitled to relocation assistance for permanent relocation due to no fault evictions.

## Reason Excluded

- 1. Substantial opposition, concerns, and questions** related to tenant relocation program
- 2. HHTF** decided to continue evaluating at a future time.

# Excluded Provisions

## Provision

## Reason Excluded

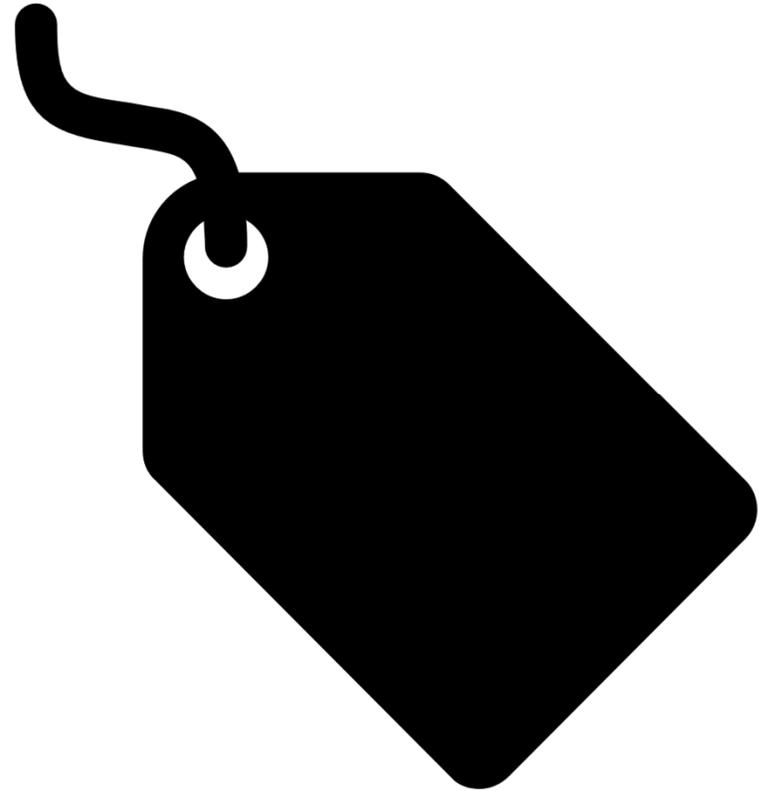
### A. Permanent Vacancy Decontrol

- i. Allowed a landlord to permanently remove a unit from rent increase limitation when a unit is voluntarily vacated by a tenant and after making a nominal improvement investment in the unit.

1. **February 19, 2019** City Council demonstrated support for eliminating permanent vacancy decontrol but wanted to wait for findings from Management Partners.
2. **Management Partners** study:
  - i. Verified that permanent vacancy decontrol may not be the best way to address current housing concerns
  - ii. Recommended a comprehensive set of housing polices that equitably address affordability and the needs of tenants/landlords.
3. **HHTF** unanimously supported elimination of permanent vacancy decontrol provision from RRSO based on Management Partners report.

# Program Budget and Fee

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# Rental Housing Program Administration

## Anticipated Increases to Program & Administrative Responses

### Expanded services:

- A. Response to increased public inquiries regarding applicability of RRSO to ≈ 22,200 units.
- B. Increased number of mediation/arbitration petitions expanded to serve ≈ 9,500 units.
- C. Develop new marketing materials and implement outreach plan.

### New administrative responsibilities:

- A. Receive and catalogue rent increase/evictions for ≈ 22,200 units
- B. Maintaining Rental Housing Database for ≈ 22,200 units
- C. Create and implement educational workshops/webinars for tenants and landlords

# Rental Housing Program Administration

## Proposed Budget Appropriation of \$359 K\*

1. **Staffing** - add (1) Program Specialist (\$154K) to work solely on Rent Review Program.
2. **Consultant Services:** increase of (\$159K) to cover professional services.
3. **Overhead Expenses** – increase of (\$46K) for supplies, postage, printing, public notice publication, correspondence, billing, etc.

\*It is anticipated that these costs will be offset by revenue generated by the Rental Housing Program Fees

# Rental Housing Program Fees

## Applicability

**A. Applies to:** All rental units  
(amount varies by unit type)

**B. Paid by:** Landlord and then half of  
the fee can be passed through to  
the tenant

FEE	MOBILE HOME	RENTAL UNIT	COVERED UNIT
Current	\$3.08	\$0.00	\$3.55
Proposed	\$5.00	\$19.00	\$40.00

## Description

1. **Proposal:** Updated fee to be charged to all rental units.

**Fee will vary depending on unit type** because effort and service provided to administer program will differ by unit type.

2. **Objective:** Updated fee to recover expected expenses for updated RRSO program.

Create a **new fund** to ensure no adverse fiscal impact to the General Fund.

# Rental Housing Program Fee

## Other Jurisdictions

- The following are examples of rent review charges in neighboring jurisdictions:
  - **City of Richmond:** \$207 for Fully Covered Rental Units, \$100 for Partially Covered Rental Units (single family homes, condos, new construction), and \$50 for Governmentally Subsidized Rental Units (Section 8 Voucher Program).
  - **City of Berkeley:** \$250 per unit and applies to all units subject to the City's Rent Stabilization Ordinance.
  - **City of Oakland:** \$68 applies to all units subject to the City's Rent Adjustment Program.
  - **City of San Jose:** \$77.30 per unit for all units subject to the Apartment Rent Ordinance, \$6.20 per unit for non-covered units.



# Next Steps Timeline

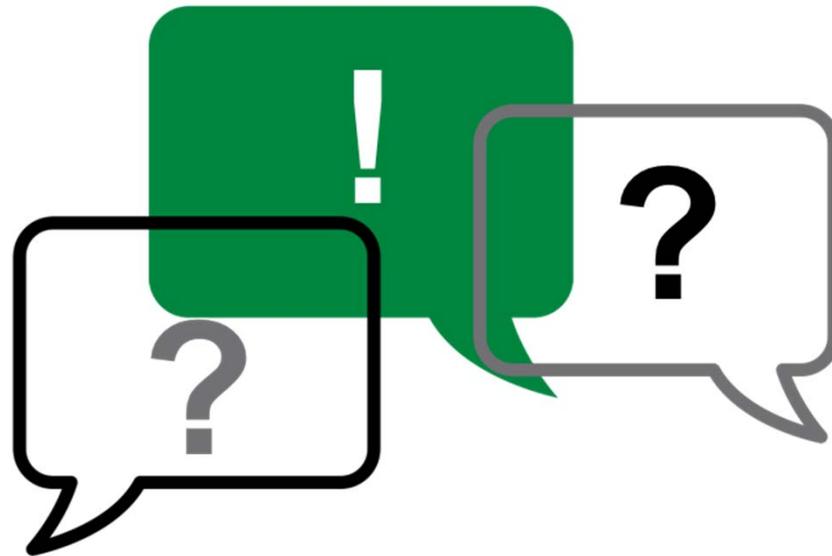
	Description	Date
City Council	<ul style="list-style-type: none"> <li>• Second Reading of the New RRSO</li> </ul>	June 25, 2019 @ 7:00 pm
City Staff	<ul style="list-style-type: none"> <li>• Prep marketing/education plan</li> <li>• Prep forms/notices</li> <li>• Update website</li> <li>• Update contracts with mediation consultant</li> <li>• Start staff recruitment for Program Specialist</li> </ul>	June 25 – July 25, 2019
City Staff	<ul style="list-style-type: none"> <li>• Notify landlords regarding the new RRSO</li> </ul>	By July 15, 2019
<b>N/A</b>	<ul style="list-style-type: none"> <li>• <b>Effective Date of the RRSO</b></li> </ul>	<b>July 25, 2019</b>
City Staff	<ul style="list-style-type: none"> <li>• Implement marketing/education plan</li> <li>• Implement Phase I of database</li> </ul>	Starting July 25, 2019

# Recommendations

That the City Council:

1. Introduces the proposed Residential Rent Stabilization and Tenant Protection Ordinance (RRSO);
2. Approves an increase the budget allocation to Administer the RRSO and the Mobile Home Space Rent Stabilization Program to cover the cost of administration of the new RRSO; and
3. Approves an increase in the Rent Review Fee to cover the cost of administration of the Ordinances.

# Questions



# Mandatory Mediation with Binding Arbitration

## Rent Increase Threshold

**A. Threshold:** Increases > 5%,  
**including all charges** except  
utility charges passed through to  
tenant per terms of lease

1. **“Including all charges”** =  
Housing Services
2. **Housing Services** – a service  
provided by the Landlord  
related to the use or occupancy  
of the Rental Unit.
3. **Exemption:** increase in  
Governmental-Utility costs in  
accordance with Section 5(d)

# Mandatory Mediation with Binding Arbitration

## Section 5(d): Governmental-Utility Service Pass Through

### **A. Governmental-Utility Services –**

Services provided by a public agency, public utility, or quasi-public or utility, including but not limited to water, sewer, gas, electric, and rubbish removal.

- 1. Landlords may only pass through costs using:**
  - i. Ratio Utility Billing System (RUBS) or similar for units not separately metered
- 2. Not considered Rent**
- 3. Shall not be increased when Rent increases**
- 4. Not considered Rent for purpose of calculating increase under Rent Increase Threshold**

# Mandatory Mediation with Binding Arbitration

## Section 5(e): Capital Improvement Pass Through

- A. Capital Improvements** – Those improvements that:
- i. Materially add to the value of the property
  - ii. Appreciably prolongs its useful life
  - iii. Adapt it to new uses
  - iv. Benefits the Tenant
  - v. May be amortized over the useful remaining life

### 1. Examples:

- i. Roof replacement
- ii. Upgrades for seismic safety
- iii. Upgrades for energy efficiency

### 2. Exemptions:

- i. Improvements for ordinary repairs, replacements, and maintenance
- ii. Deterioration resulting from unreasonable delay in making repairs including after Notice of Violation by a government agency

# Mandatory Mediation with Binding Arbitration

## Section 5(e): Capital Improvement Pass Through

- Landlords can pass through up to fifty percent (50%) of the total amount paid by the landlord including financing costs; and
- The pass through shall be amortized over five years; and
- If the rent increase plus capital improvement pass through exceed 10% or 30% over five years, the amortization period will be extended beyond five years to allow for cost recovery.
- Landlords can submit a petition for a preliminary decision prior to starting work.

# Mandatory Mediation with Binding Arbitration

## Section 9(a)(6): Fair Return

### **Fair Return**

Initial year Net Operating Income increased by a % Increase in CPI since initial year