



DATE: March 28, 2023

TO: Mayor & City Council

FROM: Assistant City Manager

SUBJECT: Fiscal Year 2024 Master Fee Schedule: Adopt a Resolution Amending the Fiscal Year 2024 Master Fee Schedule to Update the Fees Associated with Administration of the Residential Rent Stabilization and Tenant Protection Ordinance, and Finding that the Action is Exempt from CEQA Review

RECOMMENDATION

That the City Council adopts a resolution (Attachment II) authorizing the amendment to the resolution adopted March 21, 2023, for the City of Hayward Fiscal Year 2024 Master Fee Schedule associated with the administration of the Residential Rent Stabilization and Tenant Protection Ordinance.

SUMMARY

Hayward City Council adopted the Residential Rent Stabilization and Tenant Protection Ordinance (RRSO) in July 2019. The RRSO includes Section 12-1.17, which establishes that the costs of administering the RRSO shall be reimbursed in full through the imposition of a rent stabilization fee, paid annually with an amount recommended to Council by the City Manager and Housing Division. When the RRSO was adopted, Council authorized fees of \$40 per Covered Rental Unit and \$19 per Rental Unit. Covered Rental Units have a higher per unit fee because they are covered under the rent increase threshold and rent dispute resolution provisions of the RRSO, which requires additional staff and consultant work to administer. Owners of Covered Rental Units may pass through half the cost of the fee to the tenants. Owners of Rental Units are not restricted by the City's RRSO on increases that may cover the cost of the fee, though they may be subject to a State rent increase threshold.

The annual fee has not been increased since it was established in July 2019. The fee was developed based on best estimates for the number of Covered Rental Units and Rental Units in the City and the anticipated costs of implementing the RRSO. Since then, City Council adopted the Tenant Relocation Assistance Ordinance (TRAO) without an increase in fees to cover administrative costs. In recent years, administrative expenses have exceeded collected revenues. Staff has not recommended fee increases since FY 2020 due to increased economic constraints experienced by tenants and property owners during the peak of the COVID-19 pandemic. Other non-restricted housing funds were used to offset the RRSO and TRAO administration costs; however, it is no longer feasible to use other revenue funds to offset expenses.

Staff proposes increases to both the Covered Rental Unit and Rental Unit fees to account for the following administration expenses, which have substantially increased since the RRSO was adopted:

- **Adjust staffing allocation to reflect actual time:** City staff are currently allocating hours to the Rent Stabilization Fund that significantly exceed the planned allocation due to the substantial demand on staff time for implementing the RRSO and TRAO. By increasing staffing from 2.78 FTE to 4.0 FTE, the City will be able to meet the full administrative obligation of the RRSO and TRAO.
- **Increase consultant capacity:** The City contracts with the non-profit Project Sentinel to manage the rent dispute resolution process, develop implementation resources and tools, and provide outreach and education support to Hayward community members. They have not increased their rates in several years and the City has seen an increase in petitions of nearly 50% from the first year of implementation to the most recent fiscal year. Increasing the contract with Project Sentinel will account for inflation and increased petition volume.
- **Increase marketing efforts:** Through participation in the national 18-month Eviction Prevention Learning Lab, staff identified several opportunities for improving information accessibility, particularly for Hayward community members who are most challenging to reach by traditional means. By increasing the budget for marketing efforts, the City will better meet the obligation to advise tenants and landlords of their rights and responsibilities under the RRSO and TRAO.

Staff is not requesting an increase to the Mobile Home Space Rent Ordinance fee because the level of services is relatively unchanged. Based on analysis of the above expenses and current budget projections, staff recommends the following increases:

	Proposed Fee Increase		
	MH	RU	CRU
FEE PER UNIT	\$5	\$32	\$66
INCREASE FROM FY 19 FEE	\$0	\$13	\$26
PERCENT TOTAL INCREASE	0%	68%	65%
<i>TOTAL PROJECTED REVENUE</i>	<i>\$1,034,823</i>		

Legend: MH = Mobile Home Unit; RU = Rental Unit; CRU = Covered Rental Unit

The Homelessness-Housing Task Force heard an informational report on this item on March 2, 2023, and requested staff bring this item to Council with additional information regarding the implementation of the RRSO, which is included in the Discussion section of this report. As demonstrated by the accomplishments described in the Discussion, implementation of the RRSO requires active enforcement by the City to ensure landlords and tenants understand their rights and responsibilities under the RRSO. Such active enforcement increases awareness, ensuring landlords have the support they need to comply and tenants have the resources they need to advocate for themselves.

BACKGROUND

In July 2019, City Council adopted the Rent Stabilization and Tenant Protection Ordinance (RRSO; Ordinance No. 19-12).¹ Section 12-1.17 of the RRSO establishes that the costs of administering the RRSO shall be reimbursed in full through the imposition of a rent stabilization fee, paid annually with an amount recommended to Council by the City Manager and Housing Division. At the time of adoption, the following fees were established:

Table 1. Current Rent Stabilization Fee

Description	FY 19-20 Rates
Annual Fee per Covered Rental Unit	\$40
Annual Fee per Rental Unit	\$19

Covered Rental Units are those covered by the rent increase threshold provision of the RRSO. The fee is greater than Rental Units, which are not covered by the rent increase threshold, because additional resources are required to administer the rent review process. Owners of Covered Rental Units may pass through half the cost of the fee to the tenants. Owners of Rental Units are not restricted by the City's RRSO on increases that may cover the cost of the fee, though they may be subject to a State rent increase threshold. The above fee amounts were calculated in FY 2020 using the following key assumptions:

- Staffing and supplies and services expenses that cannot explicitly be attributed to administration of the Rent Review Program for Covered Rental Units were distributed proportionally by rental unit based on the proportion of Covered Rental Units (43%) and Rental Units (57%) at the time of the calculation.
- Supplies and services directly related to administering the Rent Review Program for Covered Rental Units (such as the costs of specific marketing activities and the contract for the mediation and arbitration consultant, Project Sentinel) were distributed 95% to Covered Rental Units and 5% to Rental Units, as a small proportion of the consultant's education activities benefit tenants and landlords for both unit types.

In July 2020, City Council adopted the Tenant Relocation Assistance Ordinance (TRAO; Ordinance No. 20-15). The TRA0 created requirements for permanent and temporary relocation assistance that apply to almost all units in Hayward. Since adoption, there have been 29 relocation cases and 22 (76%) of them have been due to a Code Enforcement Notice of Violation. Administering this ordinance requires substantial communication with landlords and tenants, as well as collaboration and coordination with Code Enforcement, the Fire Department, and the City Attorney's Office. Staff have also had to draft and revise Regulations for the Ordinance (per Section 12-2.14) and manage the Emergency Relocation Assistance Fund, funded through the American Rescue Plan Act. The City uses these funds to provide emergency payments to qualifying tenants displaced from their homes due to a natural disaster. The funds are also available for instances when landlords do not pay

¹ June 18, 2019, City Council Meeting Agenda and Materials:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=3985848&GUID=52D1B678-D6BB-401A-AB3C-8990885C0CDD&Options=&Search=>

required relocation assistance within the timeline established in the TRAO and TRAO Regulations. The funds allow the City to pay the tenant directly and recover the costs from the landlord. The TRAO does not include imposition of additional administrative fees.

The Homelessness-Housing Task Force (HHTF) heard an informational report on this item on March 2, 2023. HHTF members had varying responses to the item and requested staff bring this item to Council with additional information regarding the implementation of the RRSO, which is included in the Discussion section of this report.²

DISCUSSION

Adopted in 2019, the RRSO stabilizes rents for Covered Rental Units and provides tenant protections for almost all rental units in Hayward. It provides rent increase relief to tenants as allowed under State law; establishes a mediation and arbitration program to enforce its requirements and reduce tenant displacement; discourages harassment and retaliatory evictions; encourages investment in residential rental properties; and assures landlords receive a fair return on their property and sufficient rental income to cover operational costs. Section 12-1.17 of the RRSO requires that the costs of administering the ordinance be reimbursed in full through the rent stabilization fee, which is charged to all rental units. The following discussion first presents an overview of the implementation activities required to enforce the RRSO and then an analysis demonstrating that the current fee, which has not been increased since 2019, is insufficient to cover the costs of implementing the RRSO.

RRSO Implementation

Since the RRSO was adopted in 2019, staff have provided detailed annual implementation progress reports to the HHTF.^{3,4,5,6} These reports integrate available data to describe key indicators such as: the volume and nature of eviction notices submitted to the City; average rent increases as determined by notices submitted by landlords to the City; the volume, type, and outcomes of petitions submitted to the City; and other implementation process indicators for the RRSO and TRAO. Most recently, the September 28, 2022, report included an analysis of unlawful detainer data obtained from the Superior Court of Alameda County.

² March 2, 2023 HHTF Meeting Agenda and Materials:

<https://hayward.legistar.com/MeetingDetail.aspx?ID=1084886&GUID=36062005-4BA8-4A03-85D8-589D2AEC9376&Options=info|&Search=>

³ March 20, 2020 HHTF Meeting Agenda and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4344677&GUID=B0C788EE-6B8B-4B62-9006-2DA3C426E0B8&Options=&Search=>

⁴ September 3, 2020 HHTF Meeting Agenda and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4627611&GUID=970D2BD1-8039-47A6-8D9A-EFDDD16911A6&Options=&Search=>

⁵ September 2, 2021 HHTF Meeting Agenda and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=5121227&GUID=035EDFAD-616C-4370-AF7E-A12DD6830D27&Options=&Search=>

⁶ September 28, 2022 HHTF Meeting Agenda and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=5851268&GUID=0D2F49EE-1393-4E9F-9EAC-33F88B4AF299&Options=&Search=>

To operationalize the RRSO and assist landlords with compliance, staff, with the support of Project Sentinel, developed templates, resources, and process workflows. These materials are critical in improving awareness of and compliance with the RRSO for tenants and landlords, in addition to engaging in the day-to-day operations required to meet the standards established in the City's Housing ordinances. These materials require regular updates as staff receive feedback from the users or as information changes. The following list summarizes key implementation accomplishments.

- Marketing, outreach, and education accomplishments:
 - Comprehensive initial outreach efforts when the RRSO was adopted, as outlined in Attachment II of the March 5, 2020, progress report to the HHTF.
 - Responding to an average of over 200 inquiries per month from tenants and landlords via email, phone, and in-person communication
 - Mailings to tenants and landlords, including postcard to all tenants in 2021 regarding housing rights during the pandemic; mailing to all landlords notifying them of updates to the RRSO; and annual invoice to landlords including FAQs for the RRSO and resources for responding to the COVID-19 pandemic
 - Monthly in-person, remote, or hybrid (varying depending on social distancing requirements) educational workshops targeted for tenants and landlords covering a variety of topics including RRSO overviews, the rent increase petition process, fair housing, and maintenance and habitability.
 - Participation in over 50 local community events in collaboration with partners including Hayward Promise Neighborhood, Kidango, Hayward Unified School District, Glad Tidings Church, La Familia, the Chamber of Commerce, and others.
 - Staff and community stakeholder participation in the 18-month Eviction Prevention Learning Lab with quarterly meetings focused on improving outreach and education to tenants and landlords.⁷
- RRSO implementation accomplishments
 - Development of 14 resources and forms in English, Spanish, and Chinese to facilitate implementation of the RRSO and rent review petition process
 - Receipt, review, and tracking of over 2,400 rent increase notices and over 700 termination notices through the end of 2022
 - Processing of 117 petitions from tenants for review of rent increase or other reason and 8 capital improvement pass-through petitions from landlords, with approximately 40% of all resolved petitions proceeding through to mediation or arbitration, requiring substantial engagement from staff and Project Sentinel with petitioners and respondents to advance the petitions within the timeframe established by the RRSO
- Internal infrastructure accomplishments
 - Identification of Covered Rental Units and Rental Units for license inventory and ongoing maintenance of records

⁷ For more information on the Eviction Prevention Learning Lab, visit <https://www.nlc.org/initiative/eviction-prevention-learning-lab/>

- Collaboration with Development Services Department and Finance to implement transition to EnerGov for maintaining unit license inventory and administering annual invoicing process
- Implementation of Microsoft Bookings module to allow community members to make appointments online for in-person or phone appointments with staff, which is often used by non-profit partners like Eden I&R (211) to help link community members to City staff for support

The efforts described above are necessary for effective implementation of the RRSO. This ongoing work helps prevent displacement of tenants through unpredictable rent increases while ensuring landlords have the right to sufficient rental income to cover the costs of operating their business. Ongoing implementation activities have focused on combined outreach to tenants so they understand and can act on their rights and education for landlords to facilitate and promote compliance.

RRSO Fee Change

The rent stabilization fee has not been increased since adoption of the new RRSO in July 2019 and in recent fiscal years, administrative expenses have exceeded collected revenues. In 2019, fees were calculated based on the best available estimates for the number of Covered Rental Units and Rental Units in Hayward and the costs of administering the RRSO. Since then, City Council adopted the TRAO without an increase in fees to cover administrative costs. After three years of implementation expenses, there is additional data to better understand the staff and consultant time and resources required to implement both the RRSO and TRAO.

Staff has not recommended fee increases since FY 2020 due to increased economic constraints experienced by tenants and property owners during the peak of the COVID-19 pandemic. During that time, staff identified other funds that could offset RRSO and TRAO administrative costs; however, as expenses rise across all Housing Division funds and other eligible fund balances are depleted, it is no longer feasible to use other revenue funds to offset expenses incurred through administration of the RRSO and TRAO.

Staff's analysis of the current fee and the need to increase it considers the following factors:

- **Increase in staffing requirements:** Currently, the Housing Division has 2.78 FTE working on the administration of the RRSO, as outlined below. Since implementation of the RRSO and the subsequent adoption of the TRAO, each of the partially funded positions spends at least 50% of their time administering these programs.
 - Housing Division Manager: .35 FTE
 - Management Analyst: .23 FTE
 - Senior Secretary: .20 FTE
 - Senior Secretary: 1.0 FTE
 - Community Programs Specialist: 1.0 FTE
- **Increase in consultant expenses:** The City contracts with the non-profit Project Sentinel to manage the mediation and arbitration process for Covered Rental Units submitting petitions for review of rent. Project Sentinel also develops and delivers

outreach presentations and creates templates and resources with City staff. Project Sentinel has not increased their rates in several years and the City has seen an increase in petitions of nearly 50% from the first year of implementation to the most recent fiscal year, likely due to a number of factors including improved outreach and inflation pressures. The increase in case load comes with corresponding time requirements for Project Sentinel staff who must correspond with parties in a timely and accurate manner.

- **Increase in marketing and outreach expenses:** Through participation in the Eviction Prevention Learning Lab, staff identified several outreach and marketing activities that can improve communication and education with tenants and landlords, with specific focus on reaching those who are the hardest to reach. Investing in these resources can improve accessibility and increase awareness of the RRSO and TRAO for tenants and landlords with the goal of preventing unnecessary evictions and displacement.

Based on current budget projections and analysis, staff recommends increasing the annual fee to account for the anticipated increases in expenses, which will meet the obligation under Section 12-1.17 to reimburse the full cost of administration of the ordinance through the annual fee. Staff does not recommend making any changes to the fee for administering the Mobile Home Space Rent Stabilization Ordinance (MRSO) because the level of service is relatively unchanged. Specifically, the proposed fee increase for the RRSO is based on the following assumptions:

- **Staffing changes:** Adjust the FTE allocations to accurately reflect staff time spent administering the RRSO and TRAO.
 - Housing Division Manager: .50 FTE (increase of .15 FTE)
 - Management Analyst: 1.0 FTE (increase of .77 FTE)
 - Senior Secretary: .50 FTE (increase of .30 FTE)
 - Senior Secretary: 1.0 FTE (no change)
 - Community Programs Specialist: 1.0 FTE (no change)
- **Consultant contract change:** Negotiate new rates with Project Sentinel to adjust for inflation and account for an increased volume of petitions.
- **Marketing and outreach changes:** Increase the supplies and services budget for marketing expenses to improve accessibility and increase awareness of the RRSO and TRAO.

Table 2 summarizes projected expenses for FY 2024 based on the above assumptions. In addition to the above increases, the summary below also reflects anticipated costs for key services including translation and interpretation and printing, mailing, and postage. Based on feedback from the HHTF, staff evaluated the projected budget to identify opportunities to reduce expenses. Staff do not recommend making any reductions to the proposed budget as any cuts in funding would correlate with cuts in service, which would prevent the City from implementing the RRSO as required by the ordinance.

Table 2. Summary of Projected FY 24 Budget

Budget Category	Projected Amount
Salaries and Benefits	\$748,436
Supplies & Overhead	\$42,387
Services	\$244,000
Total	\$1,034,823

Additionally, as with calculations made for the fee in 2019, the proposed fee increase proportionally distributes expenses that cannot explicitly be attributed to administration of the Rent Review Program based on the most recent proportion of Covered Rental Units and Rental Units. Expenses directly related to administering the Rent Review Program for Covered Rental Units are distributed 95% to Covered Rental Units and 5% to Rental Units. Finally, the proposed rate increases account for the rate of unpaid fees from previous fiscal years.

The proposed fee increases in Table 3 were calculated based on the above assumptions in order to achieve full cost recovery:

Table 3. Proposed Fee Changes

	Proposed Fee Increase		
	MH	RU	CRU
FEE PER UNIT	\$5	\$32	\$66
INCREASE FROM FY 19 FEE	\$0	\$13	\$26
PERCENT TOTAL INCREASE	0%	68%	65%
TOTAL PROJECTED REVENUE	\$1,034,823		

Legend: MH = Mobile Home Unit; RU = Rental Unit; CRU = Covered Rental Unit

When the fee was adopted in FY 2020, staff conducted benchmarking research using FY 2019 data to compare the administrative fees of comparable jurisdictions with similar programs. Staff revisited this research as part of the fee increase analysis and, on average, fees in comparable jurisdictions increased about 30%. Attachment III has more detailed information on benchmarking research. The proposed fee is less than the fee required in most other jurisdictions.

Environmental Review

Section 15273 of the California Environmental Quality Act (CEQA) Guidelines states that CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purposes of:

1. Meeting operating expenses, including employee wage rates and fringe benefits;
2. Purchasing or leasing supplies, equipment, or materials;

3. Meeting financial reserve needs and requirements;
4. Obtaining funds necessary for capital projects necessary to maintain service within existing services areas; or
5. Obtaining funds necessary to maintain intra-city transfers as are authorized by city Charter; and

This action is exempt from CEQA based on the foregoing provisions.

ECONOMIC IMPACT

There will be an economic impact to landlords and tenants with this fee increase, as the annual fee for both Covered Rental Units and Rental Units will increase. Tenants will likely experience some impact, as under the RRSO, owners of Covered Rental Units may pass through half the cost of the annual fee to tenants. Owners of Rental Units are not restricted by the City's RRSO on increases that may cover the cost of the fee, though they may be subject to a State rent increase threshold.

FISCAL IMPACT

Revenue generated by the current fee implemented in FY 2020 is not sufficient to cover existing expenses incurred in administering the RRSO and TRAO. Staff anticipates that revenue generated by the proposed fee change included in this staff report will offset the costs of administering the program. There is no anticipated impact to the General Fund.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Present, Protect, & Produce Housing. Specifically, this item relates to the implementation of the following projects:

Project 7, Parts 7b: Monitor the implementation of the Rent Stabilization Ordinance and prepare a statistical report

PUBLIC CONTACT

Staff presented this item for input at the HHTF meeting on March 3, 2023. Three public comments were received from landlords and property owners, expressing concern about the fee increase and asking for additional information regarding the implementation of the RRSO. Additionally, the City engaged in substantial public contact when revising the RRSO in 2019 and has received comment from HHTF members on the annual RRSO implementation progress reports described in the Discussion section of this report.⁸

⁸June 18, 2019, City Council Meeting Agenda and Materials:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=3985848&GUID=52D1B678-D6BB-401A-AB3C-8990885C0CDD&Options=&Search=>

NEXT STEPS

Adoption of this Resolution will amend the Master Fee Schedule, which staff will process with the Finance Department. Staff will provide mailed notification to all property owners of the fee increase once finalized and with sufficient notice before the FY 2024 invoices are mailed in the fall. The HHTF will hear the annual implementation progress report on the RRSO in September 2023.

Prepared by: Amy Cole-Bloom, Management Analyst

Recommended by: Dustin Claussen, Assistant City Manager
Christina Morales, Housing Division Manager

Approved by:



Kelly McAdoo, City Manager