



DATE: September 2, 2021

TO: Homelessness-Housing Task Force

FROM: Assistant City Manager

SUBJECT: Implementation Update on the Residential Rent Stabilization and Tenant Protection Ordinance

RECOMMENDATION

That the Homelessness-Housing Task Force (HHTF) review and discuss this report on the implementation progress of the Residential Rent Stabilization and Tenant Protection Ordinance.

SUMMARY

The Council approved the Residential Rent Stabilization and Tenant Protection Ordinance (RRSO) in June 2019, greatly expanding the number of rental units in Hayward covered by the new 5% annual rent increase threshold and creating additional protections, such as just cause eviction and prohibitions against harassing or discriminating against tenants. Since it became effective in July 2019, staff have been collecting and analyzing data on petitions for review of rent, as well as rent increase and termination notices, which landlords are required to submit to the Rent Review Office under the new RRSO.

The HHTF heard an update on RRSO implementation in March 2020 and made recommendations for revision to the RRSO, which Council adopted in July 2020. In this report, the HHTF is hearing an informational update on the RRSO following two full years of implementation. Importantly, 18 months of that implementation has been during the COVID-19 pandemic, which has created substantial financial distress for tenants and landlords alike and during which an eviction moratorium was in effect for a majority of the timeframe. Data in this report should be reviewed within this context. Further, given the unique nature of the majority of the RRSO implementation, staff does not recommend making any new changes to the RRSO beyond what Council already authorized in July 2020.

BACKGROUND

RRSO Implementation

On June 18, 2019,¹ the Council approved the introduction of a new RRSO to improve housing stability for Hayward tenants. Staff and community partners conducted a comprehensive and community inclusive process, including specific direction provided by the Council on February 19, 2019,² a community workshop on April 6, 2019, and numerous subsequent HHTF meetings, to develop the RRSO. The key components of the RRSO passed in June and made effective on July 25, 2019 include:

- 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;
- Provisions to protect Section 8 voucher holders from discrimination;
- Requirements that landlords file rent increase notices and eviction notices with the City to obtain accurate data about rental housing activity;
- Tenant retaliation protection provisions; and
- Just Cause for tenant evictions.

On March 5, 2020,³ staff provided the HHTF with a progress report on RRSO implementation and made recommendations for revising the RRSO based on changes to State law and an analysis of implementation challenges. Task Force members supported recommendations for revisions to the RRSO presented in that report and, on July 14, 2020,⁴ Council voted to adopt amendments to the RRSO and the addition of the Tenant Relocation Assistance Ordinance (TRAO; Chapter 12, Article 2 of the Hayward Municipal Code).

COVID-19 Response

Since the onset of COVID-19, the City of Hayward has instituted several renter protections intended to mitigate housing instability caused by the pandemic. These protections include:

- **Rent Relief Program:** The Council authorized a total of more than \$1.7 million in HOME Investment Partnership Program (HOME) and emergency Community Development Block Grant (CDBG) funds for an emergency rent relief program, providing up to \$5,000 in direct rent payments to landlords on behalf of almost 700 tenant households.
- **Expanded Mediation:** The Council authorized the expansion of the City's agreement with Project Sentinel to provide a free mediation program to support landlords and

¹June 18, 2019 City Council Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=3985848&GUID=52D1B678-D6BB-401A-AB3C-8990885C0CDD&Options=&Search=>

²February 19, 2019, City Council Staff Report and Attachments:

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

³March 5, 2020, Homelessness-Housing Task Force Staff Report and Materials:

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

⁴July 14, 2020, City Council Staff Report and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4590663&GUID=ADB12ECB-15EB-4DB2-B096-5A6D9877359A&Options=&Search=>

tenants negotiating repayment plans when tenants are unable to pay rent due to the pandemic. Both landlords and tenants may apply for the program.

- **Local Eviction Moratorium:** Before the State moratorium was enacted in August 2020, the Council adopted an emergency ordinance establishing a temporary moratorium on evictions for non-payment of rent caused by the COVID-19 pandemic or for no-fault evictions. Council extended the moratorium until it was superseded by State law.
- **Tenant Relocation Assistance Fund:** The Council adopted a resolution approving the City's federal stimulus expenditure plan for American Rescue Plan Act funds, including contributing \$250,000 in Fiscal Years 2022, 2023, and 2024 to a relocation assistance fund for tenants displaced due to no fault evictions or health and safety issues. This fund would allow the City to make payments directly to tenants when landlords are unable or refuse to make assistance payments required by the TRA0.⁵

DISCUSSION

This discussion section provides an overview of the RRSO implementation progress, including the following areas of implementation:

- Analysis of tenant and landlord petitions;
- Analysis of rent increase and eviction notices submitted as required by the RRSO;
- Discussion of participation in the Eviction Prevention Learning Lab and data accessibility; and
- Discussion of Tenant Relocation Assistance Ordinance implementation.

The staff report from the July 2020 RRSO update includes a comprehensive list of all resources and materials created to help tenants and landlords comply with the RRSO, as well as a discussion of the revisions made to the RRSO after its first year of implementation.

It is important to note that, while the RRSO has been in effect in Hayward for two years, the majority of that time has been during the COVID-19 pandemic and corresponding local, state, and federal eviction moratoria. As such, it is difficult to measure the RRSO's progress in meeting its goals of reducing displacement and to make comparisons between rent increase data submitted to the City's Rent Review Office and market trends.

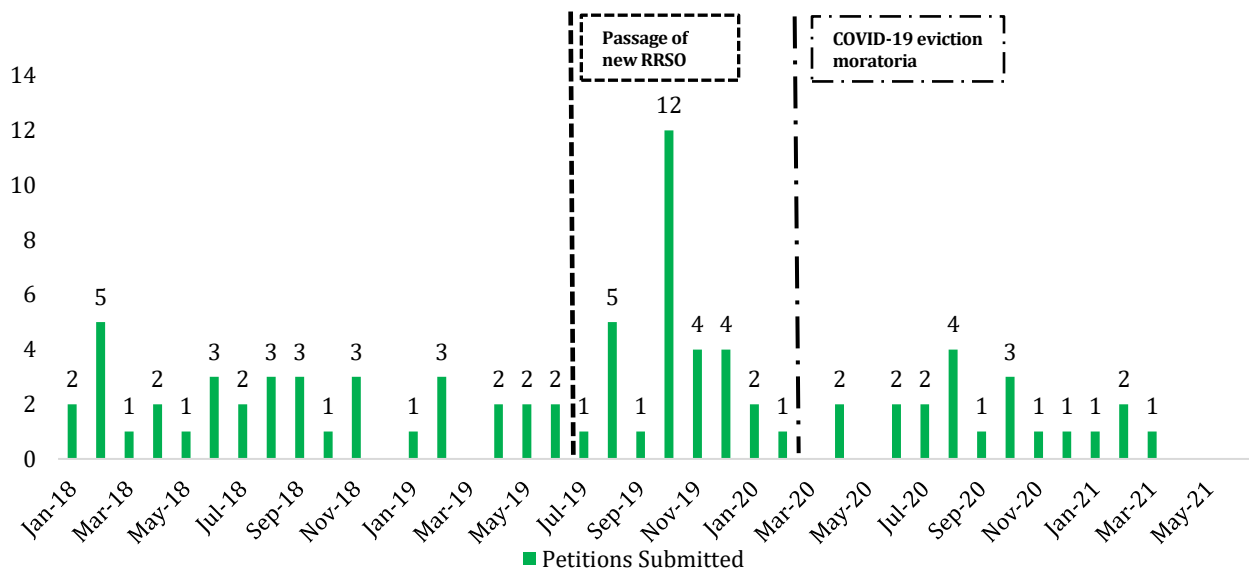
Tenant and Landlord Petitions

The new RRSO expanded the mediation and arbitration process for rent dispute resolution to include more Covered Rental Units. The process is initiated by a petition, either from a tenant or a landlord. To support the petition process and make it as easy as possible for tenants and landlords to understand and comply with the RRSO, staff created several petition forms for tenants and landlords, including infographics and fact sheets. This information is available in English, Spanish and Chinese.

⁵ July 13, 2021, City Council Staff Report and Materials:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=5028015&GUID=E0215022-6A47-486F-81C4-9BFB2583AE10&Options=&Search=>

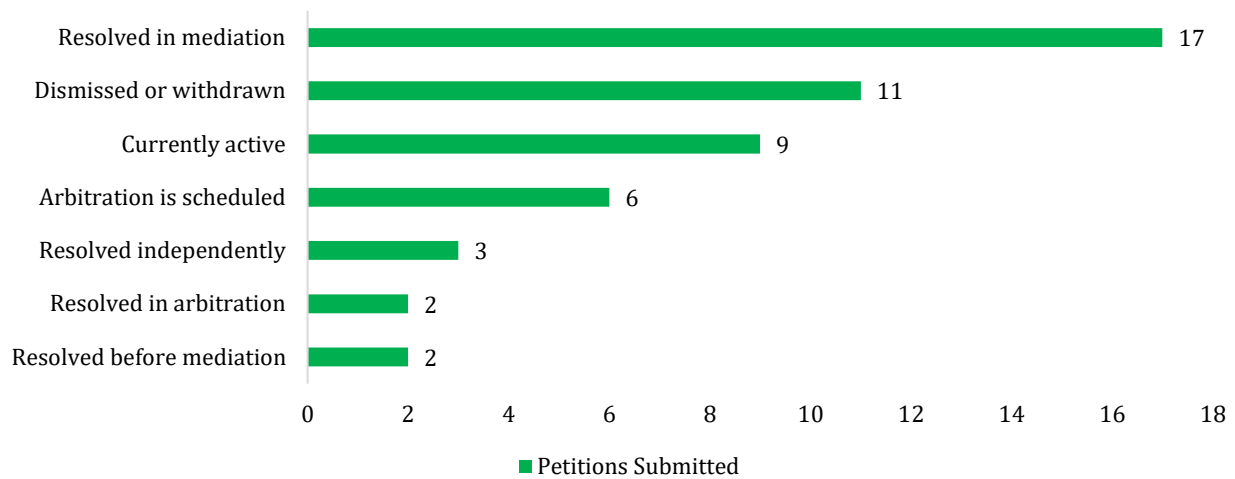
As shown in Figure 1, the number of petitions submitted by tenants was highest during the first six months after the RRSO was revised in July 2019, which is when access to the mediation and arbitration process was expanded to more units. In the months following the Governor’s declaration of a state of emergency and local emergency orders due to COVID-19, the number of petitions decreased substantially and have remained low. Of those submitted after July 2019, all but two were submitted by tenants. Staff have talked with several landlords to explain the fair return and capital improvement petition process and Project Sentinel has delivered multiple landlord workshops focused on the petition process.

Figure 1. RRSO Petitions Received since January 2018



The Rent Review Office received 50 petitions from when the new RRSO went into effect through the end of June 2021. Figure 2 describes the outcomes of each petition received since the new RRSO went into effect, as of August 2021. The majority are no longer active. Of those that were accepted and resolved (n = 24), almost all were resolved either in mediation or before it was needed, with only two going to arbitration. Arbitration is scheduled for six cases, and another nine are currently active and in the process of being reviewed or scheduled.

Figure 2. Tenant Petition Outcomes, as of August 2021



Rent Increase and Termination Notices

The RRSO requires that landlords provide the Rent Review Office with copies of all rent increase and termination notices. Collecting such information enables staff to identify trends in Hayward’s rental environment that were previously unclear without reliable data. However, after two years of implementation, there are important limitations to consider for this analysis and interpreting existing data. First, it is likely that not all landlords are complying with the requirement to provide eviction and rent increase notices to the Rent Review Office, so existing data may under-represent eviction notices and may not fully reflect rent increase trends. Second, local, state, and federal COVID-19 eviction moratoria beginning in March of 2020 means eviction notice data is not reflective of normal market conditions in Hayward, as the moratoria restrict the type of evictions permitted during the pandemic. Box 1 below provides more information on the eviction moratoria. While there has not been a freeze on rent increases during that time, many landlords may have opted not to increase rents for tenants who were already struggling to pay.

Box 1. State and Local Eviction Moratorium Timeline

- *March 16, 2020:* Governor authorizes local jurisdictions to prohibit commercial and residential evictions due to non-payment where failure to pay is due to COVID-19 pandemic
- *March 24, 2020:* City passes a temporary moratorium on residential evictions
- *April 7, 2020:* City revises local moratorium to include commercial evictions, lender evictions of homeowners, and prevention of retaliation against tenants
- *June 30, 2020:* City extends temporary moratorium on evictions through September 30, 2020
- *August 31, 2020:* State enacts AB 3088 establishing a state-wide moratorium on residential evictions until January 31, 2021 and precluding local governments from extending their own moratoria beyond already enacted expiration dates
- *September 30, 2020:* City’s temporary residential eviction moratorium sunsets and is not extended due to AB 3088
- *January 29, 2021:* State enacts Senate Bill 91, extending the state eviction moratorium through June 30, 2021, and allocating \$2.6 billion in stimulus funding for rent relief to cover 80% of unpaid rent owed by eligible low-income tenants
- *June 28, 2021:* State enacts Assembly Bill 832, again extending the eviction moratorium through September 30, 2021, and expanding the rental assistance program to cover 100% of unpaid rent owed by eligible low-income tenants

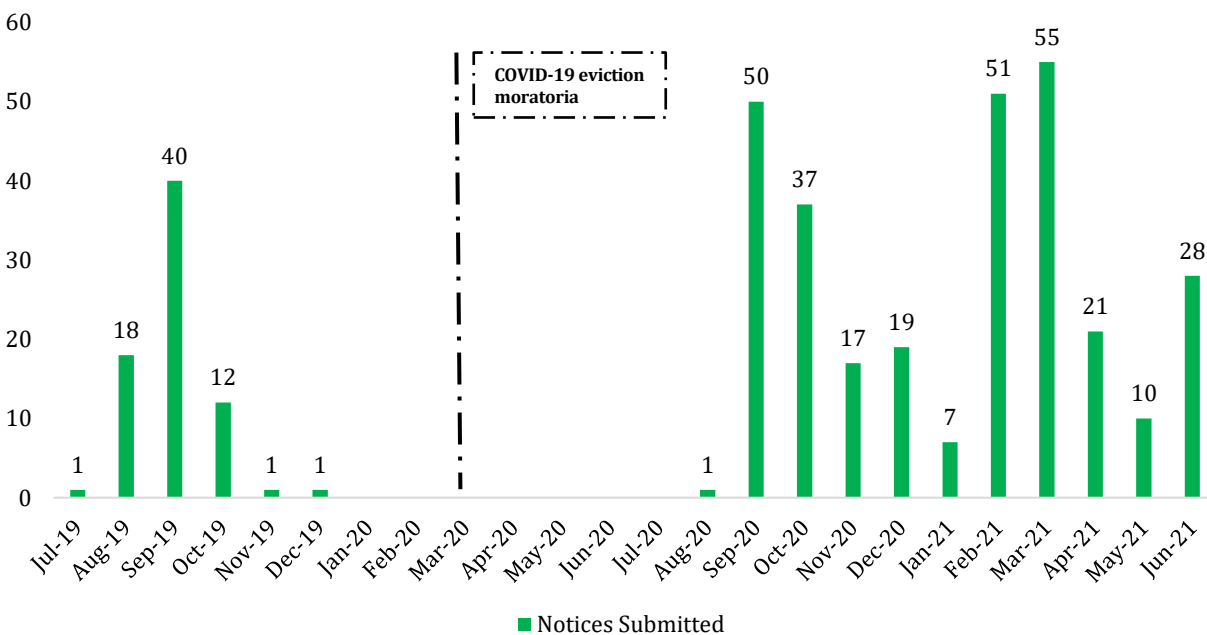
To make it as easy as possible for Landlords to comply with this component of the RRSO, staff developed several forms for noticing that meet all the noticing requirements of the RRSO, including a template form to use whenever a landlord increases rent. These forms are posted to the City’s website and available in hard copy in the Rent Review Office kiosk, which was available at the entrance to City Hall during the pandemic closure.

Termination Notices

Since the RRSO was passed in July 2019 through June 2021, the Rent Review Office has received 446 termination notices from landlords complying with the RRSO. These notices are not documentation of an eviction, but instead are notices to pay or quit, which are intended to be cured by the tenant (either by paying past due rent or leaving the unit). Many termination notices can be cured, so not all termination notices received by the Rent Review Office led to displacement.

As shown in Figure 3, the Rent Review Office did not receive any notices of termination during the first six months of the pandemic, from March 2020 through August 2020. This trend is consistent with the timing of the State eviction moratorium, which was enacted in August 2020 and required that landlords file a 15-day notice to pay or quit when tenants are unable to pay rent. Tenants then have 15 days to provide their landlord with a declaration of COVID-19 related financial distress form. The State moratorium was subsequently extended in January and June 2021, through September 2021. Therefore, the data in Figure 3 does not necessarily reflect actual displacement of tenants.

Figure 3. Termination Notices Received from July 2019 to June 2021



Of the 446 notices submitted to the Rent Review Office in the first two years of the requirement, the majority (96%) were for a failure to pay rent or utilities. In those cases, as of

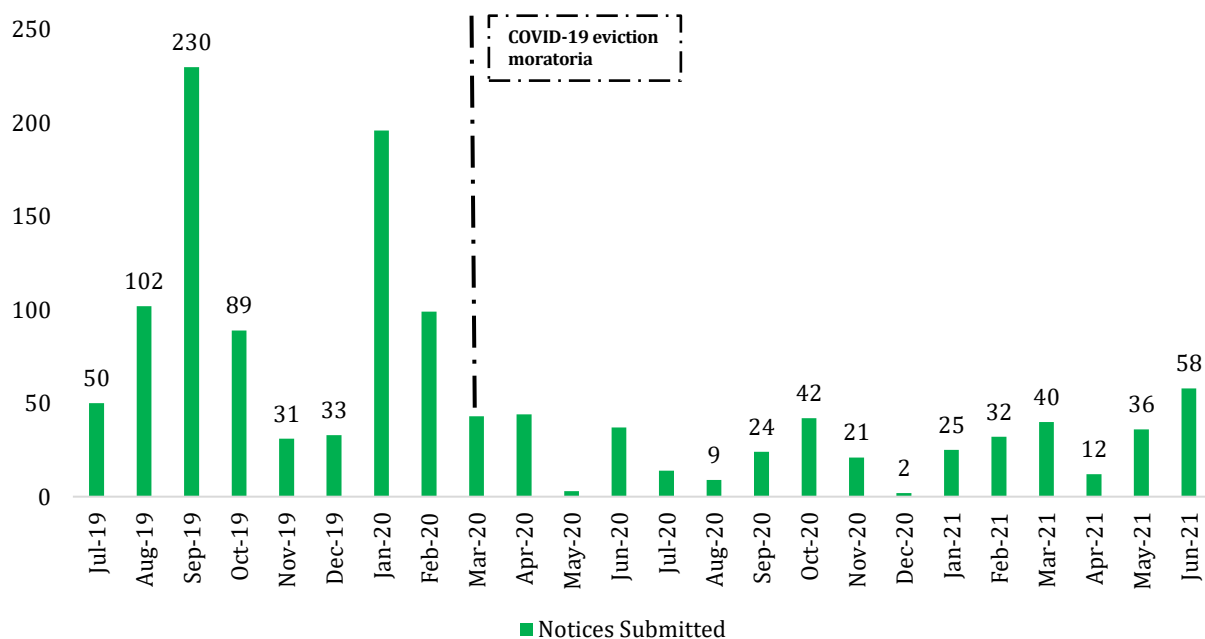
August 2020, tenants had the opportunity to respond with a declaration of inability to pay, per state law. Only 2% of all notices received since July 2019 were for a violation of the lease and another 2% were for a no-fault eviction, such as an owner or family member moving into the unit.

Rent Increase Notices

Since the RRSO was passed in July 2019 through June 2021, the Rent Review Office has received 1,271 rent increase notices. Of those notices received, 1,080 (85%) had enough information to determine the amount of the rent increase. Notices with not enough information often provided options for the tenant to pick different lease lengths with different increases depending on the lease term or had incomplete address or current rent information. Since identifying this trend, staff are establishing a process to follow-up with landlords who submit deficient notices to notify them of the issues and provide them with the City’s rent increase notice template.

For rent increase notices that had sufficient information, the average rent increase amount was 4.8% for covered rental units (i.e., those subject to the RRSO’s rent increase threshold) and 6.2% for rental units. As shown in Figure 4, since the onset of the COVID-19 pandemic and the corresponding eviction moratoria, the number of rent increase notices submitted to the Rent Review Office has dropped substantially.

Figure 4. Rent Increase Notices Received from July 2019 to June 2021

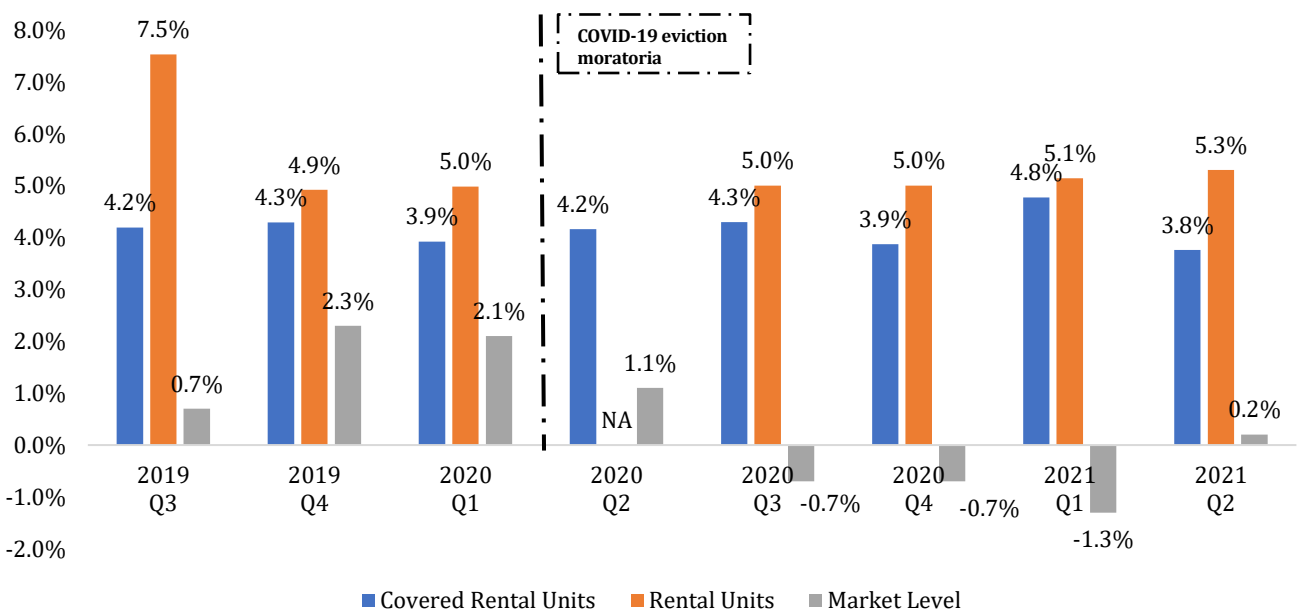


Data from the CoStar real estate database provides some insights into the Hayward rental market by surveying effective rent on new leases in multi-family rental properties.⁶ Over time, average effective rent has reduced from an average increase of 5.7% in 2016 to an average of 3.7% in 2018. When compared to the rent increase information shared with the Rent Review

⁶ Effective rents refer to the actual rent after factoring in concessions or other discounts.

Office, market-level data show lower average effective rent, as shown in Figure 5. It is important to note that available data on multi-family effective rent changes does not capture existing leases or changes to those agreements over time, which includes potential substantial rent increases for individual households. While market prices for multi-family properties may decrease, not all tenants will experience the relief of market rent depreciation. However, when comparing Figures 4 and 5, there appears to be a correlation between the reduction in market rents and the number of rent increase notices filed. While the cause of this relationship cannot be determined at this time, it appears that fewer tenants have received rent increases at the same time that market rent is depreciating.

Figure 5. Comparison of Average Rent Increases Submitted to the Rent Review Office and Average Multi-Family Market Rents from July 2019 through June 2021, by Quarter



The City’s RRSO is intended to stabilize rents, creating predictability for landlords and tenants and preventing unpredictable spikes in rent for individual households. As the average change in market rents is considerably lower than the increases in actual rent submitted to the Rent Review Office, additional time is needed to evaluate the extent to which rents are stabilizing, particularly given the unique circumstances of the pandemic during the majority of the RRSO’s implementation.

Data Infrastructure and Implementation Improvements

Since the last update to the HHTF in March 2020, staff have launched both the external and internal components of the Rent Review Database. For external use, the database allows tenants and landlords to search for a specific unit and determine which components of the RRSO apply. Through this search function, they can determine if a unit is subject to the rent stabilization threshold, which can help landlords comply with the RRSO and help tenants determine if they have received an unlawful rent increase. Internally, the database allows staff and our consultants to track the status of tenant and landlord petitions, as well as easily query and report on the trends in existing petitions.

In addition to expanding the Rent Review Database, the City was selected to participate in the Eviction Prevention Learning Lab (EPLL).⁷ The EPLL is a national peer-to-peer network focused on eviction prevention strategies, providing cities and their partners with access to best practices, policies, and tools for preventing eviction. It is facilitated by the National League of Cities and the Stanford Legal Design Lab. The City is focusing on the learning areas of 1) Tenant and Landlord Education and 2) Communication, Outreach, and Engagement. Additionally, through participation in the EPLL, the City has been selected as a pilot site for the development of a Housing Loss Public Tool. Through the pilot project, the City has begun conversations with the Alameda County Superior Courts to access eviction data. This data may help the City evaluate eviction activity in the City and produce a geographic depiction of where evictions are occurring in Hayward. Such an analysis is important to understanding the eviction landscape in Hayward, where displacement pressures are rising for renters, most of whom are Black/African American or Hispanic and carrying larger housing cost burdens than White or Asian renters. Staff are still in early communications for this project but are optimistic about accessing new data and piloting effective ways to visualize and report on eviction trends in the City.

Tenant Relocation Assistance Ordinance Implementation

Alongside the amendments to the RRSO approved in July 2020, Council also adopted Chapter 12, Article 2 of the Hayward Municipal Code, titled the Tenant Relocation Assistance Ordinance (TRAO). The TRAO creates permanent and temporary relocation assistance requirements for landlords to pay under certain circumstances when a tenant becomes displaced from their unit. Landlords are required to pay permanent relocation assistance when there is a no-fault just cause eviction. Temporary relocation assistance is required when landlords must complete substantial repairs that would temporarily displace the tenants, or when a government order is issued for health and safety issues. For more information about the TRAO, see Attachment II.

Since its implementation, staff have created a number of resources to facilitate compliance with the TRAO:

- TRAO Summary (translated into English, Spanish, and traditional Chinese)
- Template notice to tenants form, for landlords to use to notify tenants of the applicability of the TRAO (translated into English, Spanish, and traditional Chinese)
- Template permanent relocation noticing forms for landlords to use when completing a no-fault eviction (translated into English, Spanish, and traditional Chinese)
- Template permanent and temporary relocation noticing forms for landlords to use when tenants are eligible for assistance due to a notice to vacate from Code Enforcement

Staff are still finalizing temporary relocation noticing forms, which require landlords and tenants to coordinate to share information necessary for calculating the type and amount of assistance owed during a temporary displacement not caused by a government order to vacate. The forms are intended to help the landlord comply with the requirements of the

⁷ Visit the EPLL for more information: <https://www.nlc.org/initiative/2021-eviction-prevention-learning-lab/>

TRAO when doing substantial repairs that will displacement tenants temporarily. Once the forms are completed, they will also be translated from English into Spanish and traditional Chinese.

Since implementation, staff have reviewed twelve relocation cases, the majority of which have been initiated through a Code Enforcement inspection that has found the unit to be in violation of health and safety code. Staff from Housing and Code Enforcement work closely to share information on these cases and to communicate with the tenants. Staff have observed that in many cases, landlords are either unwilling or unable to make the required relocation assistance payments. In response, staff are taking two key actions. First, staff are drafting implementation regulations, as authorized by Section 12-2.14 of the TRAO. The regulations will detail the City's ability to provide relocation payments to a tenant on behalf of the landlord if the landlord fails to comply, then recover the payment from the landlord through a special assessment or lien. Second, Council authorized the City's federal stimulus expenditure plan for American Rescue Plan Act funds, creating a relocation assistance fund for displaced tenants of \$250,000 for FY 22 through FY 24. This fund, along with the implementation regulations, will enable the City to make relocation assistance on behalf of landlords who cannot or refuse to pay, then recover the costs through special assessment, lien, or a negotiated repayment plan.

ECONOMIC IMPACT

This report is an informational update on the implementation progress of the RRSO. It does not propose any substantial legislative changes that would create any new or differing economic impact.

FISCAL IMPACT

This informational update does not propose any changes or additions that would create a fiscal impact to the City's General Fund. The RRSO does include an administration fee, the revenue for which supports the implementation of the ordinance. This includes staff expenses, as well as education and outreach activities to ensure landlords and tenants are aware of their rights and responsibilities.

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

Since it was passed in July 2019, the City has conducted several education and outreach workshops and received many inquiries regarding the RRSO. As reported in the previous

HHTF update, the City hired a new Housing Program Specialist in February 2020 who has focused on increasing outreach and education efforts, with an emphasis on meeting tenants and landlords where they are through tabling events and collaboration with partners like Hayward Unified School District, in addition to online workshops. From July of 2020 to date, staff have participated in 38 outreach events, including outdoor tabling at neighborhood events and resource fairs and hosting online workshops about the RRSO as well as the County's Emergency Rental Assistance Program and existing eviction moratoria.

In addition to scheduled outreach and education events, the City has received 6,365 inquiries since July 2019 to the Housing Division phone or office, including a specific Spanish language line that was set up during the pandemic. Over half (55%) of the inquiries have been about the RRSO. Frequent RRSO inquiries include tenants or landlords asking about allowable rent increases, questions from landlords about the administrative fee, and questions from tenants and landlords about just cause eviction. Another 22% of all inquiries received since July 2019 were related to COVID-19. The COVID-19 inquiries were primarily about rent relief or the eviction moratorium.

NEXT STEPS

Staff will continue to monitor implementation of the RRSO, identifying additional opportunities to improve processes, forms, and outreach strategies. Through continued participation in the EPLL, staff plan to evaluate current outreach, communication, and education strategies. Staff will also continue working with the EPLL and Alameda County Superior Court to improve eviction data access and reporting. Additionally, staff have already scheduled nine outreach events for the remainder of the year, including partnering with Code Enforcement, ECHO Fair Housing, and HUSD.

On September 21, 2021, Council will hear an informational report on the City's plan for responding to the end of the State's eviction moratorium at the end of the September. Staff will share more information about expanded mediation services and services to prevent foreclosure for low-income homeowners.

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