

# **CITY OF HAYWARD**

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
[www.Hayward-CA.gov](http://www.Hayward-CA.gov)



CITY OF  
**HAYWARD**  
HEART OF THE BAY

## **Agenda**

**Thursday, September 3, 2020**

**6:00 PM**

**Remote Participation**

## **Homelessness-Housing Task Force**

COVID-19 Notice: Consistent with State of California Executive Order No. 29-20 dated March 17, 2020, and Alameda County Health Officer Order No. 20-10 dated April 29, 2020, the Task Force will be participating in public meetings via phone/video conferencing.

Please note that we are now using the Zoom Webinar platform to conduct meetings and receive live public comment.

*How to watch the meeting from home:*

1. Comcast TV Channel 15
2. Live stream <https://hayward.legistar.com/Calendar.aspx>
3. YouTube Live stream: <https://www.youtube.com/user/cityofhayward/live>
4. YouTube Live stream (Español): <https://youtu.be/DqciWPPWVXI>

*How to submit written Public Comment:*

*Send an email to [yolanda.cruz@hayward-ca.gov](mailto:yolanda.cruz@hayward-ca.gov) by 3:00 p.m. the day of the meeting. Please identify the Agenda Item Number in the subject line of your email. Emails will be compiled into one file, distributed to the Task Force and City staff, and published on the City's Meeting & Agenda Center under Documents Received After Published Agenda. Written comments received after 3:00 p.m. that address an item on the agenda will still be included as part of the record.*

*How to provide live Public Comment during the meeting:*

*Click this link below to join the webinar: <https://hayward.zoom.us/j/96614219689?pwd=WWtKdVo3RDdB2ZzBQVWVzRnFBNDpQT09>  
Passcode: DnC5G3#t*

*or*

*Dial: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 929 205 6099 or +1 301 715 8592  
or +1 312 626 6799  
Webinar ID: 966 1421 9689  
Passcode: 46024244*

*A Guide to attend virtual meetings is provided at this link: <https://bit.ly/3jmaUxa>*

**CALL TO ORDER:** Chair Lamnin

**ROLL CALL**

**PUBLIC COMMENTS:**

Limited Only to the Items on the Agenda and Submitted in  
Writing Prior to the Meeting

**APPROVAL OF MINUTES**

1. [MIN 20-084](#) Minutes of the Homelessness-Housing Task Force Meeting on  
June 4, 2020

**Attachments:** [Attachment I Draft Minutes 6/4/2020](#)

**REPORTS/ACTION ITEMS**

2. [RPT 20-090](#) Analysis of Alternative Rent Stabilization Thresholds in the City  
of Hayward's Residential Rent Stabilization Ordinance

**Attachments:** [Attachment I Staff Report](#)

**INFORMATIONAL ITEMS**

3. Emerging Needs Due to COVID-19 (no staff report needed)

**FUTURE AGENDA ITEMS**

**TENTATIVE SCHEDULE**

**DECEMBER 3, 2020**

1. Hayward's Homelessness Strategic Plan
  - Workforce Development Pathways
2. Review of New Housing and Homelessness Legislations  
(informational item - no staff report needed)
3. Evaluation of Task Force Continuance

**MARCH 4, 2021**

1. Criteria/Priorities for Next NOFA (if sufficient funding is available)
  - Hayward Specific Area Median Income or Income Targeting Reflecting Specific Needs of Hayward Residents
  - Potential for Hayward Down payment Assistance Program

**COMMITTEE MEMBER/STAFF ANNOUNCEMENTS AND REFERRALS**

**ADJOURNMENT**



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**File #:** MIN 20-084

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**DATE:** September 3, 2020

**TO:** Homelessness-Housing Task Force

**FROM:** Deputy City Manager

**SUBJECT**

Minutes of the Homelessness-Housing Task Force Meeting on June 4, 2020

**RECOMMENDATION**

That the Task Force approves the minutes of the meeting on June 4, 2020.

**ATTACHMENTS**

Attachment I Draft Minutes 6/4/2020



**MINUTES OF THE HOMELESSNESS-HOUSING TASK FORCE MEETING  
REMOTE PARTICIPATION  
Thursday, June 4, 2020, 6:00 p.m.**

**CALL TO ORDER**

The Task Force meeting was called to order by Council Member Lamnin at 6:00 p.m. The meeting was conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order No. 29-20 dated March 17, 2020, and Alameda County Health Officer Order No. 20-10 dated April 29, 2020, regarding the COVID-19 pandemic.

**ROLL CALL**

Present:

Council Member Lamnin  
Council Member Salinas  
Council Member Wahab

Absent: None

**OTHER PARTICIPANTS**

Jennifer Ott, Deputy City Manager; Christina Morales, Housing Division Manager; Doris Tang, Management Analyst and Yolanda Cruz, Administrative Clerk.

**PUBLIC COMMENTS**

There were none.

**APPROVAL OF MINUTES**

**1. Minutes of the Homelessness-Housing Task Force Meeting on March 5, 2020**

It was moved by Council Member Salinas, seconded by Council Member Wahab, and carried unanimously, to approve the minutes of the Homelessness-Housing Task Force meeting on March 5, 2020.

**INFORMATIONAL ITEMS**

**2. Informational Report on Program and Policies that Promote Homeownership**

Informational only.

Council Member Lamnin opened the public comments section at 6:45 p.m.

**MINUTES OF THE HOMELESSNESS-HOUSING TASK FORCE MEETING  
REMOTE PARTICIPATION  
Thursday, June 4, 2020, 6:00 p.m.**

Public speakers participated by calling the conference phone number at 1(415) 915-0612.

The following individuals spoke during public comments:

David Stark, with Bay East Association of Realtors

Shreya Shah

Council Member Lamnin closed the public comments section at 6:52 p.m.

**FUTURE AGENDA ITEMS**

**TENTATIVE SCHEDULE**

**SEPTEMBER 3, 2020**

1. Criteria/Priorities for Next NOFA (if sufficient funding is available)
  - Hayward Specific Area Median Income or Income Targeting Reflecting Specific Needs of Hayward Residents
  - Potential for Hayward Down Payment Assistance Program
2. Hayward's Homelessness Strategic Plan
  - Workforce Development Pathways
3. Emerging Needs due to COVID-19 (no staff report needed)

**DECEMBER 3, 2020**

1. Evaluation of Task Force Continuance
2. Review of New Housing and Homelessness Legislations (informational item)
3. Emerging Needs Due to COVID-19 (no staff report needed)

**TASK FORCE MEMBER/STAFF ANNOUNCEMENTS AND REFERRALS**

Council Member Lamnin announced ACA (Assembly Constitutional Amendment) 5, a ballot measure that would repeal Proposition 209. ACA 5 would be presented to the voters potentially in the fall.

**ADJOURNMENT**

Council Member Lamnin adjourned the meeting at 8:04 p.m.



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**File #:** RPT 20-090

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**DATE:** September 3, 2020

**TO:** Homelessness-Housing Task Force

**FROM:** Deputy City Manager

**SUBJECT**

Analysis of Alternative Rent Stabilization Thresholds in the City of Hayward's Residential Rent Stabilization Ordinance

**RECOMMENDATION**

That the Homelessness-Housing Task Force (HHTF) reviews and provides comments on the report summarizing analysis of potentially lower rent stabilization thresholds.

**SUMMARY**

On July 14, 2020, City Council directed staff to analyze alternative lower rent stabilization thresholds for HHTF consideration. This report analyzes the benefits and challenges of using a) a fixed percentage threshold, as established in the City's current rent stabilization ordinance, and b) a threshold based on an established economic index, with a discussion of three potential indices.

Analysis of available data indicates that housing is unaffordable for over half of Hayward renters and that, even though renters are seeing greater increases in annual median income, any income gains are often consumed by housing costs. With that consideration, staff presents the following options to the HHTF:

- 1. Maintain the current threshold as a fixed percentage at 5%.** This option provides an approximation of long-term market appreciation and promotes clarity and predictability for both landlords and tenants. Further, available data indicate that this option would maintain the City's current stabilization rates and enables landlords to make a fair return on investment.
- 2. Implement a new threshold using 100% of the annual change in CPI, with a ceiling (5%) and floor (2%).** Using 100% of CPI will likely result in a lower rent increase threshold, which will increase the likelihood that rental housing in Hayward becomes more affordable to tenants. The majority of Hayward renters are housing burdened, and one in four are severely cost burdened. Using CPI as a threshold would address growing affordability concerns while still most likely providing landlords a fair return. If a landlord's net operating income, which factors in their operating costs, is less than the percent change in CPI, the landlord can request a higher rent



increase to cover costs and receive an annual increase in operating profit.

Staff reviewed additional economic indices; however, they are not recommended because they are either not likely to provide a fair return to property owners (HUD's Annual Adjustment Factors) or do not address affordability concerns (Annual Median Income).

Should the HHTF choose to recommend a revision to the RRSO's residential rent increase threshold, staff proposes the following timeline for next steps:

- October/November 2020: First and second readings of revised RRSO at City Council
- January/February 2021: Revised RRSO effective date

## **ATTACHMENTS**

Attachment I Staff Report



**DATE:** September 3, 2020

**TO:** Homelessness-Housing Task Force

**FROM:** Deputy City Manager

**SUBJECT:** Analysis of Alternative Rent Stabilization Thresholds in the City of Hayward's Residential Rent Stabilization Ordinance

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## **BACKGROUND**

### **Current Rent Increase Threshold & Allowable Rent Increases**

On June 18, 2019<sup>1</sup>, Hayward City Council approved a new Residential Rent Stabilization and Tenant Protection Ordinance (RRSO) to mitigate displacement of Hayward residents. Among other important provisions, the new RRSO extended rent increase protections to all rental units permitted under state law. The RRSO created a Residential Rent Increase Threshold (see RRSO Section 12-1.05) which establishes that rent increases for covered rental units:<sup>2</sup>

- Can only be imposed once every 12 months
- Can be no more than 5% of the existing monthly rent absent other justifications described below.
- Are subject to the RRSO's rent dispute resolution process if they exceed 5%, meaning that tenants can petition a rent increase more than 5% to initiate a review of the increase

In addition to the annual rent increase, the RRSO includes provisions for when rent increases of more than 5% are allowable:

- Banked Rent Increase: Landlords "bank" annual rent increases (up to 5%) not charged to the tenant and charge the banked increase in future years with the annual increase. The total rent increase (annual increase plus the banked rent increase) may be 10% or less of a tenant's current rent.
- Capital Improvement Pass-Through: Once completed and paid for, Capital Improvement costs may be charged to the tenant. The increase cannot be more than 10% of the tenant's current rent (including annual and banked rent increases). The increase must be removed after half of the costs for the improvement have been recovered by the landlord.

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<sup>1</sup> June 18, 2019 City Council Staff Report and Attachments:

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

<sup>2</sup> Covered rental units are all units except: single unit properties that are exempt due to state law; owner occupied properties with a legal accessory dwelling unit; affordable housing units with other rent controls; hospitals, care facilities, convalescent homes, and transitional housing; motels, hotels, inns, and boarding houses; and non-profit cooperative units owned or occupied by most of the owners

- Fair Return Rent Increase: Rents can be increased above 5% if it is necessary for a landlord to cover costs and get a fair return on their investment. The Discussion section of this report has more information about fair return increases and the City's definition of fair return as defined in the RRSO.
- Rent Increase after Non-Voluntary Vacancies: Landlords can increase rent up to 5% of previous tenant's rent.
- Rent Increase after Voluntary Vacancies: Landlords can set initial rent without limitation. In other words, the rent can be increased to market rents if a tenant voluntarily vacates the unit.

Additionally, the RRSO establishes an allowable utility pass-through. Utilities that are charged by the landlord to the tenant separate from rent as stated in the lease are not considered rent. Landlords must use a system to make sure that the utilities are shared fairly among the tenants and they can only pass-through actual costs. If requested by the tenant, the landlord must give the tenant information explaining the methodology used to allocate utility costs and documentation that verifies actual expense to the landlord.

### **Direction to Revisit the Existing Rent Increase Threshold**

On March 5, 2020, the HHTF met to receive a report on the implementation progress of the RRSO and to hear recommendations for revisions.<sup>3</sup> Task Force members supported recommendations for revisions that were then presented to Council for discussion and approval on July 14, 2020.<sup>4</sup> Revisions focused on clarifying the RRSO, aligning it with new state tenant protections legislation, and responding to specific policy issues identified by the HHTF or from earlier work sessions.

Council approved the recommendations and directed staff to return to the HHTF with additional analysis of other options for structuring the residential rent increase threshold. Council members also cited public comment that recommended using the Department of Housing and Urban Development's (HUD) Annual Adjustment Factors rate as a threshold and directed staff to explore this index along with other options for review at the next the HHTF meeting. This report to the HHTF responds to Council's direction for further analysis of the rent increase threshold.

### **DISCUSSION**

The following section provides analysis of potential rent increase thresholds for HHTF consideration. Included in the discussion is information about Hayward renters to identify the economic and demographic characteristics of renter-occupied households in Hayward. This section also provides an overview of the purpose of rent control and rent stabilization policies

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<sup>3</sup> March 5, 2020, Homelessness-Housing Task Force Staff Report and Attachments:

<https://hayward.legistar.com/MeetingDetail.aspx?ID=761368&GUID=EC9B416A-5F1C-4574-9AD6-081EBEF9729A&Options=&Search=>

<sup>4</sup> July 14, 2020, Hayward City Council Staff Report and Attachments:

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

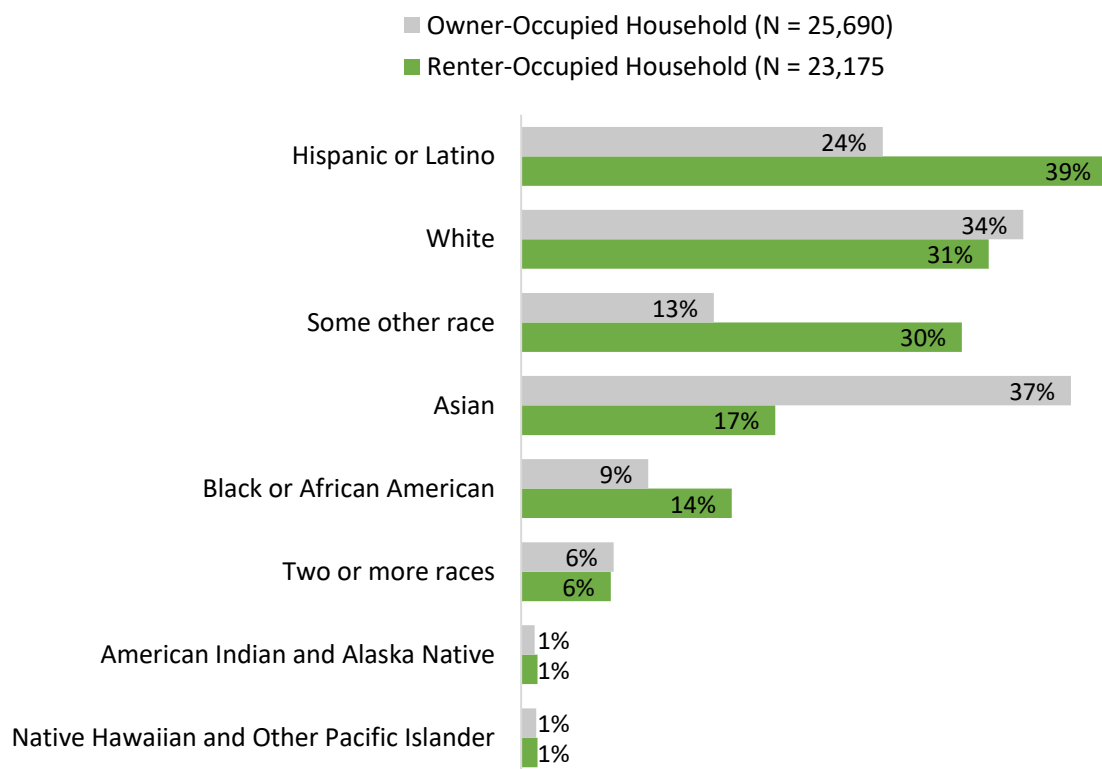
over time, and discussion of rent stabilization through a) a fixed percentage threshold and b) an economic index.

## Hayward Renters

The most recent American Community Survey (ACS) data paints a picture of Hayward renters *who are more likely to be low-income racial and ethnic minority groups with a higher housing cost burden compared to Hayward homeowners.*

The Hayward community is very diverse; almost two-thirds of Hayward residents speak a language other than English and nearly one in four residents are a race other than white. Among white households, the proportion who rent is similar to those who own their homes. However, among Hispanic/Latino and Black/African American households, a much higher proportion rent rather than own their homes (see **Figure 1** below).

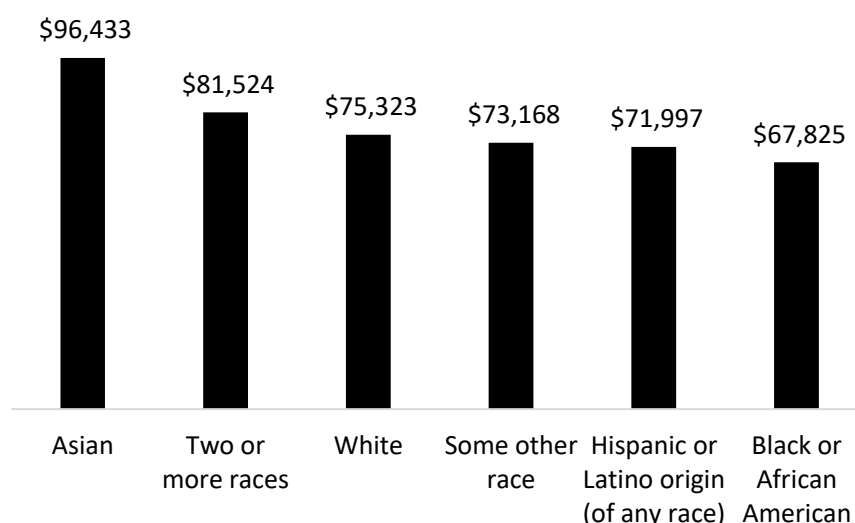
**Figure 1. Race and Ethnicity of Renter- and Owner-Occupied Households<sup>5</sup>**



Additionally, income data demonstrates that, across home types, Hispanic/Latino and Black/African American households have lower annual median income than Asian or white households (see **Figure 2** on the following page).

<sup>5</sup> 2018 American Community Survey 1-Year Estimates

**Figure 2. Annual Median Income of Hayward Residents by Race/Ethnicity (N = 48,865)<sup>6</sup>**



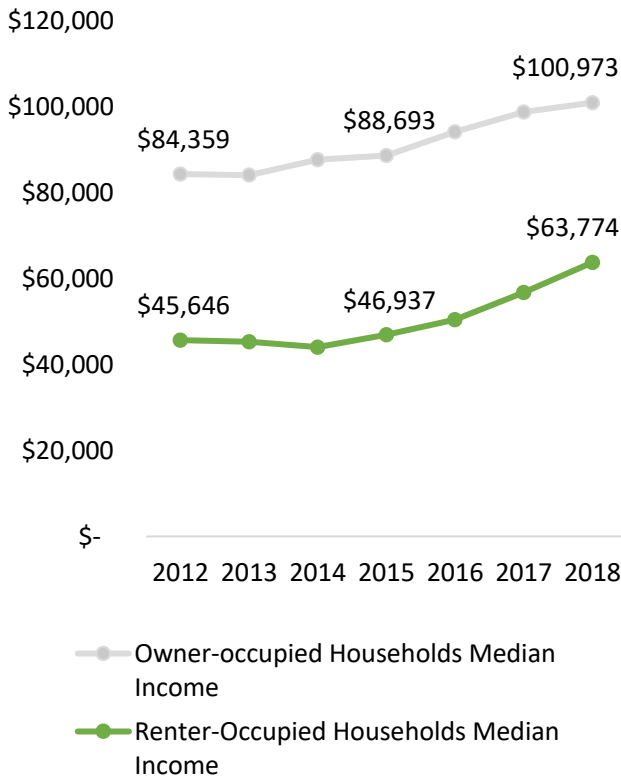
Though it does not capture more recent data or the significant financial impacts of COVID-19 on landlords and tenants, it is clear that in recent years Hayward renters have seen a substantial boost in their incomes (see **Figure 3**). On average, renters' annual median income (AMI) increased 5.2% from 2012 through 2018, compared to an average 3.1% increase among homeowners. Although Hayward renters' AMI has risen at a greater rate, their income continues to be far lower than homeowners' income. According to HUD, if a household's total housing costs exceed 30% of the household's income, those housing costs are considered unaffordable and those households are considered "housing cost-burdened."<sup>7</sup> In Hayward, over half of renters experience housing cost burden, while only about a third of homeowners are cost burdened (see **Figure 4**). Furthermore, one in four renters (26%) are severely housing cost burdened, meaning they spend over half of their income in rent.

<sup>6</sup> 2018 American Community Survey 1-Year Estimates

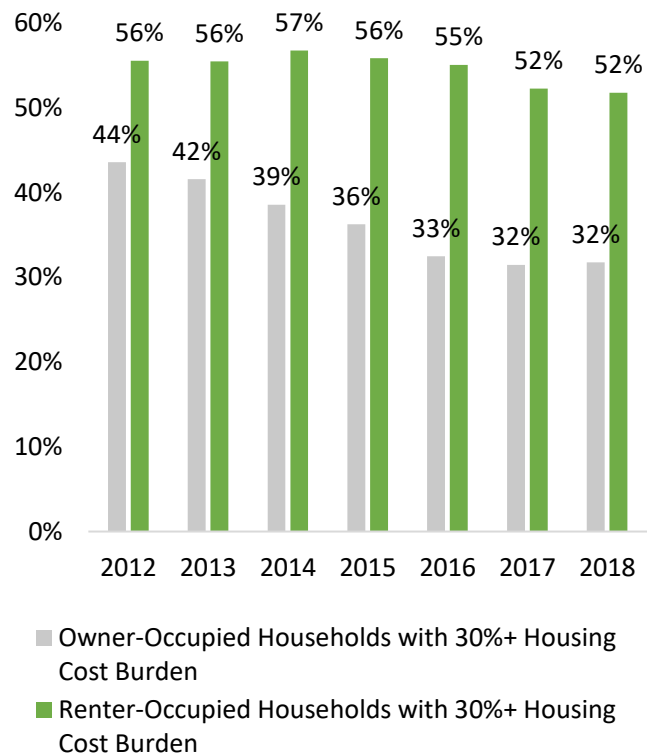
<sup>7</sup> HUD Affordable Housing. Retrieved from:

[https://www.hud.gov/program\\_offices/comm\\_planning/affordablehousing/](https://www.hud.gov/program_offices/comm_planning/affordablehousing/)

**Figure 3. Annual Median Income of Renter- and Owner-Occupied Households<sup>8</sup>**



**Figure 4. Percent of Owner- and Renter-Occupied Households with Housing Cost Burden<sup>9</sup>**



Collectively, the data reveal a challenging landscape for Hayward's renters:

- More **renters are people of color**, who are more likely to have **lower incomes than their white neighbors**
- While renters' recent incomes are increasing, they continue to **experience housing cost burden**, suggesting that any **gains they make in income are consumed by their rent** and housing is **still unaffordable**

This landscape mirrors the challenges experienced by renters across California, where eight out of ten low-income households are burdened by housing costs and many of those households belong to people of color.<sup>10</sup> Additionally, it is almost certain that the COVID crisis has exacerbated these burdens for many households, especially for people of color.

<sup>8</sup> American Community Survey 5-Year Estimates, 2012-2018. Sample sizes vary annually.

<sup>9</sup> American Community Survey 5-Year Estimates, 2012-2018. Sample sizes vary annually.

<sup>10</sup> California Budget & Policy Center (April 2019). California's housing affordability crisis hits renters and households with the lowest incomes the hardest. Retrieved from: [https://calbudgetcenter.org/wp-content/uploads/2019/04/Report-California-Housing-Affordability-Crisis-Hits-Renters-and-Households-With-the-Lowest-Incomes-the-Hardest\\_04.2019.pdf](https://calbudgetcenter.org/wp-content/uploads/2019/04/Report-California-Housing-Affordability-Crisis-Hits-Renters-and-Households-With-the-Lowest-Incomes-the-Hardest_04.2019.pdf)

## **Stabilizing Rent Increases**

As an anti-displacement strategy, rent stabilization policies can help keep renters, particularly those of color who are more likely to rent and to experience greater housing costs, in their homes, preserving existing housing and helping to prevent homelessness.<sup>11</sup> The City's current rent stabilization policies are in line with the City's goals to preserve housing for its existing residents and to counteract centuries of racist housing policies that have had disproportionate impacts on people of color and their ability to find and maintain affordable housing.

This section discusses the following threshold options:

1. A fixed-rate threshold like the 5% threshold in the City's current RRSO
2. A threshold aligned with an economic index, including
  - a. Consumer Price Index,
  - b. HUD Annual Adjustment Factors Index, or
  - c. Annual Median Income

## ***Rent Control & Rent Stabilization Policies***

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<sup>11</sup> For more information on these goals, see the City of Hayward's *Strategic Roadmap* (<https://hayward.legistar.com/LegislationDetail.aspx?ID=4315589&GUID=1F328D58-C3FC-41E5-8BF7-A17E4E09DDCB&Options=&Search=>), the City of Hayward's *Racial Equity Action Plan* (<https://hayward.legistar.com/LegislationDetail.aspx?ID=4544083&GUID=5CDE545C-2BB9-4C01-AC3C-9C1CBBDB4A0A&Options=&Search=>), the City of Hayward's Navigation Center prioritization policy (<https://hayward.legistar.com/LegislationDetail.aspx?ID=4056931&GUID=2D38C7B0-C7BF-4C35-84BF-CEE97008D399&Options=&Search=>), and the Alameda County EveryOne Home *Plan to End Homelessness* (<https://everyonehome.org/wp-content/uploads/2018/12/EveryOne-Home-Strategic-Update-Report-Final.pdf>)



In general, rent control and rent stabilization policies are intended to maintain affordable housing by preventing unpredictable spikes in rent.

Early rent control policies in response to the World War II housing boom were characterized by strict price ceilings for long-term renters. There are few of these rent control policies still in effect today, as many local jurisdictions have modified their approach to rent control in response to concerns about maintenance, quality of housing services, and landlords' ability to see a return on their investment. These later policies, referred to as rent stabilization, are less strict. They apply only to certain types of housing and permit rent increases on set schedules. Today's rent stabilization laws, like the RRSO in Hayward, also often include eviction and other tenant protections. As discussed by the Urban Institute,

arguments against rent stabilization made by economists focus on the policy's impact on supply; however, those arguments often fail to factor in that many jurisdictions have provisions to address impacts on supply (like Hayward's fair return standard).<sup>12</sup>

Additionally, as California's State Constitution guarantees property owners the right to a fair return on their investment, many of California's local rent stabilization laws include a provision defining a fair return (see Box 1 for more information about the fair return standard established in Hayward's RRSO).

### ***Rent Stabilization through a Fixed Threshold***

Currently, Hayward's RRSO establishes a fixed threshold that caps rent increases at 5%, with some exceptions (e.g., banking) not to exceed 10%. This approach is intended to stabilize rents by preventing sudden and unpredictable increases while ensuring that landlords receive a fair return as defined in the RRSO. Other jurisdictions in the Bay Area that use a fixed threshold for their rent stabilization or mediation programs include Fremont, San José, and San Leandro.

#### **Box 1. The RRSO Standard of Fair Return**

The California State Constitution and Hayward's RRSO guarantee landlords a right to a fair return on their investment. According to the RRSO, the fair return standard assures landlords "both a Fair Return on their Property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation" (Section 12-1.03).

Using 2018 as its initial year, the RRSO establishes a fair return standard ensuring that a landlord's net operating income (not including debt service or capital improvements) increases at least the same amount as the increase in the Consumer Price Index during the same period.

When a landlord's increase in net operating income is less than the increase in CPI, the landlord is eligible to petition for a rent increase more than 5%.

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<sup>12</sup> Rajasekaran, P., Treskon, M., & Greene, S. (January 2019). Rent control: What does the research tell us about the effectiveness of local action? *Urban Institute*. Retrieved from: <http://aagla.org/wp-content/uploads/2019/10/Urban-Institute-Rent-Control.pdf>

Since the RRSO's enactment through June 30, 2020, the average rent increase for covered rental units was 4.7%, slightly below the 5% threshold. This reflects market trends and suggests that the current threshold is helping to stabilize rents. The Bureau of Labor Statistics (BLS) CPI Index: Rent of Primary Residence (CPI Rent Index) measures trends in rent and from 2010 to 2018, it has averaged a 4.7% increase for the San Francisco-Oakland-Hayward area.<sup>13</sup>

This current approach can maintain the City's current rental housing, as data indicate that 1) tenants' incomes are increasing 5.2% each year on average since 2012, and 2) the CPI Rent Index shows that rents have increased 4.7% each year on average since 2010. The 5% fixed threshold also promotes predictability, allowing both renters and landlords to plan for increases over time. It also creates more long-term market rate return, ensuring landlords have the funds to maintain their properties and earn a fair return as defined in the RRSO (see Box 1). However, available data are through 2018 and do not reflect the financial and economic consequences of COVID-19. Based on available data, the City's 5% threshold may promote stability for renters who have seen a comparable percentage in income since 2012, but it does not address the affordability challenges associated with persistent housing cost burden and potential displacement (see **Figure 4**).

### ***Rent Stabilization through Economic Indices***

An alternative to rent stabilization with a fixed annual percentage increase threshold is a threshold anchored to an economic index, such as the Consumer Price Index (CPI). The following section discusses three potential economic indices for a rent increase threshold. For a comparison chart of the following indices and the fixed percentage threshold, see **Table 1**.

#### **Consumer Price Index**

The CPI All Items metric is a widely used measure of inflation and is frequently used as the best available economic index for projecting changes in many apartment operating costs, such as maintenance, management, and insurance.<sup>14</sup> Since 2001, CPI for the San Francisco-Oakland-Hayward area has increased an average of 2.6% each year and no annual increase has exceeded 5% since the change from 2000 to 2001 (see **Figure 5**). Most Bay Area cities with rent stabilization use inflation as measured by CPI as the basis for allowable rent increases, including Richmond, Oakland, Berkeley, Alameda, and San Leandro. These cities vary in setting increase thresholds at 100% or less than 100% of the annual percentage change in CPI. For example, Richmond's threshold is 100% of the annual change in CPI each year, while Alameda's threshold is 70% of the annual change.

CPI reflects changes in the inflation rate of many consumer goods, so using CPI for a rent increase threshold ensures that changes in rent are linked to changes in costs. However, using

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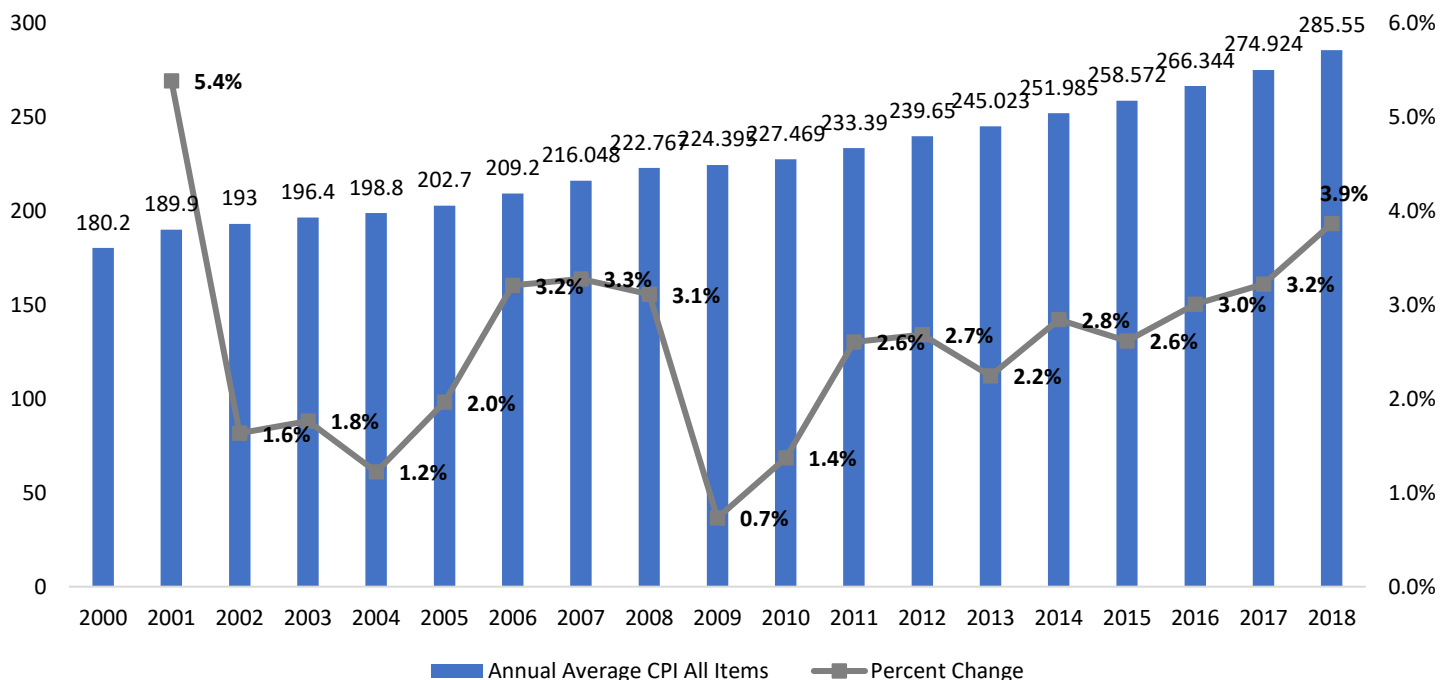
<sup>13</sup> Federal Reserve Economic Data. Retrieved from: <https://fred.stlouisfed.org/series/CUURA422SEHA>

<sup>14</sup> Barr, K., Burns, P., & Flaming, D. (April 2016). Study of the Apartment Rent Ordinance of the city of San José: Final report. *Economic Roundtable*, p. 86. Retrieved from: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3380034](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3380034)

CPI almost guarantees a lower threshold than the current threshold and, since implementation of the existing RRSO, stakeholders have expressed concerns to City staff that a lower threshold would cause owners of smaller properties to remove them from the market. As discussed in the background section, the RRSO does include additional allowable rent increases, including banking and petitioning for a fair return, which could help address these concerns.

Importantly, Hayward’s definition of fair return requires that, at minimum, landlords’ net operating revenue matches the increase in CPI. Therefore, limiting the threshold to less than 100% of the change in CPI would make it difficult for landlords to obtain their constitutional right to a fair return as defined by the RRSO.

**Figure 5. Percentage Change in CPI Over Time**



### HUD Annual Adjustment Factors (AAF) Index

Written public comment submitted to Council and discussed during the July 14, 2020, Council meeting recommended exploring the Annual Adjustment Factors (AAF) Index from HUD for the San Francisco-Oakland-Hayward area as an alternative to the City’s current fixed percentage rent increase threshold. HUD establishes the AAF based on CPI data related to changes in the price of residential rent and utilities. The AAF is then used to set annual rent adjustments for certain types of Section 8 housing assistance payment programs. Notably, HUD does not use the AAF to determine subsidies for market rate property owners, such as those participating in the Housing Choice Voucher program (i.e., Section 8).

Importantly, the AAF is an index for establishing rent thresholds for subsidized affordable housing programs. It is not designed for property owners to receive a fair return on their investment based on allowable rent increases established by the AAF. For example, CPI increased 2.45% from December 2019 to December 2018, which is the initial year for calculating fair return in the RRSO. In that same time, the AAF decreased 1.03%. The AAF is designed specifically for non-profit housing. It is not likely that landlords would receive a fair return on their investment should Hayward adopt the AAF as a rent increase threshold.

### Annual Median Income

Every year, HUD releases annual median income (AMI) data for Alameda County, which is part of the Oakland-Fremont metro area. The data represents the median, or the income level at the middle of all income earners in the region. AMI is a more useful metric than average income, as an average may be skewed by outliers in either direction. However, AMI still presents some challenges as a threshold index for rent increases. Putting the incomes of homeowners and renters together to calculate a median income level means that the higher incomes of homeowners (see **Figure 3**) drives that median level up, so renters who tend to earn less will be held to a rent increase standard that may be driven by higher earning households. Similarly, AMI for the region can be influenced by an influx of high wage-earning renters or homeowners seeking cheaper housing alternatives on the east side of the Bay. Additionally, using AMI as a rent increase index will ensure continued cost burden.

The following table summarizes the strengths and challenges of each of the threshold options discussed in this section:

**Table 1. Comparison of Threshold Options**

Threshold	Strengths	Challenges
Fixed percentage (Current RRSO)	<ul style="list-style-type: none"> <li>• Predictability</li> <li>• Long-term market-rate return</li> <li>• Aligns with Hayward’s fair return standard</li> <li>• Simple to understand and interpret</li> </ul>	<ul style="list-style-type: none"> <li>• May out-pace income growth of tenants over time</li> <li>• Is not a tool to reduce housing cost burden</li> </ul>
Consumer Price Index (Bureau of Labor Statistics)	<ul style="list-style-type: none"> <li>• May mitigate cost burden over time</li> <li>• Aligns with Hayward’s fair return standard</li> <li>• Captures increase in cost of many apartment operating expenses</li> <li>• With existing RRSO provisions, landlords can request higher rent increase if operating costs</li> </ul>	<ul style="list-style-type: none"> <li>• Can be difficult to interpret</li> <li>• If only a fraction of CPI is used, it will likely not result in landlords making a fair return</li> <li>• If the rate of operating costs exceeds the rate of increase in CPI, the landlord will have to petition for a fair return</li> </ul>

Threshold	Strengths	Challenges
	increase at a higher rate than rents	
Annual Adjustment Factors (HUD)	<ul style="list-style-type: none"> <li>• Would likely mitigate rent burden.</li> </ul>	<ul style="list-style-type: none"> <li>• Designed for non-profit housing, therefore will not guarantee a fair return for landlords as required in the RRSO and State Constitution</li> </ul>
Annual Median Income (HUD)	<ul style="list-style-type: none"> <li>• Directly related to income</li> <li>• Clear to understand and interpret</li> </ul>	<ul style="list-style-type: none"> <li>• Reflects income but not cost of living</li> <li>• Would maintain cost burden as rent would continue to consume income gains</li> </ul>

### Rent Increase Thresholds with a Floor and Ceiling

When establishing a rent increase threshold for rent stabilization based on an economic index, it is worth also considering if there should be a floor (minimum) and ceiling (maximum) that rent can be increased. Local jurisdictions that use CPI with a floor and ceiling on rent increases include Alameda and Mountain View.

Establishing a rent increase floor means that if the percent change in the selected index is less than the set floor amount, landlords would be able to increase rent using the floor threshold, as opposed to the percent change in the index. Precedent for this method is already established in Hayward's Mobile Home Space Rent Stabilization Ordinance, which sets rent increases at either 60% of CPI or 3% if 60% of the change in CPI is less than 3%. Setting a floor ensures that landlords' right of fair return is achieved, regardless of what may happen to the selected economic index.

A rent increase ceiling means that, should the selected economic index spike and result in a larger percentage increase, rent increases could not exceed a set percentage. A ceiling provides the predictability that comes from a fixed percentage threshold. It allows renters to know that, regardless of what happens with the economic index, their rent increase will not exceed a set amount.

Staff recommends that if the HHTF recommends a stabilization threshold based on an economic index like CPI, they also recommend a floor and ceiling for rent increases. Based on a review of other jurisdictions and economic data, staff recommends the following:

- Rent Increase Floor: 2%
- Rent Increase Ceiling: 5%

A 5% ceiling is consistent with initial data showing a 4.7% average increase for rent stabilized units. A 2% floor factors in available data on operating costs for landlords from the National Apartment Association's (NAA) annual survey of operating income and expenses in rental communities. The NAA's survey of apartment communities with over 50 units showed that in 2018 the San Francisco metro area experienced just over a 1% increase in operating expenses as a percentage of gross potential rent.<sup>15</sup> A 2% floor would account for increased inflation in operating costs since 2018 and reflects that the average annual CPI increase since 2001 was 2.6%.

## Conclusion

At Council's direction, the HHTF has been tasked with reviewing the existing residential rent increase threshold. Staff presents the following options for the HHTF's consideration:

1. **Maintain the current threshold as a fixed percentage at 5%.** Available data indicate that this option would maintain the City's current stabilization rates, as renters' average annual median income increases match both the average increase of those submitted to the City since the RRSO was passed and the CPI Rent Index. This option provides an approximation of long-term market appreciation and also promotes clarity and predictability for both landlords and tenants and reduces potential confusion related to frequent policy changes.
2. **Implement a new threshold using 100% of the annual change in the CPI All Items metric, with a ceiling (5%) and floor (2%).** Using 100% of CPI will likely result in a lower rent increase threshold which will increase the likelihood that rental housing in Hayward becomes more affordable to tenants over time. The majority of Hayward renters are housing burdened, and one in four are severely cost burdened, even accounting for gains in income. Using CPI as a threshold would likely mitigate affordability concerns over time by allowing tenants to realize economic gains. Landlords will still likely receive a fair return through this threshold. If a landlord's net operating income, which factors in their operating costs, is less than the percent change in CPI, the landlord can request a higher rent increase to cover costs and receive an annual increase in operating profit.

When considering these options, the HHTF should also consider the time and cost investment required for outreach and education of tenants and landlords any time a substantial change is made to the RRSO. For example, as a result of the most recent revisions and enactment of the Tenant Relocation Assistance Ordinance, staff have held multiple workshops, developed several written resources and communications, and experienced an increase in inquiry volume. Any additional change to the RRSO would require a comparable commitment of resources.

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<sup>15</sup> National Apartment Association (September 2018). 2018 NAA survey of operating income and expenses in rental apartment communities. *UNITS Magazine*. Retrieved from: <https://www.naahq.org/news-publications/units/september-2018/article/survey-operating-income-expenses-rental-apartment>

## **ECONOMIC IMPACT**

A change in the RRSO residential rent increase threshold would have an economic impact on landlords of covered rental units. Changing from a fixed percentage threshold would a) likely lower the current rent increase threshold and b) make the increase threshold less predictable.

## **FISCAL IMPACT**

A change in the RRSO residential rent increase threshold would have no fiscal impact on the City's General Fund.

## **STRATEGIC ROADMAP**

This agenda item supports the Strategic Priority of Present, Protect, & Produce Housing. This item is not specifically related to a project identified in the Strategic Roadmap. Staff is bringing forth this new item at Council's direction. Staff will include this item in the next bi-annual update to Council on the Strategic Roadmap.

## **PUBLIC CONTACT**

Council received public comment on the July 14, 2020, RRSO and Tenant Relocation Assistance Ordinance item, which staff took into consideration in the development of this report. Additionally, staff provided notice of the HHTF meeting to the Housing Division's interested parties list, as well as representatives from landlord and tenant groups.

## **NEXT STEPS**

Should the HHTF choose to recommend a revision to the RRSO's residential rent increase threshold, staff proposes the following timeline for next step:

- October/November 2020: First and second readings of revised RRSO at City Council
- January/February 2021: Revised RRSO effective date

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*Approved by:*



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