

ORDINANCE NO. 19-

AN INTERIM EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD ESTABLISHING A TEMPORARY MORATORIUM ON CERTAIN RESIDENTIAL RENT INCREASES NOT TO EXCEED FIVE PERCENT IN THE CITY OF HAYWARD

THE CITY COUNCIL OF THE CITY OF HAYWARD hereby ordains as follows:

SECTION 1. Findings.

- A. Pursuant to Article XI, Section 7 of the California Constitution and Government Code Section 36937, the City of Hayward ("City") may make and enforce all regulations and ordinances using its police powers.
- B. The City has one of the least affordable housing markets in California and the United States, which exacerbates the City's shortage of decent, safe, affordable, and sanitary rental housing.
- C. Renters occupy about 49 percent of the City's housing stock and 57 percent of renters are cost burdened under the federal definition, meaning they spend more than 30 percent of their income on housing.
- D. From the City's Fall 2017 through Winter 2019 Community Outreach on Housing, the City received extensive public testimony about the exorbitant costs and scarcity of rental units.
- E. Given the housing cost burden faced by many City residents, excessive rental increases threaten the public health, safety, and welfare of City residents, including seniors, those on fixed incomes, those with low and moderate income levels, and those with other special needs to the extent that such persons may be forced to choose between paying rent and providing food, clothing, and medical care for themselves and their families.
- F. Housing insecurity and excessive rent increases could result in homelessness and displacement of low-income families.
- G. The City currently regulates rent increases and evictions for residential housing covered under its Residential Rent Stabilization Ordinance introduced in 1983.
- H. Of the approximately 22,874 units originally covered under the City's Rent Stabilization Ordinance, only approximately 1,000 -1,600 units remain subject to the City's regulations on rent increases.

I. The City Council has announced its plan to repeal its Residential Rent Stabilization Ordinance and replace it with a new Residential Rent Stabilization and Tenant Protection Ordinance to provide relief to residential Tenants in the City by stabilizing Rent Increases as allowed by state law; to alleviate the hardship and displacement caused by serious housing shortages by establishing a mediation and arbitration program and increasing tenant protections.

J. The City Council finds and determines that a temporary moratorium on residential rent increases for eligible rental units not to exceed a 5.0 percent inflation factor is necessary to protect the access of Hayward residents, particularly low-income and working people, to affordable housing in the city.

K. Based upon the above-described facts and circumstances, and for these same reasons, the City Council finds that this ordinance is necessary as an emergency measure for preserving the public peace, health and safety, and therefore it may be introduced and adopted at one and the same meeting, and shall take effect immediately upon its adoption.

L. The Consumer Price Index (CPI) is an accepted measure of the general change over time in prices and therefore the cost of living.

M. This interim Ordinance allows up to a 5.0 percent annual increase in rent during the moratorium period, and such figure, which exceeds the Consumer Price Index for the Bay Area of California for April 2019, is found and determined to provide a fair return.

SECTION 2. Definitions.

A. City Council. The Hayward City Council.

B. Housing Services. Housing Services include, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades, and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, Utility Charges that are paid by the Landlord, refuse removal, furnishings, telephone, parking, the right to have a specified number of occupants, the right to have pets, and any other benefit, privilege, or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.

C. Landlord. An owner of record, lessor, sublessor, or any other person, entity or non-natural person entitled to receive Rent for the use and occupancy of any Rental Unit, or an agent, representative, predecessor, or successor of any of the foregoing.

- D. **Moratorium Period.** From the effective date of this Ordinance and continuing until July 25, 2019 or until the effective date of the adoption of the City's Residential Rent Stabilization and Tenant Protection Ordinance, no housing provider shall serve or give a rent increase that, on a cumulative basis over the 12 months preceding the effective date of this ordinance, exceeds a 5.0 percent annual increase in rent.
- E. **Property.** All Rental Units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.
- F. **Rent.** All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord for use or occupancy of a Rental Unit and Housing Services under a Rental Housing Agreement.
- G. **Rental Housing Agreement.** An oral, written, or implied agreement between a Landlord and a Tenant for use or occupancy of a Rental Unit and Housing Services.
- H. **Rental Unit.** A building, structure, or part thereof, or land appurtenances thereto, or any other rental property rented or offered for rent for residential purposes and Housing Services.
- I. **Tenant.** A Tenant, subtenant, lessee, sublessee, or a person entitled under the terms of a Rental Housing Agreement to the use or occupancy of a Rental Unit.

SECTION 3. Imposition of Temporary Moratorium on Residential Rent Increases.

- A. During the Moratorium Period, no Landlord shall increase Rent for any Rental Unit not otherwise exempted by this Ordinance or state law by more than 5.0 percent per year. This moratorium shall not apply to any Rent increase which, after proper notice to the Tenant, took effect prior to the effective date of this Ordinance.
- B. **Exemptions.**
1. The following Rental Units are exempt from the entirety of the moratorium established under this Ordinance:
 - a. Accommodations in any hospital, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by either an educational institution or a private organization which offers spaces in rooms for Rent in conjunction with the providing of services such as meals, cleaning services, and social programs.

- b. Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses; provided that such accommodations are not occupied by the same Tenant for thirty (30) or more continuous days.
- c. Rental Units in a nonprofit cooperative that are owned, occupied, and controlled by a majority of the residents.
- d. Rental Units whose Rents are controlled, regulated (other than by this ordinance), or subsidized by any governmental unit, agency or authority for term specified in written agreement with governmental unit, agency or authority. Upon termination of regulatory covenants or contracts that control, regulate, or subsidize the Rents of a Rental Unit, the Rental Units shall be subject to this ordinance.
- e. Rental Units that are lawful and in compliance with the Hayward Municipal Code section 10-1.2740, et seq. (Accessory Dwelling Units), if the primary residence is occupied by the Property owner.
- f. Rental Units located in a structure for which a certificate of occupancy is first issued after July 1, 1979.
- g. Any residential real Property that is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b), (d) or (f) of Section 11004.5 of the California Business and Professions Code.
- h. A condominium unit that has been sold separately by the subdivider to a bona fide purchaser for value. However, this ordinance shall apply to pre-1979 condominium units that remain unsold by the subdivider, unless and to the extent the Property has become owner-occupied for a period of at least a year. A subdivider who continues to Rent out the units and allows a public report for sale of subdivision interests to lapse may be regulated by this ordinance because they are no longer "alienable" for purposes of the statute preempting local regulation.
- i. Rental Units exempt from Rent control pursuant to the Costa-Hawkins Rental Housing Act (California Civil Code § 1954.52).

C. Initial Rents. This moratorium does not regulate the initial Rent at which a Rental Unit is offered.

D. Affirmative Defense. In any action by a Landlord to recover possession of a Rental Unit, the Tenant may raise as an affirmative defense any violation of or noncompliance with any of the provisions of this Ordinance.

E. Fair Return Determinations. This moratorium, unless extended, is only effective for the Moratorium Period as defined herein. Given that the allowable increase of 5.0 during the Moratorium Period percent exceeds the Consumer Price Index, which is an accepted measure of general change over time in price and therefore the cost of living, , the City Council finds that this moratorium does not deny any owner a fair and reasonable return on their investment.

F. Petition for Relief from Moratorium. If during this Moratorium Period a property owner believes the application of this moratorium's limitation on Rent increases would deprive the owner of the ability to receive a just and reasonable return on their investment, the owner may petition the city manager for a determination of the amount of Rent necessary to provide the owner with a just, fair, and reasonable return and authorization to charge such Rent. The city manager shall establish a procedure for reviewing such petitions.

SECTION 4. Enforcement Procedures

The City, at its sole discretion, may choose to enforce the provisions of this ordinance through administrative fines and any other administrative procedure set forth in Hayward Municipal Code Chapter 1, section 1-3.00. Violations of the provisions of this ordinance may be subject to fines of up to \$4,000. The City's decision to pursue or not pursue enforcement of any kind shall not affect a tenant's rights to pursue civil remedies.

SECTION 5. Civil Remedies.

A Tenant may bring a civil suit in the courts of the state alleging that a Landlord has violated any of the provisions of this Ordinance or any regulations promulgated hereunder including that the Landlord has demanded, accepted, received, retained a payment or payments in excess of the lawful Rent, failed to maintain a Rental Unit in compliance with applicable health and safety and building codes, including but not limited to Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10, or decreased Housing Services. In a civil suit, a Landlord found to violate this Ordinance shall be liable to the Tenant for all actual damages, including but not limited to the damages described in this Section. A prevailing Tenant in a civil action brought to enforce this Ordinance shall be awarded reasonable attorneys' fees and costs. Additionally, upon a showing that the Landlord has acted willfully or with oppression, fraud, or malice, the Tenant shall be awarded treble damages. No administrative remedy need be exhausted prior to filing suit pursuant to this Section.

SECTION 6. Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 7. Effective Date and Expiration Date.

This ordinance shall take effect immediately following its adoption and shall continue until July 25, 2019 or until the adoption of the City’s Residential Rent Stabilization and Tenant Protection Ordinance.

SECTION 8. Environmental Determination.

The City Council finds that the adoption and implementation of this Ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061(b)(3) in that the City Council finds there is no possibility that the implementation of this Ordinance may have significant effects on the environment.

PASSED FOR FINAL ADOPTION as an emergency ordinance this _____ day of June 2019, by the following vote:

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward