

ORDINANCE NO. 20-

AN ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA AMENDING
ARTICLE 1 OF CHAPTER 12 OF THE HAYWARD MUNICIPAL CODE RELATING
TO RESIDENTIAL RENT STABILIZATION AND TENANT PROTECTION

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1.

Section 12-1.04 of Article 1, Chapter 12 of the Hayward Municipal Code, is hereby amended to read in full as follows:

SEC. 12-1.04 - DEFINITIONS.

(a) "Arbitrator." A person who is neither a Tenant as that term is defined in this ordinance nor who has an interest in residential rental Property that would require disqualification under the provisions of the Political Reform Act if such person were an elected state official and a person whom the Rent Review Officer determines meets one of the following criteria:

- (1) Completion of a Juris Doctor or equivalent degree from a school of law and completion of a formal course of training in arbitration which, in the sole judgment of the Rent Review Officer, provides that person with the knowledge and skills to conduct a rental dispute arbitration in a professional and successful manner; or
- (2) Completion of at least three arbitration proceedings for a Superior Court or other public entity that involved issues the Rent Review Officer considers similar to those raised in Rent dispute arbitrations.

(b) "Banking" or "Banked Increase." Any Rent Increase the Landlord chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in this ordinance.

(c) "Business Tax Declaration." The annual declaration required to be filed in connection with a Landlord's obtaining or renewing a city business license for Rental Units. Any failure by a Landlord to file such a declaration, whether pursuant to an exemption or otherwise, shall not relieve a Rental Unit from being subject to the provisions of this ordinance.

(d) "Capital Improvements." Those improvements that were paid for and completed after July 25, 2019, which materially add to the value of the Property and appreciably prolong its useful life or adapt it to new uses, benefit the Tenant, and which may be amortized over the useful remaining life of the improvement to the Property, including but not limited to improvements to, the seismic safety of the rental Property or increase the energy efficiency of the rental Property (including any improvement to allow a significantly more accurate allocation of utility costs), provided that in determining the cost of a capital improvement no consideration shall be given to any additional cost incurred for increased Property damage or improvements for ordinary repairs, replacements, and maintenance, and/or deterioration resulting from an unreasonable delay in the undertaking of completion or after a Notice of Violation by a government agency ordering repairs that has remained unabated for 90 or more days of any repair or improvement.

(e) "Covered Rental Unit." Any residential Rental Unit, other than a mobile home unit, and all Housing Services provided with such unit that is located in the City of Hayward and used or occupied by the payment of Rent.

Notwithstanding the foregoing, the following residential Rental Units are not deemed Covered Rental Units for the purpose of this ordinance:

- (1) Rental Units in a nonprofit cooperative that are owned, occupied, and controlled by a majority of the residents.
- (2) 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.
- (3) 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.
- (4) Rental Units located in a structure for which a certificate of occupancy is first issued after July 1, 1979.
- (5) 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.

(6) 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.

(7) Rental Units exempt from Rent control pursuant to the Costa-Hawkins Rental Housing Act (California Civil Code § 1954.52).

(f) "CPI." Consumer Price Index for all items for all urban consumers for the San Francisco-Oakland-Hayward area (CPI-U) published by the U.S. Bureau of Labor Statistics.

~~(fg)~~ "Fair Return" as defined in Section 12-1.09(a)(6).

~~(gh)~~ "Governmental-Utility Services." Services provided by a public agency, public utility, or quasi-public or utility, including but not limited to water, sewer, gas, electric, and rubbish removal.

~~(hi)~~ "Gross Income." The annual Rents collected from all occupied Rental Units as well as income from any other source related to the use or occupancy of the Rental Units, including income from facilities, garage or parking fees or other services if not included in Rent; utility costs paid directly to the Landlord by the Tenant if not included in the Rent.

~~(ij)~~ "Harassment." A knowing and willful act or course of conduct directed at a specific Tenant or Tenants which:

(1) Would cause a reasonable person to fear the loss of use or occupancy of a Rental Unit or part thereof, or of any service, privilege or facility connected with such use or occupancy, without legitimate reason or legal justification; or

(2) Materially interferes with a Tenant's peaceful enjoyment of the use and/or occupancy of a Rental Unit; or

(3) A single act may constitute Harassment for purposes of determining whether a vacancy was voluntary. A course of conduct is a pattern of conduct composed of a

series of acts over a period of time, however short, evidencing a continuity of purpose.

(~~j~~k) "Health Facility." means any facility, place or building that is organized, maintained, and operated for the diagnosis, care, and treatment of human illness, physical or mental, including convalescence and rehabilitation, and including care during and after pregnancy, or for any one or more of these purposes.

(~~k~~l) "Housing Service." A service provided by the Landlord related to the use or occupancy of a Rental Unit, including but not limited to, insurance, repairs, replacement, maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

(~~l~~m) "Initial Rent." The Rent in effect on July 25, 2019 is the Initial Rent. If there was no Rent in effect on that date, the Initial Rent is the Rent charged on the first date that Rent was charged after that date. For tenancies that commenced after July 25, 2019, the Initial Rent is the rate of Rent charged on the date the tenancy begins.

(~~m~~n) "Landlord." Any owner, lessor, or sublessor of real Property who receives or is entitled to receive Rent for the use or occupancy of any Rental Unit or portion thereof in the City of Hayward, and the designated representative, agent, or successor of such owner, lessor, or sublessor.

(~~n~~o) "Mediator." A person whom the Rent Review Officer determines meets all of the following criteria:

- (1) Has received at least 24 hours of formal training in mediation;
- (2) Has mediated Rent disputes or has had other experience or training showing a capability to mediate the issues which arise in such disputes; and
- (3) Who is neither a Tenant as that term is defined in this ordinance nor has an interest in residential rental Property that would require disqualification under the provisions of the Political Reform Act if such person were an elected state official.

(~~o~~p) "Net Operating Income." The revenue available to the Landlord after paying the normal Operating Expenses.

(~~p~~q) "Operating Expenses." The costs of normal operations, including management, taxes and insurance, maintenance and other recurring costs.

(~~qr~~) "Property." means a parcel of real Property, located in the City of Hayward, that is assessed and taxed as an undivided whole.

(~~rs~~) "Rent." The total consideration, including any bonus, benefit, gratuity, demanded or received by a Landlord for or in connection with the use or occupancy of a Rental Unit, or the assignment of a lease for such a unit, including Housing Services or subletting, but excluding any amount demanded or received by a Landlord as a Security Deposit.

(~~st~~) "Rental Agreement." means an agreement, oral, written, or implied, between a Landlord and a Tenant for the use and/or occupancy of a Rental Unit.

(~~tu~~) "Rent Increase." Any additional Rent demanded of or paid by a Tenant for a Rental Unit, including any reduction in Housing Services without a corresponding reduction in the amount demanded or paid for Rent; or a pro rata increase in costs of Housing Services apportioned to a Covered Rental Unit.

(v) "Rent Increase Threshold." The limitation on the annual Rent Increase as set forth in Section 12-1.05.

(~~uw~~) "Rent Review Officer." The person or persons and/or entity designated by the City Manager to administer and enforce the provisions of this ordinance.

(~~vx~~) "Rental Unit." Any building, structure, or part thereof, or appurtenant thereto, or any other rental Property Rented or offered for Rent for living or dwelling purposes, including houses, apartments, rooming or boarding house units, and other real properties used for living or dwelling purposes, together with all Housing Services connected with the use or occupancy of such Property. For purposes of this ordinance a Rental Unit shall not include the following:

- (1) Aa mobile home or mobile home space;
- (2) 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;
- (3) 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.

(wy) "Security Deposit." Any payment, fee, deposit or charge, including but not limited to an advance payment of Rent, used or to be used for any purpose, including but not limited to any of the following:

- (1) Compensation of a Landlord for a Tenant's default in the payment of Rent;
- (2) The repair of damages to the premises caused by the Tenant beyond ordinary wear and tear;
- (3) The cleaning of the Rental Unit, if necessary, upon termination of tenancy; provided, however, that the term Security Deposit shall not include any fee or charge pursuant to any mutual agreement for the Landlord at the request of the Tenant to make any structural, decorative, furnishing, or other similar alterations as long as such alterations are other than that cleaning or repairing for which the Landlord may charge the previous Tenant under California law.

(xz) "Skilled Nursing Facility." A Health Facility or a distinct part of a hospital that provides, at a minimum, skilled nursing care and supportive care to patients whose primary medical need is the availability of skilled nursing care on an extended basis. Such facility must provide 24-hour inpatient care, an activity program, and medical, nursing, dietary, pharmaceutical services. Additionally, the facility must provide effective arrangements, confirmed in writing, through which services required by the patients but not regularly provided within the facility can be obtained promptly when needed.

(yaa) "Source of Income." All lawful, verifiable sources of income, or rental assistance from any federal, state, local, or nonprofit-administered benefit or subsidy program, or any financial aid from any rental assistance program, homeless assistance program, Security Deposit assistance program, or housing subsidy program, whether paid directly to the program participant, Landlord, or representative of either.

(zbb) "Tenant." A Tenant, subtenant, lessee, or sublessee, or any other person entitled by written or oral agreement to the use or occupancy of any Rental Unit or Covered Rental Unit.

(aacc) "Veteran." Any person who served in the active military, naval, or air service of the United States, or as a member of the National Guard who was called to and released from active duty or active services, for a period of not less than 90 consecutive days or was

discharged from service due to a service-related disability. This includes veterans with other-than honorable discharges.

(b)dd) "Voluntarily Vacated." Shall mean a vacancy that results from the independent choice of the Tenant, without intimidation, pressure, or Harassment, but does not include tenant vacancy due to severe habitability issues as defined in Civil Code Sections 1941.1 et seq. and Health and Safety Code Sec 17920.3 and 17920.10. For purposes of this section "abandonment" is defined as the Tenant's independent choice, without intimidation, pressure, or Harassment to relinquish all right and possession of the premises, with the intention of not reclaiming or resuming its possession or enjoyment, and the Landlord terminates the tenancy pursuant to Civil Code Section 1951.3. Abandonment is considered voluntary.

Section 12-1.05 of Article 1, Chapter 12 of the Hayward Municipal Code, is hereby amended to read in full as follows:

SEC. 12-1.05 - RESIDENTIAL RENT INCREASE THRESHOLD.

(a) ~~From and after July 25, 2019 (the effective date of this Ordinance), a~~ Rent Increase, including any increase of Housing Services, for use or occupancy of a Covered Rental Unit may be imposed once every twelve (12) months, ~~for an amount equal to or less than five percent (5%) of the existing total monthly Rent. Such an increase shall be known as the, "Rent Increase Threshold" and shall not be subject to Section 12-1.07 of this Ordinance. The Rent Increase shall be limited pursuant to the Rent Increase Threshold as set forth below:~~

(1) Five Percent Threshold. From January 1, 2018, through December 31, 2020, a Rent Increase, if any is imposed, shall be equal to or less than five percent (5%) of the existing total monthly Rent and shall not be subject to Section 12-1.07 of this Ordinance.

(2) CPI Threshold. From and after January 1, 2021, a Rent Increase, if any is imposed, shall be limited to reflect the annual percent change in the CPI as set forth below, and shall not be subject to Section 12-1.07 of this Ordinance:

(i) If the annual percent change in the CPI is less than two percent (2%), the maximum Rent Increase shall not exceed two percent (2%);

(ii) If the annual percent change in the CPI is between two percent (2%) and five percent (5%), the maximum Rent Increase shall not exceed the annual percent change in the CPI;

(iii) If the annual percent change in the CPI is five percent (5%) or higher, the maximum Rent Increase shall not exceed five percent (5%).

(3) CPI Calculation. The annual percent change in the CPI will be calculated using the difference in the CPI in August of the current year as compared to the CPI in August of the previous year. Staff shall make publicly available the CPI Threshold calculation for the following year no later than October 1 of the current year, unless the U.S. Department of Labor delays the release of the August data of the current year. The CPI Threshold shall be effective January 1 following the release of the Rent Increase Threshold.

~~(14)~~ A Rent Increase, including any increase of Housing Services, for any Covered Rental Unit that exceeds the ~~five percent (5%)~~ Rent Increase Threshold within a twelve (12) month period, shall be subject to Section 12-1.07 of this ordinance and a Tenant may file a petition for review of the Rent Increase in accordance with Section 12-1.07(b) and 12-1.07(c).

~~(25)~~ If a Landlord has imposed a Rent Increase during any twelve (12) month period between ~~July 25, 2018~~ January 1, 2020, and ~~July 25, 2019~~ January 1, 2021, the Landlord may increase no earlier than the anniversary date of the last Rent Increase.

(b) Exemptions to the Rent Increase Threshold:

(1) A Rent Increase after the Covered Rental Unit has been Voluntarily Vacated;

(2) A Rent Increase after lawful eviction;

(3) The Rent Increase Threshold shall not apply if doing so would violate the terms of a written lease entered into on or before ~~July 25, 2019~~ January 1, 2021. Otherwise,

any provision, whether oral or written, in or pertaining to a Rental Agreement whereby any provision of Section 12-1.05 is waived or modified, is against public policy and void.

- (4) An increase for Governmental-Utility Service costs in accordance with Section 12-1.05(d).
 - (5) An increase for Capital Improvement costs in accordance with Section 12-1.05(e).
 - (6) An increase based on Banking in accordance with Section 12-1.05(f).
- (c) Limitations on Fees. The following fees may not be charged to Tenants except as provided:
- (1) Excess Replacement Fees. No Landlord shall charge a Tenant a replacement fee for a key or security card that exceeds the actual replacement cost plus ten dollars (\$10.00) unless approved by Tenant petition.
 - (2) Excess Bounced Check Service Fees. No Landlord shall charge a Tenant a service charge for a dishonored ("bounced") check that exceeds the amount allowed under California Civil Code Section 1719(a)(1), as amended. Landlord need not provide Tenant with a third-party invoice for this service charge.
 - (3) Late Payment Fees. No Landlord shall charge a Tenant a fee for late payment of Rent exceeding a total of five percent (5%) of the monthly Rent for each payment of Rent that is three (3) or more days late.
 - (4) Application Screening Fees. No Landlord shall charge a Tenant an application screening fee in excess of the amount allowed under California Civil Code Section 1950.6(b), as amended.
- (d) Governmental-Utility Service Pass Through. A Landlord may only pass through costs of Governmental-Utility Services through a ratio utility billing system (RUBS) or similar unmetered allocation arrangement, pursuant to the terms of a written lease. However, costs for Governmental-Utility Service pursuant to this section shall not be considered Rent, and shall not be increased when Rent Increases, nor shall they be considered Rent

for purposes of calculating an increase under the Rent Increase Threshold in accordance with Section 12-1.05(a).

- (1) Within two (2) months receipt of a utility rate cost increase and/or any increase in utility services costs above one percent (1%) of the Tenant's existing Rent, upon request by a Tenant, the Landlord shall provide the Tenant(s) documentation supporting the level of increase, including at a minimum:
 - (i) Proof of the Governmental-Utility Service cost for the entire building showing the amount paid by the Landlord for each billing period for a twelve (12) month period prior to the increase in the Governmental-Utility Service;
 - (ii) Proof of the Governmental-Utility Service cost by month or billing period apportioned to each unit for a twelve (12) month period prior to the increase in the Governmental-Utility Service.
 - (iii) Billing notices or other equivalent documents from the agency imposing the increase reflecting the amount of increase in the Governmental-Utility Service cost for the entire building; and
 - (iv) The RUBS or unmetered allocation arrangement calculations used by Landlord or third-party agency on behalf of the Landlord to apportion the increased costs among the Tenants.
- (2) In accordance with Section 12-1.07 of this ordinance, the Tenant may file a petition to initiate review of a Governmental-Utility Service upon the Landlord's failure to provide the Tenant with the documentation required in Section 12-1.05(d)(1) and when the Government-Utility Service increase in cost exceeds one percent (1%) of the Tenant's existing Rent.
- (3) Failure of the Landlord to follow the procedure set forth in this subsection shall be a defense in any action brought to recover possession of a Covered Rental Unit or to collect the disputed Governmental-Utility Service Pass Through costs.
- (e) Capital Improvements. A Landlord may impose a pass-through cost, in addition to a Rent Increase, to the extent authorized in a final decision by an Arbitrator on a Landlord

capital improvement petition filed in accordance with this section. Costs for Capital Improvements shall not be considered Rent and shall not be increased when Rent Increases, nor shall they be considered Rent for purposes of calculating an increase under the Rent Increase Threshold in accordance with Section 12-1.05(a).

(1) Limitations on Pass-through for Capital Improvements.

- (i) Must be a Capital Improvement as defined in Section 12-1.04(d) that was paid for and completed after July 25, 2019.
- (ii) The Capital Improvement must have been completed and paid for prior to the filing of the petition for a final decision by an Arbitrator.
- (iii) A petition to impose a Capital Improvement pass-through of costs must be initiated by the Landlord within two (2) years of completion of the capital improvement work.
- (iv) The total costs passed through by the Landlord may not exceed fifty percent (50%) of the total amount paid by the Landlord; and
- (v) No Landlord may require a Tenant to pay any amount of any cost that is attributable to any period of time that the Tenant was not entitled to use and occupy the Covered Rental Unit; and
- (vi) No Landlord may require a Tenant to pay more than its share of the cost attributable to that Tenant's Covered Rental Unit that is permitted to be passed through to Tenant.
- (vii) Equipment otherwise eligible as a Capital Improvement will not be considered if a "use fee" is charged (i.e. coin-operated washer and dryers).

(2) Calculating Capital Improvements.

- (i) Capital Improvement costs must be amortized over the useful life of the improvement.
- (ii) Capital Improvements shall be given a useful life period of five (5) years or sixty (60) months and the total costs shall be amortized over that time period,

unless the Rent Increase coupled with the Capital Improvement cost would exceed ten percent (10%) of the existing Rent for a Covered Rental Unit.

- (iii) When a capital improvement cost standing alone or a capital improvement cost coupled with a Rent Increase and Banking Increase would exceed ten percent (10%) or thirty percent (30%) in five years, the excess can only be recovered by extending the Capital Improvements amortization period in yearly increments sufficient to cover the excess. In addition, the Landlord must comply with the requirements to notice the Tenant of the extended amortization period with the initial Capital Improvement cost.
 - (iv) For mixed-use structures, only the percent of residential square footage will be applied in the calculations. The same principle shall apply to Landlord-occupied Rental Units (i.e., exclusion of Landlord's unit).
 - (v) If a unit is occupied by an agent of the Landlord, this unit must be included when determining the average costs per unit. For example, if a building has ten (10) units, and one is occupied by a nonpaying manager, any Capital Improvement would have to be divided by (10), not nine (9), in determining the average Capital Improvement increase.)
 - (vi) Where a Landlord is reimbursed for Capital Improvements (i.e. insurance, court-awarded damages, subsidies, etc.), this reimbursement must be deducted from such Capital Improvements before costs are amortized and allocated among the units.
 - (vii) The dollar amount of the Capital Improvement charge shall be removed from the allowable Rent in the sixty-first month or at the end of an extended amortization period.
- (3) Landlord Petition for Capital Improvements.
- (i) A Landlord must file a petition with the Rent Review Officer to schedule an arbitration for review of Capital Improvement costs in accordance with this section and Section 12-1.07.

- (ii) The Landlord must provide documentation of its costs in support of the petition for Capital Improvement. Undocumented labor costs provided by the Landlord cannot exceed 25% of the costs of materials.
- (4) Landlord Petition of Capital Improvements for Provisional Decision by Arbitrator. A Landlord may file a petition of Capital Improvement costs in accordance with this section and Section 12-1.07 with the Rent Review Officer to schedule an arbitration for a provisional decision prior to performing the Capital Improvement, which shall include a written proposal, cost estimates and other supporting documentation. A final decision by an Arbitrator shall not be considered until the Capital Improvement has been completed and the necessary documentation submitted.
- (5) Failure of Landlord to Remove Capital Improvement Costs from Rent.
 - (i) If an owner fails to reduce a Capital Improvement costs from Rent in the month following the end of the amortization period for such improvement and the Tenant pays any portion of such Capital Improvement costs after the end of the amortization period, the Tenant may recover interest on the amount overpaid.
 - (ii) The applicable rate of interest for overpaid Capital Improvements shall be the rate specified by law for judgements pursuant to California Constitution, Article XV and any legislation adopted thereto, and shall be calculated at simple interest.
- (f) Landlord "Banked Increase".
 - (1) A Landlord may bank all or part of its annual permissible Rent Increase up to five percent (5%) in accordance with the Rent Increase Threshold and use the Banked Increase at a later time. The Landlord may apply the unused Rent Increase to its current year in accordance with this section.
 - (2) Limitations on Banking.
 - (i) Any Banked Increase that has not been imposed shall expire after ten (10) years.

(ii) A Landlord shall add no more than a five (5) percent Banked Increase to the total of any current year Rent Increase not to exceed a total annual Rent Increase of ten (10) percent.

(iii) The first year from which a Landlord may bank an unused rent increase is the 2018 calendar year.

(3) Notice. The Landlord shall notice a Banked Increase concurrent with a Rent Increase pursuant to Section 12-1.15.

(4) A Tenant may file a petition for review of a Banked Increase in accordance with Section 12-1.05(g) and Section 12-1.07 of this ordinance. If a Tenant contests a Banked Increase in accordance with Section 12-1.05(g) and Section 12-1.07, the Landlord shall provide evidence of the rental history of the subject Covered Rental Unit.

(g) Petition Process

(1) Tenant Petitions. A Tenant may submit a petition to the Rent Review Officer in accordance with Section 12-1.07 on any one (1) or more of the following grounds:

(i) The Landlord failed to provide notice of the Rent Increase, Banked Increase, or Governmental-Utility Services in accordance with Section 12-1.15;

(ii) To request review of a Rent Increase in excess of the ~~five percent (5%)~~ Rent Increase Threshold in Section 12-1.05(a);

(iii) To contest the Banked Increase calculations or a Banked Increase coupled with a Rent Increase in excess of ten (10%) percent;

(iv) To request review of an increase in Governmental-Utility Services which exceeds one percent (1%) of the Tenant's existing Rent;

(v) To request a reduction in Rent based on decreased Housing Services;

(vi) To contest a Capital Improvement cost not subject to a final decision of an Arbitrator per Section 12-1.05(e)(2) as an unauthorized or excessive pass through;

(vii) To request review of a Rent Increase when the Covered Rental Unit has uncured health, safety, fire, or building violations.

(viii) For any other violation by the Landlord of Section 12-1.05.

(ix) For a violation of the rent increase limitations imposed by California Civil Code section 1947.12, as it may be amended from time to time.

(2) Landlord Petitions. There is hereby established a Landlord petition process. In accordance with Section 12-1.07 of this ordinance, a Landlord may submit a petition to the Rent Review Officer on any one (1) or more of the following grounds: (i) to request a Rent Increase in excess of the Rent Increase Threshold or in excess of a ten percent (10%) Rent Increase, inclusive of Banking and/or Capital Improvement costs to obtain a Fair Return; or (ii) to request a pass through of Capital Improvement costs. The Landlord must provide notice to the Tenant(s) of the petition in accordance with Section 12-1.15.

Section 12-1.07(b) of Article 1, Chapter 12 of the Hayward Municipal Code is hereby amended to read as follows:

SEC. 12-1.07 - THE RENT DISPUTE RESOLUTION PROCESS.

(b) Tenant Right to File a Petition. A Tenant may file a petition to initiate review of a Rent Increase, including: 1) the Landlord's failure to provide notice of the Rent Increase, Banked Increase, or increase in Government-Utility Service cost in accordance with Section 12-1.05(d) and Section 12-1.15; 2) to request review of a Rent Increase in excess of the ~~five percent~~ 5% Rent Increase Threshold; 3) to contest the Banking calculations or a Banked Increase coupled with a Rent Increase in excess of ten percent (10%); 4) to request review of an increase in costs of Governmental-Utility Services which exceeds one percent (1%) of the Tenant's existing Rent; 5) to request a reduction in Rent based on decreased Housing Services; 6) to contest a Capital Improvement cost as an unauthorized or excessive pass through; and 7) to request review of a Rent Increase when the Covered Rental Unit has uncured health, safety, fire, or building violations.

Section 12-1.09(a) of Article 1, Chapter 12 of the Hayward Municipal Code is hereby amended to read as follows:

SEC. 12-1.09 - STANDARDS OF REVIEW.

- (a) The Arbitrator shall consider all relevant factors when evaluating Rent Increases above the ~~five percent (5%)~~ Rent Increase Threshold or a Landlord petition in compliance with Sections 12-1.07(e) and 12-1.07(f), including the following:
- (1) Unavoidable increases in maintenance and Operating Expenses, including the reasonable value of the Landlord's labor. Factors to be considered, include but are not limited to:
 - (i) Year to year comparison of annual operating budget and financial statements; and
 - (ii) Operating Expense documentation.
 - (2) Application of Banking Rent Increases when owner chooses to delay imposing part or in full an annual Rent Increase not to exceed a total Rent Increase of ten percent (10%). Factors to be considered, include but are not limited to:
 - (i) The rental history of the unit or the complex of which it is a part;
 - (ii) The presence or absence of past increases; and
 - (iii) The frequency of past Rent Increases.
 - (3) Verification of the Governmental-Utility Services cost increase. Factors to be considered, include but are not limited to:
 - (i) The percentage of the utility rate costs increase above one percent (1%) of the Tenant's existing Rent.
 - (ii) The allocation of the increased Government-Utility Service costs among Tenants including any increase or decrease in the number of Tenants in the Covered Rental Unit.

- (iii) Whether the cost increase is the result of irresponsible or wasteful use of utilities by the Tenant.
 - (iv) Whether the Landlord provided the Tenant(s) documentation supporting the level of increase in accordance with Sections 12-1.05(d) and 12-1.15.
- (4) Capital Improvement of the Covered Rental Units, including the reasonable value of the Landlord's labor and financing costs. Factors to be considered, include but are not limited to:
- (i) Improvement completed;
 - (ii) Landlord's petition made within two (2) years of completion of Capital Improvement work;
 - (iii) No more than fifty percent (50%) pass through costs requested;
 - (iv) Distinguished from ordinary repair or maintenance;
 - (v) For the primary benefit, use, and enjoyment of the Tenant;
 - (vi) Permanently fixed in place or relatively immobile and appropriated to the use of the Property;
 - (vii) Not coin-operated nor for which a "use fee" or other charge is imposed on Tenants for its use; and
 - (viii) Cost-factored and amortized in accordance with Section 12-1.05(e).
- (5) Other financial information which the Landlord is willing to provide.
- (6) A Landlord's fair rate of return on investment based on the following calculations:
- Fair Return Standard. A Fair Return is the Initial Year Net Operating Income adjusted by the percentage increase in the Consumer Price Index since the Initial Year. "Net Operating Income" is the Gross Income from a Covered Rental Unit net of Operating Expenses. Debt service and Capital Improvement costs are not included in calculating Net Operating Income.

Initial Year. The "Initial Year" is the 2018 calendar year, provided that where the Rent for Covered Rental Units has been set in a prior Fair Return decision regarding a petition pursuant to this Part, in which case the calendar year that was the Current Year in the prior determination may be used as the Initial Year for the purposes of reviewing a subsequent Fair Return petition.

Current Year. The Current Year is the most recent calendar year preceding the submission of a petition pursuant to Section 12-1.07.

Calculation of Consumer Price Index. The percentage increase in the CPI shall be determined by comparing the monthly CPI for All Urban Consumers for all items for the San Francisco-Oakland-Hayward metropolitan area as reported by the U.S. Bureau of Labor Statistics, for December of the comparison year to the monthly CPI for December 2018 (i.e., 289.896), or the monthly CPI for December of the Current Year in cases that the Initial Year was determined through a subsequent petition, whichever is later. In the event a successor index to the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-Hayward metropolitan area is established by the Bureau of Labor Statistics, this calculation method may be updated accordingly in the Regulations.

Section 12-1.15(d) of Article 1, Chapter 12 of the Hayward Municipal Code is hereby amended to read as follows:

SEC. 12-1.15 - INFORMATION TO BE SUPPLIED TO TENANT.

(d) Notice of a Rent Increase to Tenants—Covered Rental Units Only. Whenever the Landlord serves a notice of Rent Increase, the Landlord shall at the same time and in the same manner serve the Tenant with a notice that sets forth all of the following information:

- (1) That a petition to review the rent increase pursuant to Section 12-1.07 may be obtained from the Rent Review Officer and must be filed with the Rent Review Officer within thirty (30) days of receiving notice of the rent increase;

- (2) The address, telephone number, and website of the Rent Review Officer and the fact that the Tenant is encouraged to contact the Officer for an explanation of the provisions of this ordinance;
- (3) The applicable Rent Increase Threshold(s) as set forth in Section 12-1.05;
- (34) The amount of the current Rent and the Rent Increase both in dollars and as a percentage of existing Rent and a statement of the following:
- (i) That the Landlord considers the Rent Increase consistent with the ~~five percent (5%)~~ Rent Increase Threshold set forth in Section 12-1.05(a) ~~of this ordinance~~; or
 - (ii) The Landlord considers the Rent Increase coupled with a Banked Increase and/or any approved Capital Improvement costs not to exceed ten percent (10%) to be consistent with the permissible threshold under this ordinance; or
 - (iii) Identify the reason for the increase above the Rent Increase Threshold or ten percent (10%), inclusive of Banking and/or any approved Capital Improvement costs; and documentation supporting the level of increase desired. Such documentation shall include at a minimum: the rental history of the unit if the Landlord considers Section 12-1.05(e) or Section 12-1.05(f) as providing authorization for the increase; a summary of the unavoidable increases in maintenance and Operating Expenses; or other relevant information that supports the level of Rent Increase desired.
- (45) The name, address, and telephone number of the person whom the Tenant must attempt to contact within ten (10) days after filing a petition to satisfy the provisions of Section 12-1.07(d) of this ordinance and the best time(s) to attempt that contact.

Section 2. California Environmental Quality Act (CEQA).

The City Council independently finds and determines that this action is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the

proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. Pursuant to Section 620 of the Charter of the City of Hayward, this Ordinance shall become effective thirty (30) days from the date of its adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of, ____ 2020, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the day of _____, 2020, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBER

APPROVED: _____

Mayor of the City of Hayward

DATE: _____

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward