



DATE: September 21, 2021

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Eviction Moratorium Update: Review Update on the Status of the State Eviction Moratorium, Local Eviction and Foreclosure Data, and Summary of Resources Available to Prevent Evictions and Foreclosure

RECOMMENDATION

That the Council reviews this update on the State eviction moratorium, data on the status of evictions and foreclosures in Hayward, and a summary of existing and upcoming tenant and homeowner protection and assistance programs to prevent evictions and foreclosures.

SUMMARY

On June 22, 2021, Council directed staff to provide an update on the State eviction moratorium and the City's plans for ensuring Hayward residents can access resources necessary to prevent eviction.¹

This report provides an update on the State eviction moratorium along with a discussion of the eviction and foreclosure landscape in Hayward and the Bay Area. The report concludes with a summary of the City's efforts to promote housing stability as the State eviction moratorium expires, and many homeowners' mortgage forbearance plans expire. While local eviction data is not readily available, regional data related to evictions suggest that Hayward residents have been unable to pay rent during the pandemic, but have been applying for available financial assistance. Available foreclosure data suggest forbearance periods are coming to an end and, to date, a small number of property owners have been unable to pay delinquent payments or to modify loans, and few foreclosures have been initiated.

The COVID-19 pandemic has resulted in a significant amount of economic instability for Hayward residents. State and local eviction moratoria have provided the necessary time to establish safeguards to protect community members affected by the pandemic from evictions and foreclosures. The Council has authorized the use of emergency funds from both the CARES Act and American Rescue Plan Act, as well as portions of the City's regular annual allocations of Community Development Block Grant (CDBG) and HOME Investment Partnership Program (HOME) funds to create a suite of programs and services to support

¹ June 22, 2021, City Council Staff Report and Materials:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=4992605&GUID=47AE2E66-8B82-4421-A31F-1C9DA7F8A26A&Options=&Search=>

vulnerable tenants and homeowners. The State and federal Government have also provided financial assistance to provide up to 12 months of past due rent and three months of future rent on behalf of low-income tenants. Additionally, State legislation provides the following safeguards to protect tenants from evictions and displacement once the moratorium concludes:

- Allows income-eligible tenants to receive financial assistance for past-due rent and utilities, as well as future rent;
- Protects tenants who were unable to pay rent during the protected time period (March 1, 2020 through August 31, 2020) and who pay at least 25% of past-due rent during the transition period (September 1, 2020, through September 20, 2021) from eviction. After November 1, 2021, landlords can pursue unpaid rent through small claims court, but cannot use unpaid rent from that time as the basis for an eviction;
- Requires landlords seeking to evict tenants for non-payment of rent during the COVID-19 recovery period of October 1, 2021 through March 31, 2022, to prove that they applied for rental assistance and to include language in their notices telling tenants they can avoid eviction by applying for rental assistance; and
- Does not classify state or federal rental assistance as earned income, so tenants' eligibility for other state benefit programs like CalFresh or CalWORKS is not affected.

Since the federal government has provided financial assistance and the State has enacted the above listed safeguards, much of the risk of mass residential evictions has been mitigated. These resources greatly reduce the need for an additional local moratorium. In addition, the City is planning to use a significant portion of the City's ARPA/Stimulus funds towards a foreclosure prevention program. The most critical role for the City at this juncture is to ensure that tenants and property owners are aware of protections and resources available to them. Staff is actively working on increasing outreach efforts in line with existing best practices and expanding community engagement. Given the availability of resources and supports to prevent eviction and foreclosure, staff does not recommend enacting a local moratorium as the State moratorium expires.

BACKGROUND

Since the onset of the COVID-19 pandemic in March 2020, many in the Hayward community have struggled with the physical, mental, and economic impacts of the pandemic. Recognizing the increased eviction risk of sudden and prolonged loss of income due to the pandemic, the Council adopted an emergency ordinance on March 24, 2020, establishing a temporary eviction moratorium for non-payment of rent caused by the COVID-19 pandemic or for no-fault evictions (unless there are health and safety concerns) and providing free mediation services for landlords and tenants to negotiate repayment agreements.² Subsequently, the State established a state-wide moratorium on residential evictions in August 2020, which it extended in January 2021 and again in June 2021. The State's moratorium superseded the City's moratorium and is set to expire on September 30, 2021. Through discussions with the

² March 24, 2020, City Council Staff Report and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4399195&GUID=BFD696C9-8ED0-4F9F-8B99-98912C9C0679&Options=&Search=>

City's state legislative advocate, staff does not anticipate that the State will issue another extension. The most recent extension of the State moratorium creates the COVID-19 recovery period from October 1, 2021 through March 31, 2022, which protects tenants from eviction if they have applied for rental assistance within 15 business days of receiving a termination notice during that period.

On June 22, 2021, Council directed staff to provide an update on the State eviction moratorium and the City's plans for ensuring Hayward residents can access resources necessary to prevent eviction.³ In anticipation of the end of the State moratorium, Council also established several programs to support vulnerable renters and homeowners, who are still experiencing economic impacts of the pandemic. This report provides an update on the State eviction moratorium, an overview of the eviction and foreclosure landscape in Hayward and the Bay Area, and a summary of the different supports Council has enacted to help renters and homeowners as the State moratorium ends, including plans for targeted outreach and education efforts. Through analysis of the State moratorium protections and existing State and local protections and resources for renters and homeowners, staff recommends that Council not enact a new moratorium when the State moratorium expires.

DISCUSSION

State Eviction Moratorium

The State enacted its first eviction moratorium in August 2020. It then extended the moratorium in January 2021 and again in June 2021. Prior to both the January and June extensions, the Council enacted a local emergency moratorium, in the event that the State did not extend its moratorium. The most recent version of the State eviction moratorium is Assembly Bill 832, which creates some key protections for tenants experiencing financial distress due to COVID-19:

- Income-eligible tenants (making 80% or less of the area median income) can apply for financial assistance for past-due rent and utilities, as well as future rent and utilities.
- Tenants who pay at least 25% of past-due rent from September 1, 2020, through September 20, 2021, are protected from eviction. While landlords can collect the remaining rent through the small claims court after November 1, 2021, they cannot use unpaid rent from that time as the basis for an eviction.
- Landlords seeking to evict tenants for non-payment of rent during the COVID-19 Recovery Period of October 1, 2021, through March 31, 2022, are required apply for rental assistance for their tenants and must include language in their notices telling tenants they can avoid eviction by applying for rental assistance.
- Rental assistance is not considered earned income by the State, so tenants' eligibility for other State benefit programs like CalFresh or CalWORKS is not affected.

Through AB 832, landlords are required to make a good faith effort to determine if government assistance is available to the tenant and to cooperate with a tenant's efforts to

³ June 22, 2021, City Council Staff Report and Materials:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=4992605&GUID=47AE2E66-8B82-4421-A31F-1C9DA7F8A26A&Options=&Search=>

obtain emergency rental assistance. AB 832's COVID-19 recovery period protects renters who cannot make rental payments between October 1, 2021 and March 31, 2022, by making sure landlords provide information about rental assistance when they provide a notice to pay or quit and by requiring landlords to apply for rental assistance. With these requirements, the State leverages communication between landlords and tenants to make sure tenants are aware of available rental assistance.

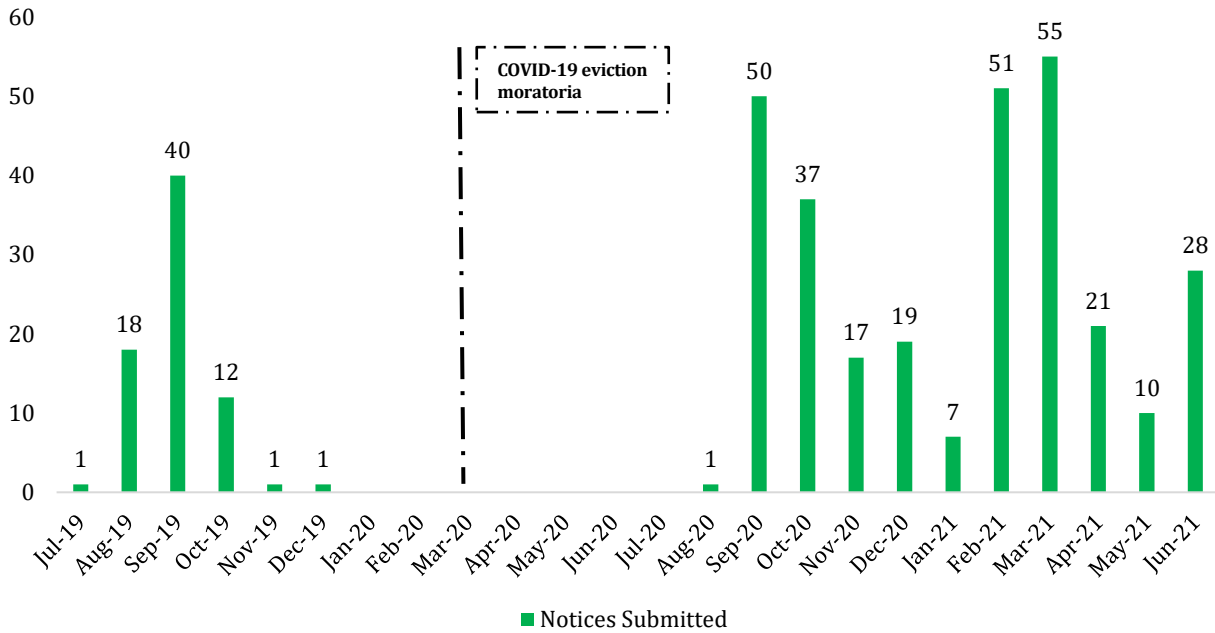
Eviction and Foreclosure Landscape

Evictions

Currently, there is no publicly available data about local evictions. However, the Residential Rent Stabilization and Tenant Protection Ordinance (RRSO) requires that landlords file termination notices with the City. While it is unknown if all landlords comply with this requirement, there are still some trends in termination notice data over the past two years that can be explored within the context of the COVID-19 pandemic. These notices are not documentation of an eviction but do identify the just cause provision under which the landlord intends to terminate tenancy. Since the RRSO was passed in July 2019 through June 2021, the Rent Review Office has received 446 termination notices from landlords complying with the RRSO. The majority (96%) were for a failure to pay rent or utilities. Notices to pay or quit are intended to be cured by the tenant (either by paying past due rent or leaving the unit). Many termination notices can be cured, so not all termination notices received by the Rent Review Office led to displacement.

As shown in Figure 1, the Rent Review Office did not receive any notices of termination during the first six months of the pandemic, from March 2020 through August 2020 consistent with the City's eviction moratorium. However, notice filing resumed in August 2020, consistent with the timing of the State eviction moratorium, which was enacted in August 2020. The State eviction moratorium required that landlords file a 15-day notice to pay or quit when tenants are unable to pay rent (instead of a 3-day notice). Once the 15-day notice is given, tenants have 15 days to cure the notice by paying or by providing their landlord with a declaration of COVID-19 related financial distress form. The State moratorium was extended in January and June 2021, through September 30, 2021. Therefore, the increase in termination notices starting in September 2020 illustrated in Figure 1 does not necessarily reflect actual displacement of tenants but is an indicator of non-payment of rent.

Figure 1. Termination Notices Received from July 2019 to June 2021



Beyond termination notice data submitted to the Rent Review Office, Census Household Pulse Survey data also provides some insights into the eviction landscape of the region. Since the onset of the pandemic, the United States Census Bureau has conducted a weekly Household Pulse Survey to provide quick and accurate data on how people’s lives have been impacted by COVID-19. Table 1 reports data for renter households in the San Francisco-Oakland-Berkeley metro area in the first two weeks of August, broken down by income level. While the majority of renters in the region are up to date on their monthly rent payments, nearly a third of those making less than \$75,000 are not confident in their ability to make their next payment. Of those who are already behind, half making less than \$75,000 are concerned that they are likely to be evicted. These findings demonstrate that lower income households in the region are still experiencing housing instability, particularly those who are behind on rent. While the state moratorium offers protections for these renters, the high rate of individuals reporting likely eviction may not be aware of their protections or may not have accessed available emergency rental assistance.

Table 1. Census Household Pulse Data for Renters

	All renter households	Households with less than \$75,000 annual income	Households with \$75,000 or greater annual income
Up to date on monthly rent payments	84%	79%	94%
Concerned about ability to make next month’s rent payment	17%	30%	3%
Behind on rent and likely to face eviction in next two months	37%	51%	0%

Staff are currently working closely with Alameda County Superior Court staff to obtain eviction data that will allow City staff to look at changes in eviction patterns over time, both by frequency and geography (at the zip code level). This will be the first time the City has had access to such detailed local data and this is an important step in understanding displacement in Hayward.

Foreclosures

In March 2020, to mitigate the impacts of the COVID-19 pandemic and the subsequent stay-at-home orders, legislators enacted policies that required loan forbearance on federally backed single-family mortgages. Forbearance has helped many homeowners avoid foreclosure during the COVID-19 pandemic, providing initial forbearance periods of 6 months with extensions up to 18 months. As a result, many homeowners may be facing the end of their agreement periods as federal protections expire.

Staff have access to active foreclosure data for Hayward through a paid service called RealQuest. This system allows staff to query properties that are currently in the foreclosure process, based on the following phases:

- **Pre-Foreclosure:** A Notice of Default has been issued which provides public notice that a loan is delinquent and that the lender has initiated the foreclosure process. Homeowners in California have 90 days to pay what is owed to cure the default.
- **Auction:** If homeowners are unable to pay what is owed, a Notice of Sale is recorded at least 90 days after the Notice of Default. In California, once the Notice of Sale is issued, the trustee will sell the property at auction in 21 days.
- **Real Estate Owned (REO):** As defined by RealQuest, REO identifies properties that have been sold at auction. The purchaser (often the lender that serviced the defaulted mortgage) receives a trustee's deed detailing the new ownership information.

According to RealQuest data for the City of Hayward, 21 properties are in various phases of the foreclosure process. Sixteen of these are at the pre-foreclosure or auction stages and the balance have been sold at auction. The current foreclosure phase for the almost all of those in pre-foreclosure or auction was initiated in the last three months. Date of the first payment missed is only available for properties in the pre-foreclosure stage. This data indicates that properties entering into the foreclosure process in recent months first missed payments between June and December 2020. The time between the first missed payment and initiation of the foreclosure process ranged between 5 and 12 months.

The RealQuest data is based on public records and does not include data on forbearance (an agreement between the borrower and the lender to pause or reduce the amount of monthly mortgage payments for a set period of time), any information on work out plans between a lender and homeowner, or any historical foreclosure data for comparison over time. Nationally, the number of homeowners in forbearance has been declining steadily, reaching 3.25% of mortgage servicers' portfolio, per the Mortgage Bankers Association's weekly survey. Table 2 reports Census household pulse data for homeowner households in the San Francisco-Oakland-Berkeley metro area in the first two weeks of August. The majority of homeowners are up to date on their mortgage payments, regardless of income (though a large

portion of respondents declined to provide income information). A larger proportion of lower income homeowners reported low confidence in their ability to make next month's mortgage payment. Of those who are already behind on mortgage payments, a higher proportion of those who say they are likely facing foreclosure are low-income. As with the eviction data reported in Table 1, lower income households are most impacted by the economic stress of the pandemic, though renters appear to be experiencing greater housing instability.

Table 2. Census Household Pulse Data for Homeowners

	All households with a mortgage	Households with less than \$75,000 annual income	Households with \$75,000 or greater annual income
Update to date on monthly mortgage payments ⁴	92%	94%	95%
Concerned about ability to make next month's mortgage payment	4%	8%	2%
Behind on mortgage and likely to face foreclosure in next two months	3%	15%	2%

Tenant and Homeowner Protection and Assistance

Over the past several months, the Council has enacted several programs to protect tenants and homeowners, alongside existing state and federal resources and safeguards. Collectively, these assistance programs are intended to keep tenants in their homes as the State eviction moratorium expires and to support homeowners as forbearance periods expire.

There is currently about \$61 million available in federal rental assistance to Alameda County residents, with additional State funds anticipated in the coming months. Since the start of the County's Emergency Rental Assistance Program (ERAP), Hayward residents have submitted the largest portion of applications (27%; 1,792 applications) and received the largest portion of funds (25%; \$4,126,718 in assistance disbursed).⁵ The safeguards of AB 832 in combination with the availability of rental assistance and increased outreach efforts to make renters and small landlords aware of the aid, will protect Hayward residents when the State moratoria concludes.

In addition to the protections under State law and the County's ERAP, the City has enacted several programs for tenants and homeowners and there are additional County resources available to tenants. Table 3 summarizes the programs and resources that have been available, are currently available, or will soon be available to help tenants and homeowners avoid eviction and foreclosure.

⁴ A large portion of respondents did not report income status.

⁵ These totals include individuals in Unincorporated Alameda County with a Hayward address.

Table 3. Available Tenant and Homeowner Resources

Assistance	Program Descriptions	For More Information
Rental Assistance	Council authorized over \$1.7M for a City-funded rent relief program, which provided grants to 670 low-income households.	All funds from the City's Rent Relief Program have been expended.
	Through the County's ERAP, low-income tenants can apply for funding to cover up to 12 months of unpaid rent and up to 3 months of future rent. Landlords may also apply.	Hayward tenants and small landlords can apply for the County Emergency Rental Assistance Program at www.ac-housingsecure.org .
Mediation Services	Council authorized additional funding to Project Sentinel, the City's mediation and arbitration provider for the RRSO, to provide free mediation for tenants and landlords in cases where the tenants are unable to pay due to COVID-19 financial impacts.	Hayward tenants and small landlords can request mediation services using the link for free mediation services at https://hayward-ca.gov/residents/housing/housing-response-covid-19-emergency
Foreclosure Prevention	Council authorized \$1.3M for a foreclosure prevention program that will provide mortgage delinquency and default resolution counseling and advocacy and, when appropriate, financial assistance to address delinquency and promote long-term housing.	Staff released the request for proposals (RFP) for an administrator of the foreclosure prevention program on August 19, 2021
	Council approved an agreement with A-1 Community Housing Services to provide foreclosure prevention counseling services for FY 21-22.	Hayward homeowners can access more information about foreclosure prevention counseling at https://www.a1chs.org/
	The California Housing Finance Agency (CalHFA) is developing the California Mortgage Relief Program (CMRP) to provide funds to fully reinstate mortgage delinquencies for income-eligible households. Staff is monitoring this program and will work with local community agencies to ensure Hayward residents are linked to the program once funds are available.	Hayward homeowners can access more information about the CalHFA mortgage relief program at https://www.calhfa.ca.gov/HAF.htm
Additional Legal Resources	Council approved an agreement with Centro Legal de la Raza to provide legal services to stop displacement and promote housing stability. Hayward tenants have access to Centro Legal's drop-in clinics for legal resources.	Hayward tenants can learn more about accessing legal services through Centro Legal de la Raza at https://www.centrolegal.org/
	Hayward tenants and homeowners also have access to legal resources through	Hayward tenants and homeowners can find more information about AC Secure

Assistance	Program Descriptions	For More Information
	the County's AC Housing Secure program which, in addition to being the portal for rental assistance, is a legal resource hub for tenants and homeowners in need of support with housing issues.	legal services at https://www.ac-housingsecure.org/otherresources

Outreach and Education

In order to ensure that tenants and homeowners most in need of support are aware of and have access to the programs discussed in this section, staff are implementing a multi-pronged approach to outreach and education. These efforts include:

- **Tenant Know Your Rights Mailing:** Staff have developed a Know Your Rights post-card that will be mailed to over 24,000 renter households in the City. The post-card encourages tenants with questions about their housing rights related to COVID-19 evictions, rental assistance, and tenant protections against harassment to reach out to the Housing Division for more information and support.
- **Landlord Rights and Responsibilities Mailing:** Staff are drafting a Frequently Asked Questions (FAQs) document that will accompany the Fiscal Year 2021-2022 annual rent review fee invoice mailing in September 2021. The FAQ document will include information about the RRSO as well as ERAP, the City's free mediation services, and foreclosure prevention resources.
- **Upcoming Workshops:** Staff have scheduled nine outreach and education events through November 2021, with topics including fair housing and tenant rights, code enforcement, and RRSO protections with parents at Hayward Unified School District's Parent Power Session.
- **Eviction Prevention Learning Lab Technical Assistance:** The City was selected to participate in the Eviction Prevention Learning Lab (EPLL), a national peer-to-peer network focused on eviction prevention strategies, providing cities and their partners with access to best practices, policies, and tools for preventing eviction.⁶ Through participation in the EPLL, the City has access to free technical assistance, which the City is leveraging to gain additional resources and strategies for supporting renters who may not be eligible for emergency rental assistance.

Conclusion

The eviction moratoria have served the purpose of providing legislators time to implement safeguards to protect tenants from displacement resulting from the COVID-19 pandemic. These safeguards include the provision of emergency rental assistance and protection from eviction for tenants who document their financial distress and pay at least 25% of past-due rent by September 30, 2021. The State has also created a COVID-19 Recovery Period, which extends from October 1, 2021 through March 31, 2022, that requires landlords to notice tenants of available assistance and make a good faith effort to help them obtain assistance, and provides for additional protections if tenants apply for rental relief. Since the federal

⁶ Visit the EPLL website for more information: <https://www.nlc.org/initiative/2021-eviction-prevention-learning-lab/>

government has provided financial assistance and the State has enacted additional safeguards, much of the risk of mass evictions has been mitigated. These resources greatly reduce the need for additional local moratorium.

The City is working with the EPLL to identify ways to improve outreach to ensure Hayward's most vulnerable tenants are protected from displacement. In addition to monitoring the State's new Mortgage Relief Program, the City is also distributing over a million dollars in funds to prevent foreclosure through counseling, legal support, and loans to low-income homeowners to prevent displacement due to foreclosure. With the provision of these resources and ongoing protections from the State, staff recommends that the City not enact a local moratorium when the State moratorium ends in the near future. Staff will continue to monitor State and federal actions moving forward.

ECONOMIC IMPACT

As outlined in the eviction and foreclosure portion of the discussion section in this report, low-income tenants and homeowners in Hayward continue to experience economic stress due to the COVID-19 pandemic. The programs described in this report are intended to help mitigate the risk of displacement resulting from financial loss caused by the pandemic.

FISCAL IMPACT

This informational report does not propose any changes or additions that would create a fiscal impact to the City's General Fund. It describes programs that are funded through special revenue sources, including the American Rescue Plan Act and CDBG.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Preserve, Protect, and Produce Housing. This item is not specifically related to a project identified in the Strategic Roadmap. Staff is bringing forth this item at the request of the Council.

PUBLIC CONTACT

Staff continue to engage the public through both scheduled outreach events and ad hoc inquiries into the Housing Division office. From July of 2020 to date, staff have participated in 38 outreach events, including outdoor tabling at neighborhood events and resource fairs, and hosting online workshops about the RRSO as well as the County's Emergency Rental Assistance Program and existing eviction moratoria. Since beginning tracking inquiries in July 2019, the Housing Division has received over 6,000 calls or walk-in meetings with the public. Over 20% of these inquiries have been related to COVID-19.

NEXT STEPS

Staff will implement the outreach and education steps outlined in the discussion and will maintain ongoing communication with County and non-profit partners to identify

opportunities to improve and increase service provision for vulnerable tenants and homeowners at risk of displacement. Staff will also continue monitoring state legislation for changes that may impact resources for the housing stability of Hayward residents.

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Recommended by: Christina Morales, Housing Division Manager
Jennifer Ott, Assistant City Manager

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written over a horizontal line.

Kelly McAdoo, City Manager