

Project Sentinel Presents:



Hayward RRSO Petition Overview (Tenant Focused)

October 21, 2019 Workshop

Covered Rental Units



- Most Residential Units built on or before July 1, 1979 are Covered
- Key Exceptions:
 - Single Family Home
 - Care Facilities
 - Hotels
 - Housing with other government rent restrictions
 - Lodgers
 - ADUs where owner is in main unit
- 'De-controlled' status under the previous ordinance no longer applies

Additional Ordinance Provisions



- » Just Cause Termination
- » Non Discrimination based on Source of Income
- » Prohibition on Harassment/Retaliation

Basic Rule for Rent Increases:



- One increase per 12-month period
- 5% Rent Increase Threshold (RIT)
- Some exceptions apply
- Rent Review Process

Some Exceptions:



- Banking
- Vacancy Decontrol
- Utility Increases Pass-through
- Capital Improvement Pass-through (subject to LL petition)
- Fair Return increase(subject to LL petition)

Some exceptions: Banking



- If a LL increases rent less than 5% this year, LL may be able to increase it more than 5% in a subsequent year
- If a LL uses a banked increase, the total increase cannot exceed 10% in that year
- Simple example:
 - LL increases rent 3% this year
 - Next year, LL can increase rent $5\% + 2\% = 7\%$

Some exceptions: Vacancy Decontrol



- When a tenant leaves voluntarily, the landlord may set the rent to market level without restriction.
 - If a tenant is evicted for cause (through the Unlawful Detainer process), this is considered a voluntary vacancy.
- Once a new tenancy has begun, subsequent increases are subject to RRSO.

Some exceptions: Utility increases



- Services provided by a public agency/utility have increased the actual cost to the LL: ex. water, sewer, gas, electric, garbage

IF

- the lease provides that Tenant will pay utility costs separate from rent *and*
- there are no individual meters and the LL uses a ratio utility billing system (RUBS), *and*
- the new INCREASE is more than 1% of current rent amount or there is a rate increase

THEN Tenant may

- request supporting documents (must be done within 60 days of the notice) *and*
 - challenge the utility increase if the LL fails to provide the supporting documentation or the increase is greater than 1% of the tenant's rent (petition for utility cost pass through review)
- Not considered a Rent increase

Two Grounds for Landlord Petitions



1. Pass-Through of Capital Improvement Costs
2. Fair Return Review

LL Petition: Capital Improvements



- If LL invests money to improve the property for the benefit of all tenants, LL may petition to “pass-through” up to 50% of the costs on to Tenants
- Requires a hearing and Arbitrator determination approving eligible capital improvement costs, the pass-through including the amount, and the pass-through period
- Tenants may participate in the hearing process!
- An approved Capital Improvement Pass-Through will end after the pass-through period a (5+ years) period
- Total rent increase and pass-through cannot exceed 10% of Tenant’s rent
- LL can request a **provisional decision** prior to start of capital improvement project. The work must be complete and paid for before the City will give a final approval.

LL Petition: Fair Return



- LL may petition to increase rent more than 5% in any given year to obtain a fair return on investment. Causes may be:
 - Unavoidable maintenance and allowable operating expenses (recurring costs such as taxes, insurance, management fees, maintenance)
- Debt service and Capital Improvement Costs are not included when calculating a Fair Return.
- Requires an Arbitrator's decision in support of petition
- Tenants would receive notice of LL's petition so that tenants may respond

7 Grounds for Tenant Petitions



- Contest any rent increase based on improper notice
- Request to review rent Increase greater than 5%
- Contest a banked rent increase
- Request review of utility increase >1% of rent and/or LL refusal to provide supporting documentation for utility increase
- Challenge unapproved capital improvement cost pass through challenge
- Request a decrease in rent for a Reduction in service
- Request review of rent increase based on uncured Health and safety violations

T Petition: Improper Notice



Proper Notice Must Include:

- ✓ Amount of increase in both \$\$ and %
- ✓ Amount of Banked Increase applied in both \$\$ and %
- ✓ Statement that LL believes that the rent increases and/or banked increases are in compliance with the ordinance
- ✓ Identify the reason for a rent increase above 5% and provide supporting documentation
- ✓ Contact information for the tenant to meet & confer with the landlord about a rent increase with best times to call
- ✓ Contact information for the Hayward Rent Review Office
- ✓ A copy of a Tenant Petition form
- ✓ Hayward Rent Review Office will get copies of all increase notices

T Petition: Improper Notice (cont'd)



If Notice of Increase includes a

- Government Utility Service costs or
- Capital Improvement Pass-Through,

these must be identified as separate from any Rent Increase.

Notice must include:

1. Statement that the LL believes a capital improvement cost pass-through complies with the ordinance
2. Approval from the City of Hayward must be attached to notice for Capital Improvement Pass-through (i.e. Arbitrator Decision)

T Petition: Review of > 5% Rent Increase



- If Tenant receives a rent increase that exceeds 5% of their rent in a 12 month period, they may petition for review of the increase.
- The review will be limited to the amount over 5% unless there are other grounds indicated on the petition

T Petition: Contest Banked Amounts



A Tenant may contest a Rent Increase:

- By disputing the calculation of the Banked Increase
- Or, if the Banked Increase coupled with Rent Increase results in a total increase of over 10%

Note: The first year a rent increase can be “Banked” is 2018

T Petition: Utility Costs >1% of Rent



If increase in utility services costs exceeds 1% of Tenant's existing rent, Tenant may request documentation supporting the increase from the LL which LL must provide. At minimum this includes:

- The gov't-utility cost for the entire building showing amount paid for each period in the 12 month period prior to the Increase
- The cost by month or billing period apportioned to each unit in the 12 month period prior to the Increase
- Notices from service agency showing increase
- The RUBS calculation used to apportion costs among tenants

T Petition: Decreased Housing Services



Tenant may petition for a reduction in rent based on a decrease in Housing Services

"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.

T Petition: Outstanding Code Violations



Tenant may request review of a Rent Increase when the property has outstanding health, safety, fire, building violations, or repairs that the LL will not make.

Outstanding Code violations can be grounds for:

- Denial of rent increase, or
- Reduction of rent.

Landlord can fix prior to arbitration to avoid denial or ongoing rent decrease.

Petition Forms



Sections I, II and III – Basic Information about the tenant, property and owner/manager

H HAYWARD
TENANT PETITION FOR REVIEW OF RENT

This petition requests a review of the rental price of a residential rental unit by a City of Hayward Mediator and/or Arbitrator.

Rental Address (with zip code) _____
My Unit/Apartment No. _____

I. PETITIONING TENANT(S)

No.	Name(s) of Tenant(s)	Phone	E-mail
1			
2			
3			
4			

Are the Tenant(s) in this unit represented by an attorney? ☐ YES ☐ NO
If yes, please provide your representative's contact information below.

No.	Name of Representative	Phone	E-mail
1			

Company Name (if applicable) _____
Representative's Mailing Address _____

II. LANDLORD'S INFORMATION

No.	Name(s) of Landlord(s)	Phone	E-mail
1			
2			

Company Name (if applicable) _____
Landlord's Mailing Address _____

III. PROPERTY MANAGER'S INFORMATION

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Petition Forms



Section IV. A., B., C. – The basis of the petition

No.	Name(s) of Property Manager(s)	Phone	E-mail
1			
2			

Company Name (if applicable) _____

Property Manager's Mailing Address _____

IV. REASON(S) FOR FILING THIS PETITION:

A. Check all that apply:

- ☐ 1 I did not receive lawful notice of a 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 I received an annual rent increase above 5%.
- ☐ 3 I'm disputing a banking calculation; or I received a banked increase with annual rent increase that is above 10%.
- ☐ 4 I received an increase in utility costs of more than 1% of my current rent.
- ☐ 5 I'm requesting a reduction in Rent because of a reduction in Housing Services.
- ☐ 6 I'm contesting a capital improvement cost as unlawful or calculated incorrectly.
- ☐ 7 I'm requesting review of a rent increase because the property has health, safety, fire, building violations, or repairs that the landlord will not make.
- ☐ 8 Other (please explain) _____

B. Please provide the following information. (Attach copy of notice)

Effective Date of Rent Increase _____

Your Current Rent _____

Proposed New Rent _____

C. Date(s) when Notice of Rent Increase was received or date you learned of the failure to give proper notice (for item 7, provide date(s) landlord was notified of the problem or violation). Attach copy of any notice received.

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Petition Forms



Section IV.D. E. – Details and Dates for Reduction in Service or Code Violations ONLY

If items 1, 2, 3, 4, or 6 is selected, briefly describe the issue(s) with the notice or increase. _____

D. If item 5 is selected, decrease in housing services, you MUST ANSWER the following (use extra pages if necessary).

1. Service(s) reduced. _____

2. Who is affected by this service(s)? (just you, other tenants, entire complex, etc.). _____

3. Describe what changed, when it happened and how long it lasted. _____

4. Were you notified of the change and if so, how (verbally or in writing) and when? If not, did you notify the landlord of the change and if so, how (verbally or in writing) and when? _____

5. What actions has the landlord taken to restore the service or compensate tenants for the loss of service? _____

6. Approximate value of the service(s)? _____

E. If item 7 is selected, you MUST ANSWER the following (use extra pages if necessary).

1. Describe the health, safety, fire and building violations, or outstanding repairs. _____

2. Who is affected by these problems? (just you, other tenants, entire complex, etc.): _____

3. Date(s) problem(s) started and/or date(s) of code violation report(s): _____

4. Did you tell the landlord about the problem(s) and if so, how (verbally or in writing) and when? _____

5. Has the landlord taken any steps to fix the problem(s)? If so, please describe. _____

6. Is/are the problem(s) still on-going? If more than one issue, state all that are still on-going. _____

7. How has/have the problem(s) affected you? _____

F. Meet and confer requirement: REMEMBER, within ten (10) days of filing this petition, try to contact the landlord to discuss the problem or dispute.

IV. SUPPORTING DOCUMENTS

Please check which documents you are submitting with this petition:

<input type="checkbox"/> Notice of rent or other increase	<input type="checkbox"/> Copies of communication - e-mails, letters, texts, etc.
<input type="checkbox"/> Copy of lease	<input type="checkbox"/> Photos
<input type="checkbox"/> Code violation report(s)	<input type="checkbox"/> Other (please specify)

V. MEDIATION/ARBITRATION

A. Mediation: The first step in the RRSO petition process is mediation. Mediation is a confidential meeting with the tenant(s) and the landlord or the landlord's representative facilitated by a professional neutral mediator. The mediator will help the parties discuss the issues presented in this petition and assist them in reaching an agreement. If no agreement is reached through mediation, the case proceeds to arbitration. Similar to a court proceeding, an arbitrator hears the case and makes a legally binding decision based on the parties' arguments and evidence.

Pursuant to Section 12-1.07(i), parties may agree to waive mediation and proceed directly to arbitration. Such a request must be in writing and must be made no later than seven (7) days before the mediation date.

☐ I wish to waive mediation and proceed directly to arbitration.

B. Scheduling:

The Mediation/Arbitration will be scheduled no earlier than fourteen (14) days and no later than thirty (30) days after the acceptance of filing the petition. Please identify dates/times you are available during that time frame after that time and if there are specific dates/times you are not available (you may be general - e.g. "Mondays and Wednesdays - am available after 3p.m."). Mediations/Arbitrations can take 2 to 3 hours.

Petition Forms



Section IV. F., Sections V & VI – Meet & Confer, Documents, Mediation/Arbitration

4. Did you tell the landlord about the problem(s) and if so, how (verbally or in writing) and when? ____

5. Has the landlord taken any steps to fix the problem(s)? If so, please describe. ____

6. Is/are the problem(s) still on-going? If more than one issue, state all that are still on-going. ____

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Do you need an interpreter for the mediation/arbitration?

☐ YES Language: _____
☐ NO

C. Settlement Terms (optional)

For the purpose of expediting a resolution to the issues presented in this petition, what are your proposed agreement terms that would resolve the issues (e.g. percentage of rent increase, terms to resolve service reductions etc.):

Mail petition and attachments to:	Contact Information for Rent Review Office
Rent Review Office 777 B Street Second Floor Hayward, CA 94541	Monday through Friday 8:30 a.m. - 12:00 p.m. 1:00 p.m. - 5:00 p.m. Closed 12:00 p.m. - 1:00 p.m.
Petitions <u>must</u> be received within 30 days of the Notice of Rent Increase.	E-mail: housing@hayward-ca.gov Phone: (510) 583-4454

[Signature page follows]

Group exercise!



CAN MIRABEL AND JAMIE FILE A TENANT PETITION?

Mirabel and Jamie have lived in their apartment for about 5 years. About 4 months ago the dishwasher stopped working. They have 3 kids and the dishwasher was one of the reasons they moved in to their unit. After emailing the manager, repairman came, everything seemed ok. 3 weeks later it broke again. Mirabel emailed the manager and called, but got no response. She decided to call a repair company herself. The repairman came and said it would be cheaper (and more energy efficient) to replace the dishwasher than repair it. Mirabel emailed the manager, letting him know what the new repairman said. The Manager sent out the original repairman and the original repairman removed the dishwasher. Jamie emailed the Manager on August 15, 2019: “Will we be getting a replacement dishwasher? If so, when?”

The Manager replied they had to check with the Property Owner. September 29th, the Manager wrote: “The Property Owner says with rent control, they have to cut back costs and they won’t be replacing the dishwasher.”

Petition Process: Time Restrictions



Tenant has 30 days to file after petition after:

- Receiving Notice of Rent Increase, Utility Increase, or Capital Improvements Pass-Through
- After becoming aware of the RRSO (LL failure to notify)
- Having knowledge of non-compliance with habitability of reduction in services and LL failure to cure*

**Tenants must notify LL of the problem(s) so LL has opportunity to fix*

Petition Process: Submission



- Tenant Petitions and supporting documentation are submitted directly to the City of Hayward
- City sends Landlord a Notice of Receipt, the Tenant's Petition and Blank Response form

Note: Tenant pays 5% rent increase while petition is pending (if Petition challenges rent increase >5% or banked increase) and for all other grounds, Rent Increase does not have to be paid until settlement or arbitration decision becomes final

Petition Process: Meet and Confer



- Tenant must try to contact LL to discuss rent increase and/or other reasons for Petition
- The Petition will be accepted after the 10-day Meet & Confer period, unless the Rent Review Officer is notified that an agreement was reached and the Petition is withdrawn

Petition Process: After Submission



- Rent Review Officer mails Notice of Acceptance to parties
- RRO may consolidate complaints (e.g. tenants from same complex with same LL)
- Mediator is assigned no more than 30 days after Notice of Acceptance (of petition) is sent
- LL written response must be submitted at least 5 days prior to mediation hearing

Petition Process: Mediation



- Parties are sent notice of the Mediation date at least 14 days before
- RRO attempts to contact all parties to determine best mutual date/time
- Parties proceed to mediation unless mediation “waived” – i.e. go directly to arbitration
- Waiver must be done in writing at least 7 days before mediation

Petition Process: Arbitration



- Petition will be schedule for arbitration if:
 - No agreement reached at mediation, or
 - Both LL and Tenant waive of mediation
- Arbitrator appointed within 21 days.
- Hearing will be set no later than 30 days after Arbitrator is assigned

Petition Process: Arbitration



- Parties may submit written responses or additional documents at least 7 days prior to hearing
- Postponement of hearing, up to 21 days, may be granted for good cause
- Arbitrator may order an inspection of unit and/or request further information from parties prior to the hearing; may request a pre-hearing telephonic meeting

Petition Process: After Arbitration Hearing



- Arbitrator delivers decision to RRO within 20 days of Hearing; RRO sends to parties
- Any party may submit an Application for Correction of decision within 10 days of RRO mailing decision
- RRO will send a copy of the Application for Correction to the other party. Any objection must be made within 10 days of the mailing of the copy Notice of Application for Correction
- Within 30 days of date of mailing the decision, the arbitrator will respond to the Application for Correction

Petition Process: After Arbitration Hearing



- Parties notified by mail if arbitrator corrects Decision or denies.
- The arbitrator Decision becomes final 30 days after the mailing of the Decision to the parties (or 30 days after a correction of the Decision)

Petition Process: Final Decision



- If the Decision requires Tenant to pay an additional amount or increase, Tenant must pay LL within 30 days of Decision becoming final
- If Decision finds the increase or payment is excessive, LL must refund Tenant any amounts paid in excess within 30 days after decision becoming final

Petition Process: Enforcing Decision



- Tenant is allowed to withhold a certain portion of rent equal to amount of refund if LL fails to pay it out within time frame
- Tenant is still entitled to refund even if the tenancy is terminated; within 30 days of termination LL must pay out refund to tenant
- Unpaid amounts are subject to be sent to collections or treated as debt, for either Tenant or LL

Dispute Resolution Process



- ✓ Tenant submits a petition stating grounds rent review
- ✓ Meet and Confer
- ✓ Landlord responds to the petition with information supporting the rent increase
- ✓ Mediation
- ✓ Arbitration

Contacts and Resources



- ❑ Any questions about RRSO
 - ❑ Hayward Rent Review Office
 - ❑ 510-583-4454
 - ❑ housing@hayward-ca.gov
- ❑ *After a petition is filed with City*
 - ❑ Project Sentinel Helpline
 - ❑ 510-709-4561
 - ❑ Hayward@Housing.org