



Staff Report

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Meeting Date: 8/14/2019

Westminster City Council

To: Honorable Mayor and City Council
Thru: Eddie Manfro, City Manager
From: Chet Simmons, Assistant City Manager
Reviewed by: Sherry Johnson, Finance Director
Prepared by: Carrie A. Raven, Deputy City Attorney

SUBJECT:

Summary of Options for Rent Stabilization.

RECOMMENDED ACTION/MOTION:

Staff recommends that the Mayor and City Council Accept the Following Report on Rent Stabilization for Discussion.

BACKGROUND/DISCUSSION:

The laws governing when and how rent control can be imposed are very complex. Generally speaking cities have the right to impose rent and eviction controls on residential properties, but only to the extent they do not conflict with state law restrictions. The Costa-Hawkins Rental Housing Act (Costa-Hawkins) was adopted by the state in 1995, and contains the most important restrictions cities would need to comply with. In general Costa-Hawkins: 1) prohibits rent control on any units built after 1995; 2) prohibits rent control on single family homes or on condominiums where ownership has a separate subdivided interest (but rent control is possible for apartments, if they were built before 1995); and 3) mandates that landlords must be allowed to increase rent to the market rate whenever the original tenant vacates.

With respect to mobilehomes, Costa-Hawkins does not apply, so you need to look at the California Mobilehome Residency Law instead (MRL). See Civil Code §§798 et seq. Rent Control remains a possibility, but only to the extent the city's ordinance does not conflict with the rules and regulates of the MRL. Under the MRL the following units are exempt from rent control: 1) any newly constructed mobilehome space which is first offered for rent after January 1, 1990; 2) any unit which has a rental

agreement that is at least 12 months in duration, and also meets other designated requirement in the MRL; and 3) units that are not used as a person's primary residence, and are not being leased to someone else.

There are however, a number of considerations that also need to be taken into account in deciding whether to impose rent control. One of the most significant of these is the amount of time and money the City will have to invest in overseeing the ordinance's implementation. It is very expensive and very time sensitive. In addition, the rights of the landowners need to be balance against the rights the City would be seeking to protect. The Council also needs to consider the long term impact of a rent control ordinance on the City as a whole. Some argue it is necessary. Others argue that it leads to blight and loss of affordable housing stock.

Rent control was first adopted by cities in the U.S. following World War I. They were later re-introduced by the federal government during World War II, which justified them as being an emergency measure. Those restrictions remained in place until 1953. In the 1970s, due to extremely high inflation and home prices/rents, a number of larger cities began to enact rent controls in an attempt to protect tenants from those economic forces. A number of lawsuits were filed during this period throughout the country, and generally the courts upheld a city's right to impose price controls. This included in California *Birkenfeld v. City of Berkley*, 17 Cal. 3d 129, 157 (1976). Almost every city that has implemented price controls has approached it differently. Every city has its own set of rules, and they are often quite detailed. An ordinance will include, among other things, regulations establishing what the starting "base-rent" will be, and how much rent can be increased each year. Annual increases frequently involve a formula allowing increases ties to a percentage of the consumer price index (CPI), but not always. It can be very complicated, costly, and time consuming for the city's rent board to oversee. Frequently its determinations will become the subject of a dispute, and possibly a lawsuit, between the city and the landlord or sometimes with the tenant. Some cities also impose eviction controls, which are rules governing when a tenant can or cannot be evicted. Because of how different each city's ordinance can be, it continues to be important to read each ordinance carefully to understand what restrictions may be in place in a particular city. The need for all of this detail in the ordinance makes the initial drafting of a rent control ordinance quite expensive, not to mention the ongoing costs in overseeing its implementation.

If a city decides to implement rent control, by definition, it must also create a separate rent control oversight board or commission. This commission is charged with the responsibility of making sure all the rules and regulations are complied with. Landlords are required to register with the board, and keep rental information up to date each year. They make sure landlords don't increase rents beyond what is allowed, and they also hear appeals from tenants who believe they have been subject of an improper eviction or rent increase. The need for an oversight board can make it very expensive for a city to implement a rent control ordinance. By way of example, Santa Monica had a budget of \$5.1 million dollars for its rent control board last year, which has 26 employees. Santa Monica has a population of approximately 92,500 which is about the same as Westminster.

Finally, to the flexibility cities have in crafting their ordinances, some cities only seek to put price controls on apartments rents, whereas others only regulate mobilehome park rents. Still others try to regulate both. Due to the fact there are different state laws governing each of those uses, we will discuss each of those groups separately below.

Westminster's History on Rent Control

Interestingly, our research found that Westminster previously adopted a rent control ordinance in 1981, but it immediately became the subject of a number of lawsuits. An article in the Los Angeles Times dated March 26, 1985, stated that following its adoption the City was involved in 18 separate challenges to the ordinance's constitutionality. There were also numerous disputes between park owners and tenants concerning the amount of rent that could be charged. Approximately \$1.5 million in rent proceeds was being held in a court controlled trust account pending the outcome of these lawsuits.

According to the article, in November 1984 three new councilmembers were elected on a platform of repealing rent controls. Shortly thereafter the rent control ordinance was repealed in March-April of 1985. At that time Westminster's rent control ordinance was the only one left in Orange County. Stanton had recently repealed their ordinance as well. Since 1985 there have been no rent controls in Westminster. Moreover, many of the arguments that were raised at that time, are the same arguments being made now.

State Laws Limiting Rent Control

1. Residential-Apartments: Costa Hawkins

Probably the most important state law restricting rent control is the Costa-Hawkins Rental Housing Act (Costa-Hawkins). California Civil Code §§ 1954.50 et seq. The law was enacted in 1995 in response to numerous rent control ordinances enacted in the 1970s and 1980s in places like Santa Monica, West Hollywood, Berkeley and East Palo Alto. The law makes it illegal for cities to adopt certain kinds of rent control ordinances. Currently there is a big push by renters' groups and some state lawmakers to try and repeal it, lifting all of its restrictions. As recently as last year, a bill to completely repeal Costa Hawkins was defeated. But it only failed to get out of committee by one vote.

So what are these Costa-Hawkins restrictions? One of the most important says that all single family homes and condominiums are exempt from rent control. What this means is that any rent control ordinance a city might adopt, would not apply to a single family home or condominium being rented to a third party. It only applies to residential units like apartments, and sometimes to mobilehome park spaces. Costa-Hawkins also says that anything built after 1995 is exempt from rent control. So a city could not impose rent control on any apartment buildings constructed after 1995. In some cases it is possible an earlier cutoff date might even apply. For example, Oakland adopted rent controls early on, and its ordinance said that it only applied to units built prior to 1983. Under Costa-Hawkins this 1983 cutoff date must still be used in Oakland, instead of 1995. Finally, Costa Hawkins also prohibits cities from having a say in how much a landlord can raise the price after a tenant moves out. This policy known as vacancy control.

To summarize, the most important parts of Costa-Hawkins are as follows:

Automatic Exemption. The following units are exempt from rent control:

- New Construction. Any new residential housing unit constructed after 1995. Civil Code 1954.52(a)(1).
- Previously Exempt Properties. Any unit previously deemed to be exempt under a prior rent control ordinance existing on or before February 1, 1995, must remain exempt. Civil Code 1954.52(a)(2).
- Single Family Homes. Condominiums. Townhomes.

Vacancy Decontrol. Prior to the adoption of Costa-Hawkins city ordinances severely restricted how much a landlord could increase the rent, even after the original tenant had vacated. This is called Vacancy Control. Costa-Hawkins changed this by saying that a landlord has a right to set rent at "market rates" whenever the original tenant vacates. This change was called Vacancy Decontrol.

2. Mobilehome Parks - Mobilehome Residency Law

By its own term, Costa-Hawkins does not apply to mobilehomes. With respect to mobilehomes we need to look for guidance from the California Mobilehome Residency Law (MRL). California Civil Code §§798 et seq. The general rule is that cities are free to pass rent control affecting mobilehomes, but the city's ordinance will be preempted to the extent it conflicts with the MRL's state law provisions.

Mobilehomes Exempt from Rent Control.

The MRL states the following are exempt from local rent control:

- Any newly constructed mobilehome space first offered for rent on or after January 1, 1990. Civil Code § 798.45.
- Any mobilehome space subject to a long term rental agreement, and meets other specified requirements. Lease must be 12 months or longer. Civil Code § 798.17. It is not uncommon for park owners to offer long term leases in order to provide some level of protection against rent control being imposed sometime during the term. But if rent control is in effect at the expiration, the tenant has no obligation to renew the long term lease.
- Mobilehomes not being used as a person's primary residence, and which are not being leased to someone else. Civil Code § 798.21.

Manner of Regulating.

Cities have taken different approaches when it comes to how they implement rent control for mobilehome parks. Some simply utilize a traditional rent control ordinance (same as those being used to regulate apartments), which allows designated rent increases subject to the review of the rent control board. Others adopt a traditional ordinance, but then try to incentivize the park owner to utilize a city approved long term lease agreement with tenants (i.e., the ordinance says the property owner will be exempt from the traditional ordinance's rules, so long as they agree to offer all tenants the City's pre-approved long term lease). Other cities seek to use voluntary agreements with the park

owners. Each of these options can be explored in greater detail if the Council desires to move forward with an ordinance.

Local rent control ordinances must serve a legitimate governmental purpose (such as protection of tenant welfare and protection from excessive rents) and permit the landlord to earn a just and reasonable return. Cities use various formulas or methods for granting rent increases in their rent control ordinances. Many allow an annual increase based on the percentage change in the Consumer Price Index in the preceding 12 months. A rent control ordinance must establish a public hearing process for review of individual rent adjustment applications, in which a landlord is afforded due process. Ordinances must be carefully crafted to allow for a just and reasonable return consistent with the guidance provided by the courts. A denial of a just and reasonable return constitutes an unconstitutional taking of property.

Rent Increases.

Under a traditional rent control ordinance annual increases are only allowed to the extent authorized in the city's code, typically linked to CPI (Consumer Price Index) in some way. Some ordinances also allow the park owner to pass through certain expenses, like property taxes, assessments, commonly metered utilities and capital improvements. The ability to pass through these costs can be important, because owners have little incentive to make improvements or repairs if they can't pass these costs on to the residents at some point. Finally, owners must also be allowed to apply to the City's rent control board occasionally to seek a "Fair Return Increase." The owner applies to the oversight board, insisting that they really need some kind of additional bump in rents in order to earn a "just and reasonable return" on their investment. This is very cumbersome for the owner, but it does provide a means for seeking an increase if the circumstances are truly unfair to the owner. The rent control board has a lot of discretion in this area, however, litigation frequently results. It is important to understand, however, that the economics of a mobilehome park can vary significantly from park to park. In the past many parks were built by one or two persons, who later pass it on to their children, and then to grandchildren. 50-60 years later these parks are frequently owned by a large group of people who have little or no debt. In those situations it may be easier to justify smaller rent increases. But at some point the park is sold, and the property tax is re-assessed to current values. When this occurs the new owners frequently have much higher expenses that must be paid. In these situations the city needs to take the actual economics of a particular park into account when setting rents increases. Even so, it is difficult for owners to prevail. Courts will uphold the ordinance unless it's clear the city is depriving the owner of "a just and reasonable return." Recently the 9th Circuit found that one city's rent restrictions did not constitute a "taking", even though they resulted in an 81% diminution in value to the park owner's property. MHC Financing v. San Rafael, 714 F.3d 1118 (2013).

Vacancy Control/Decontrol.

Since Costa-Hawkins does not apply to mobilehomes, it is still possible for cities to impose vacancy control. Some cities impose it, and don't allow any increase in rent when the mobilehome is sold to someone new. The legality of vacancy control is still unclear under the law. Other cities have full vacancy decontrol, and allow owners to increase rent to the market rate upon sale. Finally, some cities follow partial decontrol. They allow a partial increase, but not to market rate.

Costs/Liabilities.

- The costs and risks to implement a rent control ordinance can be substantial. The following are some of the things that cities need to consider:
- Upfront Staff Resources - Staff time to draft, implement and conduct public outreach about the new ordinance. This frequently requires the need for additional employees/help.
- Study - Cities frequently get a professional study done, to help provide the legal justification for why the ordinance is needed.
- Ongoing Staff Resources - Staff time to monitor, administer and enforce annual rent increases and other issues. Costs can be substantial. Almost assuredly will require hiring new employees.
- Commission or Hearing Officer - If you have a commission to hear requests/disputes, you have to pay them and city staff to support their work. If you don't use a commission, then the City will need to pay to hire an independent outside hearing officer.
- Liability Exposure - There is a constant risk of litigation on each decision that is made. This is an evolving area of the law. Attorney costs to defend City's ordinance and decisions made.

Existing State Law - In the Absence of Local Control.

Provides that upon the declaration of a state of emergency by the President of the United States or the Governor, or upon the declaration of a local emergency by the executive officer of any county, city, or city and county, and for a period of 30 days following that declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell specified goods and services, including housing, for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation of emergency. (Pen. Code § 396(b).)

- Allows landlords, in the absence of a local rent control ordinance or a fixed-term lease, to raise rents subject only to the following advance notice requirements:
 - at least 30 days' notice for rent increases of up to 10 percent, cumulatively, per year; or
 - at least 60 days' notice for rent increases of 10 percent or more, cumulative per year (Civ. Code §827(b).)
- Allows landlords, in the absence of a local eviction control ordinance or a fixed-term lease, to terminate a tenancy unilaterally without stating a reason, subject only to the following advance notice requirements:
 - at least 30 days' notice for tenants who have occupied the premises for less than a year; or
 - at least 60 days' notice for tenants who have occupied the premises for a year or more (Civ. Code §1946.1.)

Proposed State Legislation.

While not yet adopted into law, Assemblyman David Chiu, D-San Francisco, recently introduced AB1482 to limit on a statewide basis annual rent increases to 7 percentage points above the rate of change in the consumer price index or a maximum of 10 percent, whichever is lower. Gov. Gavin Newsom signaled his support for the bill after it cleared the legislature's Housing and Community Development Committee.

FISCAL IMPACT:

To be determined. Should the Council direct staff to move forward with a rent control ordinance, there will be an expenditure of staff time in studying and preparing an appropriate ordinance. Adoption of a Rent Control Ordinance will have a fiscal impact depending on what enforcement and accountability functions are created.

ATTACHMENTS:

None.

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