



Western  
Manufactured Housing Communities  
Association



April 23, 2020

The Honorable Miguel Pulido  
City of Santa Ana  
20 Civic Center Plaza  
Santa Ana, CA 92701

**RE: OPPOSITION TO RENT CONTROL EXECUTIVE ORDER**

Mayor Pulido and Members of City Council:

On behalf of a coalition of business and property rights organizations, we request revisions to sections of City of Santa Ana Executive Order No. 2-2020 that affects rental housing providers. We recognize that the City is taking swift and bold action to contain COVID-19, however we are deeply concerned that city policy is being crafted hastily and without any regard to the consequences it has on taxpaying property owners. Throughout the COVID-19 crisis, our members worked to their best of ability to provide tenant relief programs, direct residents to community resources, and make charitable monetary and in-kind contributions to provide aid to those in need. The City's actions are well-intended, but far from perfect having curtailed the rights of property owners and compromising the public process.

City Executive Order No. 2-2020 prohibits residential landlords from increasing rent for *all* tenants for the duration of the Governor's Executive Order N-28-20, which is effectively rent control. We firmly believe that rent control is not the appropriate solution during the pandemic. In addition to ongoing expenses like mortgage payments, housing providers need the flexibility to have *tenants who can pay their rent* in order to subsidize *tenants who are unable to pay rent*. A consequence of the rent control, an entire rental community is in jeopardy of becoming insolvent and eventually foreclosed on.

There are several issues at hand such as the (1) cascading effect government regulation has on taxpaying property owners, (2) the City's nonconformance with state law, and (3) lack of consistency with the City's Charter. To be clear, we are challenging the city's rent freeze and not the eviction moratorium. We

continue to work closely with state and local officials in keeping residents housed. As such, we request very specific remedies to our concerns.

## 1. GOVERNMENTS' SHORT-TERM RESPONSE OF COVID-19 DOES NOT CONSIDER IMPACTS ON HOUSING PROVIDERS

There are several voluntary initiatives (Safe at Home guidelines) and existing regulations that provide stable pricing in the housing industry during this crisis. Unfortunately, hasty government responses to COVID-19 have resulted in prioritizing tenants and banks over taxpaying property owners. It is widely known that an overwhelming amount of rental housing providers are “mom and pop” (independent rental owners) and they do not have the cash nor credit to defer their expenses for more than a month. Rental housing providers remain ineligible for mortgage relief and federal aid (CARES Act), while they still have ongoing expenses with devastating consequences as shown below:

<b>Rental Housing Expenses</b>	<b>Consequences for Nonpayment</b>
Mortgage payments	Default and foreclosure of property
Property Taxes	Tax liens
Insurance	Loss of personal income and life savings
Utilities	Tarnished credit reports
Employees and contractors	Deferral of capital improvements
Maintenance and supplies	Inability to pay employees
Security	Breach of contract with contractors

The cascading effects of nonpayment of rent are further summarized by the LA Times Editorial Board: *It's not just renters. Landlords need help, too.*<sup>1</sup>

As written, the City's rent freeze applies to *all* tenants regardless of their ability to pay (i.e. means-testing). Minor revenue balancing efforts within reason are needed to keep businesses solvent. While foreclosures are banned at the moment, there is little relief for rental housing providers. In fact, federal relief only applies to 27,000 rental housing properties out of approximately 22.7 million nationwide.<sup>2</sup> Many lenders continue to demand payment and foreclosures will only become an eventuality. We request that City Council revise the order to allow housing providers the reasonable flexibility to rebalance their property mix.

## 2. THE CITY'S RENT CONTROL ORDER VIOLATES STATE LAW

The City's Executive Order 2-2020 is not in conformance with state law or executive orders issued by the Governor of California. The City cites the authority to enact rent control through Executive Order N-28-20. While it authorizes local government to impose substantive limitations on residential or commercial evictions, **no such authority exists in the order to regulate rental rates.**

The Costa-Hawkins Rental Housing Act (Cal. Civ. Code § 1954.50, *et. seq.*) limits the ability of local governments to regulate rents in the following ways:

- Single family homes, condominium units, and housing built after February 1, 1995 are exempt from local rent controls (see Cal. Civ. Code § 1954.52);
- Rental property owners have the right, known as vacancy de-control, to set the initial rent following vacancy (see Cal. Civ. Code § 1954.53).

<sup>1</sup> The LA Times Editorial Board, "Los Angeles Times," *Los Angeles Times*, April 15, 2020, <https://www.latimes.com/opinion/story/2020-04-15/coronavirus-landlord-renter-bailout>.

<sup>2</sup> "FHFA Moves to Provide Eviction Suspension Relief for Renters in Multifamily Properties," Public Affairs (Federal Housing Finance Agency, March 23, 2020), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Moves-to-Provide-Eviction-Suspension-Relief-for-Renters-in-Multifamily-Properties.aspx>

In addition, the Mobilehome Residency Law (Cal. Civ. Code § 798, et seq.) restricts the ability of local governments to regulate space rents in the following ways:

- Mobilehome spaces initially held out for rent after January 1, 1990 are exempt from local rent controls (see Cal Civ. Code § 798.45);
- Long term leases that meet specified criteria are exempt from local rent controls (see Cal. Civ. Code § 798.17);
- Specified fees must be permitted to be passed through (see Civ. Code § 798.49).

We strongly encourage the City to modify or clarify its executive order similar to cities across the state that have imposed rent freezes. All other California cities (e.g. Los Angeles, Glendale, Oakland, et al.) have narrowly tailored their rent freezes on eligible housing and continue to recognize a constitutional right to a fair return. In the case of Los Angeles, the “city attorney’s office...that such a sweeping ban would interfere with private contractual rights and was not likely to survive in court.”<sup>3</sup> The City Attorney argued that “unless a California law known as Costa-Hawkins was suspended, the city couldn’t stop rent increases in apartments that aren’t covered by the Rent Stabilization Ordinance. If the city pushed forward anyway, [Assistant City Attorney] Michaelson wrote that the move would likely be enjoined by a court through a temporary restraining order.”

In all cases, eligible housing units are only those already subject to rent control. In contrast, the City’s guidance documents do not adequately address the conflicts with state law, makes arbitrary exemptions, and provides no legal justification for the adoption of the order.

### **3. THE MANNER OF APPROVAL VIOLATES CITY CHARTER AND PUBLIC OVERSIGHT**

We contend that the rent control order is in breach of the City’s Charter and the manner of approval violates the principles of good governance. While the city manager has the authority to implement emergency orders, all orders are ultimately subject to ratification by the City Council. Our concern is that policymaking is hidden from public oversight and that housing providers may be unknowingly in violation because of the absence of public deliberation. It appears that city policy has been crafted and implemented without public oversight. The City’s haste has caused it to be in nonconformance with state law and in violation its own policies and procedures.

Under existing city law, the city manager has the power, as the director of emergency services, to “make and issue rules, regulations, orders or directives on matters reasonably necessary to the protection of life and property as affected by such emergency”.<sup>4</sup> However, that power is subject to the caveat that “provided such rules and regulations or suspensions *are confirmed by the city council at the earliest practicable time*” [emphasis added]. Section 700 of the Charter states, “the City Council by ordinance may assign additional functions or duties to offices, departments, or other agencies established by this charter, but shall not discontinue or assign to any other office, department, or other agency any function or duty assigned by this charter to a particular office, department, or agency.” Taken together with Section 407 of the Charter, which states “the determination of all matters of policy shall be vested in the City Council.” The Charter makes clear that policy making is vested with the City Council and that responsibility cannot be delegated. We respectfully request that the public process be restored and for the City abide by its own procedures.

For these reasons, our coalition requests revisions to the City’s Executive Order 2-2020 at the earliest possible time. We also request that the City reach out and allow housing providers to participate in discussions related to housing policy.

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<sup>3</sup> Emily Alpert Reyes, “L.A. Council Members Balk at Broader Ban on Evictions amid Coronavirus, Citing Legal Worries,” Los Angeles Times, April 22, 2020, <https://www.latimes.com/california/story/2020-04-22/la-city-council-balks-at-broader-ban-on-evictions-amid-coronavirus>

<sup>4</sup> Sec. 2-402(C)(2)(5)(a)

Respectfully,



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cc: Ms. Kristine Ridge, City Manager  
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