



**CITY OF SALINAS
HOUSING AND LAND USE COMMITTEE
STAFF REPORT**

DATE: MARCH 26, 2024
DEPARTMENT: OFFICE OF THE CITY ATTORNEY
COMMUNITY DEVELOPMENT DEPARTMENT
FROM: CHRISTOPHER A. CALLIHAN, CITY ATTORNEY
TITLE: RENT STABILIZATION AND TENANT PROTECTION

RECOMMENDED MOTION:

No action is required. This Report is presented for informational purposes.

EXECUTIVE SUMMARY:

On October 24, 2023, at the request of Council member Rocha with the support of Council member González, the City Council received a presentation generally on the housing market in Salinas, as well as the possibility for the City to enact rent stabilization and tenant protection. Following the City Council's discussion and public comments provided on the item, the City Council directed staff to prepare a rent stabilization and tenant protection ordinance and utilize the City Council's Housing and Land Use Committee as the forum through which the City will engage the community as the work on the ordinance(s) progresses.

The City Attorney's Office and Community Development Department are working with Economic Planning Systems, Inc., on the preparation of an analysis of current housing and market conditions which is intended to inform the Committee and ultimately the City Council's consideration of the ordinance(s). Following this meeting, and continuing over the next couple of months, City staff will continue engagement with the community and interested stakeholders to receive their input and recommendations.

Cities may enact rent stabilization and tenant protection ordinances pursuant to the police powers granted by the California Constitution. (California Constitution, art. XI, §5) However, cities may only apply rent stabilization ordinances to certain residential units, and must ensure landlords are receiving a reasonable rate of return. Applicable state law and constitutional considerations are summarized in this Report, as well as some practical considerations for the Committee.

A preliminary draft ordinance is included with this Report which is intended to serve as a beginning point to the Committee and the public's discussion on these issues. The Committee will note that placeholders have been included in the preliminary draft ordinance and that those placeholders will be complete before a final draft is presented to the Committee for a recommendation to the City Council.

BACKGROUND:

It is well established that cities have the ability to enact rent stabilization ordinances; however, there are statutory and constitutional limits that cities must be aware of before considering such an ordinance. (Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129)

The Ellis Act; 1985

The Ellis Act was enacted by the State Legislature in 1985 after the California Supreme Court ruled that landlords do not have the right to evict tenants to go out of the business of being a landlord. The Ellis Act, therefore, essentially provides property owners the ability to “go out of the rental business.” In cities with eviction control ordinances, landlords may only terminate tenancies for cause. The Ellis Act requires that these cities allow property owners to withdraw their property from the residential rental market, permitting them to terminate any residential tenancies in the withdrawn property. The Ellis Act applies to “accommodations” (generally apartments) which is defined to mean either an entire building (if there is only one building on the parcel) or each building on the parcel if any one of the withdrawn buildings has three or fewer units.

Municipalities can regulate the Ellis Act eviction process to some extent. Those that do typically restrict the property from use as a rental property for a period of time and require that it go back under rent control provisions if it is returned to the rental market. Salinas currently does not currently regulate the Ellis Act eviction process, nor does Salinas currently have any rent control provisions.

The Costa Hawkins Rental Housing Act; 1995

In 1995, voters passed the Costa Hawkins Act, which sought to protect the right of landlords and their continued ability to develop housing. The Costa Hawkins Act pre-empted local rent control for multi-family units built after February 1995, as well as separately alienable units including single-family homes and condominiums. Under Costa Hawkins, single-family homes and condominiums are exempt from rent control, as are newly constructed apartment buildings. The Costa Hawkins Act also bans vacancy control, which means that landlords can raise the rent to market rate after a tenant moves out. However, the Costa Hawkins Act does not fully bar local rent control and allows local jurisdictions to set annual limits on rent increases on multi-family apartment units built before 1995 while an existing tenant continues to live in the unit. A 2018 ballot initiative called the Affordable Housing Act failed to repeal Costa Hawkins, as did the 2020 proposed Proposition 21, the Rental Affordability Act, which would have re-empowered local jurisdictions to adopt new rental control ordinances. The Rental Affordability Act proposed to modify the three main limitations of Costa-Hawkins: cities and counties (1) would have been able to apply rent control to most housing that is more than fifteen years old (this did not include single-family homes owned by people with two or fewer properties; (2) could have limited how much a landlord can increase rents when a new renter moves in; and (3) would have been able to apply rent control to most housing that is more than fifteen years old. Proposition 21 was not authorized by the electorate.

The “California Prohibit State Limitations on Local Rent Control Initiative”

The California Prohibit State Limitations on Local Rent Control Initiative has qualified for the ballot in California as an initiative statute on the November 5, 2024, ballot. This initiative was designed to repeal the Costa Hawkins Rental Housing Act. The initiative would also allow cities and counties to limit rent on any housing and limit the rent for a first-time tenant and would prohibit the state from limiting “the right of any city, county, or city and county to maintain, enact, or expand residential rent control.”¹

The Tenant Protection Act (AB 1482); 2020-2030

AB 1482, The Tenant Protection Act, established a new statewide rent control policy. The Tenant Protection Act became effective in January 2020 and expires in January 2030. The Tenant Protection Act applies to rental units that were built more than fifteen years ago and are not a hotel, owned by a nonprofit, student dormitories, a duplex where the landlord lives in one of the units, deed restricted, or single-family homes not owned by a corporation.

The Tenant Protection Act affects tenants in two main ways: it limits rent increases and it imposes “just cause” protections to existing tenants.

Rent increases are limited, as follows: AB 1482 restricts the allowable annual rent increase to 5% plus a total cost-of-living adjustment of no more than 5%, for a maximum increase of 10%. The law is retroactive, calculating the starting rent from March of 2019. There is no maximum rent or limit on how much landlords can raise rents between one tenant and the next. Rent can only be increased two times within any twelve-month period and a master tenant cannot sublease at a higher rate. In order to raise rents, landlords must provide written notice.

The Tenant Protection Act also provides eviction protections to tenants if all the tenants of a rental unit have lived there for twelve months or longer. The Tenant Protection Act permits at fault and no fault evictions. The Tenant Protection Act does not contain an explicit grant of authority to local governments to enforce its provisions.

No fault evictions exist where the tenant is not at fault for the eviction (owner or family member intends to occupy the unit, intent to substantially remodel the unit, etc.) and requires the landlord to pay relocation assistance equal to the tenants.

¹ The Petition has been summarized as follows: “Current state law (the Costa-Hawkins Rental Housing Act of 1995) generally prevents cities and counties from limiting the initial rental rate that landlords may charge to new tenants in all types of housing, and from limiting rent increases for existing tenants in (1) residential properties that were first occupied after February 1, 1995; (2) single-family homes; and (3) condominiums. This measure would repeal that state law and would prohibit the state from limiting the right of cities and counties to maintain, enact, or expand residential rent-control ordinances.”

[https://ballotpedia.org/California_Prohibit_State_Limitations_on_Local_Rent_Control_Initiative_\(2024\)](https://ballotpedia.org/California_Prohibit_State_Limitations_on_Local_Rent_Control_Initiative_(2024))

At fault eviction is permitted and do not require payment of relocation assistance. At fault evictions are permitted with notice and an opportunity to cure and can include: failure to pay rent, violating the lease, committing a nuisance, damaging the property, criminal activity at the unit, and subletting contrary to the lease.

Potential Considerations for Future Action

Many California cities have enacted local government rent stabilization and tenant protection programs through ordinances responsive to those specific communities and those specific City Councils' directives. Local ordinances tend to be more focused on regional factors including cost of living and income data, rather than statewide data. Additionally, having a local ordinance in place provides the City Attorney's Office with authority to enforce AB 1482 violations, for example, which authority would not exist without a local ordinance. A local ordinance and associated enforcement programming would provide additional tools to the landlords and the tenants.

A local rent stabilization ordinance based on local conditions and data could, for example, prohibit rent increases beyond a certain percentage, further limit how often rents could be increased, and establish local sanctions and penalties for failure to comply with the local ordinances. The City could also establish fees to support the local program.

A local tenant protection ordinance based on local conditions and data could, for example, require a landlord to pay a greater amount of relocation assistance beyond what state law requires, require the relocation expenses to include move-in costs (e.g., first and last months' deposits, security deposits, and application fees), and provide for tenant protections to vest sooner than twelve months into a tenancy.

A Salinas program established and implemented pursuant to the City Council's direction could include, for example, education and training to the community of the rights and the obligations of both landlords and tenants arising from such ordinances. A study of the factors contributing to the housing affordability gap (discussed above) will need to be completed. Primary among these target constituencies would be tenant organizations, apartment owners and managers, real estate associations, and advocates and representatives for both tenants and housing providers. A comprehensive public education and outreach program could also be developed and may include such elements as bilingual marketing and delivery, printed and electronic materials, education and outreach to target constituencies, and a social media and web presence.

Other concerns have been raised by the community, including the costs associated with credit applications, cost associated with the rental application process and application fees, and whether properties with healthy, safety, and welfare issues should be permitted the same level of rent increases as properties without such issues. Property demolition and the eviction process may be a consideration for the Committee and Council. The community has also raised questions regarding the eviction process associated with a landlord's remodel of the property and subsequent increase in rent. Some clarity may need to be provided in these respects. Pass-through and other costs, such as costs associated with the use of a parking space, may also need to be considered through this process.

Implementation of a Rent Stabilization or Rent Control Ordinance

In addition to complying with relevant law, rent stabilization ordinances can be challenging to implement and enforce. A number of decisions will need to be made as a part of the Committee and Council's consideration of such an ordinance such as the level of involvement that the City Council and other city departments will have.

Reasonable Rate of Return; Process

Various formulas or methods for granting rent increases have been upheld as facially valid because they are reasonably related to a proper legislative purpose and do not preclude a just and reasonable return or necessitate unconstitutional results. Both the United States Supreme Court and California Supreme Court have held that rent stabilization is a proper exercise of a local government's police power if it is calculated to eliminate excessive rents, as long as it provides landlords with just and reasonable returns on their property. A just and reasonable return has been described as one that is high enough to encourage good management, reward efficiency, and discourage the flight of capital; and is commensurate with returns on comparable investments, but not so high as to defeat the purpose of preventing excessive rents. There is a range of rents that can be characterized as providing a just and reasonable return. For a local ordinance that with an annual increase provision that is more restrictive than that provided by the Tenant Protection Act, there must be a procedure by which an applicant can seek an additional increase on the ground the annual increase is insufficient to provide a just and reasonable return.

Rent stabilization ordinances generally authorize landlords to raise rent annually not to exceed a specified formula, such as the percentage change in the consumer price index. As previously mentioned, rent stabilization ordinances must have a mechanism to ensure that landlords receive a reasonable return on their investment. Generally, a landlord who believes they are not receiving a fair and reasonable return may appeal to the city to implement an increase greater than the amount otherwise applied. This appeal may be initially reviewed by staff or by a separate board or commission with expertise in the local rent stabilization ordinances. Other cities allow the petition to be heard by a hearing officer and conducted like other administrative hearings of the city. In either situation, there will be an impact on staff resources.

Enforcement

It is common for a dedicated staff person to be in charge of administering and enforcing the rent stabilization ordinance. Depending on the complexity of the ordinance and the number of properties affected, this could be costly to the City. On the other hand, some local ordinances require tenants to resolve disputes between them and the landlord. This can involve a notice by the tenant to cure an alleged violation, and mandatory mediation prior to filing a lawsuit. This will require the Committee and the Council to consider a variety of factors such as available staff, budget, and level of desired enforcement.

Just Cause

Most tenancy terminations require “just cause” under the Tenant Protection Act. “Just cause” includes “at-fault” or “no-fault” reasons, such as nonpayment of rent or substantial remodels. Landlords must also provide written notice to the tenant and state the “just cause” reason for termination. These protections only apply to a tenant once they have lived in the unit for 12 months. If a tenancy is terminated for a “no-fault” reason, the landlord must pay the tenant relocation payments.

Cities can enact a just-cause eviction ordinances that offer greater protections to tenants than is required by the Tenant Protection Act. Some ordinances require additional notice requirements in order for a landlord to terminate a tenancy. For example, a local government could add a requirement to cite to the specific lease term that was violated. Just cause eviction ordinances can be adopted as part of a rent stabilization ordinance, or independently. Many cities with a rent stabilization ordinance have also adopted a just-cause eviction ordinance to ensure landlords do not avoid the requirements in the rent stabilization ordinance by evicting the tenant. This is just one example of how cities may add additional tenant protections in a rent stabilization ordinance to address local concerns.

Capital Improvements

“Capital Improvements” are the installation of improvements and facilities at the facility. This can include new improvements and facilities, or replacement of existing capital improvements, but does not include ordinary maintenance or repairs. It is common for local ordinances to provide a mechanism for landlord to increase rent in order to partially recover the costs of capital improvements, in addition to the otherwise allowable rent increase. Capital improvements decrease staff costs by ensuring a fair and reasonable return is not affected. Approving these costs only takes a ministerial review by staff, and is more cost effective than going through a reasonable return appeal process.

CEQA CONSIDERATION:

Not a Project. The City of Salinas has determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CEQA Guidelines Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

STRATEGIC PLAN INITIATIVE:

This Report is consistent with the City Council's goal of pursuing housing options for residents of all income levels, including the unsheltered, that is safe and secure (Housing/Affordable Housing; City of Salinas Strategic Plan 2022-2025). As a part of the City Council's current Strategic Plan, the City Council adopted a strategy of examining the Rent Stabilization Plan.

DEPARTMENTAL COORDINATION:

The City Attorney's Office and the Community Development Department are coordinating on this effort.

FISCAL AND SUSTAINABILITY IMPACT:

There is no fiscal impact associated with the Committee's receipt of this Report and discussion on this item. There may be a fiscal impact to the City associated with the establishment and the operation of a rent stabilization program including, but not limited to, the costs associated with staff resources required to manage and to operate the program.

ATTACHMENTS:

Preliminary Draft Ordinance