

ORDINANCE NO. NS-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA PROHIBITING RESIDENTIAL REAL PROPERTY AND MOBILEHOME SPACE RENTAL RATE INCREASES THAT EXCEED THREE PERCENT (3%) ANNUALLY, OR EIGHTY PERCENT (80%) OF THE CHANGE IN CONSUMER PRICE INDEX, WHICHEVER IS LESS, WITHIN THE CITY

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of Santa Ana hereby finds, determines and declares as follows:

- A. At the City Council meetings on September 21, 2021, and October 5, 2021, the City Council discussed the City of Santa Ana's ("Santa Ana" or "City") ability to address rent increases on residential real property and in mobilehome parks.
- B. The increasing housing rent burden and poverty faced by many residents in the City of Santa Ana threatens the health, safety, and welfare of its residents by forcing them to choose between paying rent and providing food, clothing, and medical care for themselves and their families.
- C. According to the May 2017 report by the California Housing Partnership Corporation, median rent in Orange County, which includes Santa Ana, has increased twenty-eight percent (28%) since 2000, while median renter household income has declined by 9%, when adjusted for inflation. Additionally, the May 2020 report by the California Housing Partnership Corporation demonstrated that renters need to earn \$42.23/hr, or, 3.2 times the state minimum wage to afford an average monthly asking rent of \$2,196 for a two-bedroom apartment in Orange County.
- D. Orange County's lowest income renters spend eighty-one percent (81%) of their income on rent, leaving very little to meet other basic human needs such as food and health.
- E. If Santa Ana renter-occupied households paid thirty percent (30%) of their income on housing, renters would have an extra \$176 million dollars of disposable income (income minus housing costs) to spend in the community each year, or \$7,000 per household. Additionally, racial inequities would decrease, as the yearly disposable income would increase by 14% for Latinos, 13% for Asian or Pacific Islanders, and 7% for Whites.

- F. The housing rent burden and poverty faced by many residents in Santa Ana threatens the health, safety, and welfare of its residents, particularly when resulting in eviction and displacement. Studies have shown that evictions play an impactful role in the lives of low income renter households and can also contribute to poverty through disruptive effects such as job loss, adverse health effects, and negative consequences for children.
- G. Moreover, an eviction can remain on a renter's credit history for at least seven years, impacting one's ability to rent and find employment opportunities.
- H. The Costa-Hawkins Rental Housing Act, *California Civil Code* section 1954.50, et seq., limits the applicability of local rent stabilization policies, including prohibiting local jurisdictions from applying rent stabilization to certain residential rental properties. This Ordinance intends to comply with the Costa-Hawkins Rental Housing Act, and all other applicable state and federal laws.
- I. Mobilehome Parks comprise approximately five percent (5.1%) of all housing in Santa Ana. The city has 29 Mobilehome Parks containing 3,913 spaces. Six of the Mobilehome Parks and one thousand twenty spaces in Santa Ana are currently age-restricted to persons 55 years of age or older.
- J. Many residents of mobilehome parks could become homeless if mobilehome park owners were to impose significant rent increases.
- K. Increasing the number of homeless residents in Santa Ana, particularly elderly residents who may be in need of medical or other care, could create a public health and safety risk.
- L. The economic conditions and recognized housing shortage in Southern California has the potential to detrimentally impact a substantial number of residents in Santa Ana, and impose a particular hardship on senior citizens, persons living on fixed incomes, and other vulnerable persons living in mobilehome parks in Santa Ana.
- M. The Mobilehome Residency Law ("MRL"), *California Civil Code* sections 798, et seq., expressly authorizes cities to regulate the setting and/or increasing of rents for the use and occupancy of a mobilehome space, subject to certain exceptions.
- N. Santa Ana Municipal Code ("SAMC"), Chapter 41, Article X, establishes standards for the development of mobilehome parks as a type of multiple-family residential development, and provides for the establishment of said development in areas throughout the City that will ensure their compatibility with other permitted uses in the district, consistent with the Housing Element of the City's General Plan.

- O. The City has not previously regulated the setting and increasing of rents for residential real property or mobilehome spaces. However, given the concerns discussed herein, the City Council desires to evaluate rent stabilization policies protecting residents from unreasonable rent increases, while ensuring that the owners of residential real property and mobilehome parks may earn a fair and reasonable return on their property.
- P. Pursuant to the City's police power, as granted broadly under Article XI, section 7 of the California Constitution, and Santa Ana Charter section 200, the Santa Ana City Council has the authority to enact and enforce ordinances and regulations for the public peace, health, and welfare of the City and its residents.
- Q. Based on the foregoing facts, and the facts presented to the City Council at the meetings at which this ordinance was introduced and adopted, the City Council finds that allowing owners of residential real property and mobilehome parks to have unfettered discretion to increase rents, would pose a threat to the public health, safety or welfare, and that a prohibition of rent increases, except as allowed herein, is therefore necessary.
- R. The City Council hereby adopts these regulations in order to address the threats set forth below.
1. Absent the adoption of this ordinance, as a result of the economic conditions and recognized housing shortage in Southern California, significant rent increases will impact a substantial number of residents in Santa Ana and constitute a threat to public health, safety and welfare, and a particular hardship for senior citizens, persons living on fixed incomes, and other vulnerable persons living in Santa Ana;
 2. Housing costs continue to escalate in Orange County, and mobilehome parks serve as an important affordable housing option for Santa Ana residents;
 3. Because a mobilehome is affixed to the property on which it resides, it is generally not cost effective to move it, resulting in the owner losing the mobilehome if they cannot pay the rent imposed by the landlord;
 4. Certain aspects of public health, safety, and welfare are not adequately protected due to the lack of rent stabilization mechanics or controls in Santa Ana, and it is the interest of the City, the owners, residents, and the community as a whole that the City consider regulations to protect affordable housing within the City, including, but not limited to, rent stabilization regulations applicable to residential real property and mobilehomes.
- S. The Request for Council Action for this ordinance dated September 21, 2021, shall be incorporated herein by this reference, and together with this ordinance,

any amendments or supplements, and oral testimony, shall constitute the necessary findings for this ordinance.

- T. The City Council finds, determines and declares that the threat to the public health, safety and welfare of the City and its residents necessitates the enactment of the ordinance.

Section 2. The recitals and statements of fact set forth in the preamble to this ordinance are true and correct, constitute a substantive part of this ordinance, and are incorporated herein by this reference.

Section 3. Section 8-1998 of the Santa Ana Municipal Code is deleted in its entirety.

Section 4. Division 5 is hereby added to Article X (Property Maintenance) of Chapter 8 (Buildings and Structures) of the Santa Ana Municipal Code to read as follows:

Division 5. – RENT STABILIZATION

Section 8-1998.1 – Prohibited Increases.

- (a) Increases in rent on residential real property or mobilehome spaces in the City of Santa Ana in excess of three percent (3%), or eighty (80%) of the change in the Consumer Price Index, whichever is less, and more than one rent increase in any twelve (12) month period, are prohibited, unless expressly exempt under the Costa-Hawkins Rental Housing Act codified in *California Civil Code* section 1954.50, et seq., or the Mobilehome Residency Law codified in *California Civil Code* sections 798, et seq. If the change in the Consumer Price Index is negative, no rent increase is permitted. The term Consumer Price Index means, at the time of the adjustment calculation completed by the City pursuant to subsection (b), the percentage increase in the United State Consumer Price Index for all Urban Consumers in the Los Angeles-Long Beach-Anaheim Metropolitan Area published by the Bureau of Labor Statistics, not seasonally adjusted, for the most recent twelve (12) month period ending prior to the City's calculation pursuant to subsection (b). A violation of this section occurs upon the service of notice or demand for a prohibited increase in rent.
- (b) No later than June 30th each year, beginning with the year 2022, the City shall announce the amount of allowable rent increase based on subsection (a) herein, which shall be effective as of September 1st of that year.

Section 8-1998.2 – Reasonable Rate of Return.

This ordinance allows for an annual adjustment of residential real property or mobilehome space rent of up to three percent (3%), or eighty (80%) of the change in the Consumer Price Index, whichever is less. A Consumer Price Index-based increase is found and determined to provide a just and reasonable return on an owner's property, and has been adopted to encourage good management, reward efficiency, and discourage the flight of capital, as well as to be commensurate with returns on comparable investments, but not so high as to defeat the purpose of curtailing excessive rents and rental increases. Notwithstanding the foregoing, however, any owner of residential real property or a mobilehome park who contends that the limit on rental increases set forth in Section 8-1998.1 above will prevent the owner from receiving a fair and reasonable return on their property may petition for relief from the cap set forth in section 8-1998.1 pursuant to the procedures set forth in section 8-1998.3.

Section 8-1998.3 – Fair Return Petition for Rent Increase.

(a) An owner of residential real property or a mobilehome park owner may petition for a rent increase in excess of that provided in section 8-1998.1 in order to obtain a fair and reasonable return on their property ("Fair Return Petition"). Such Fair Return Petition shall be on an application form prescribed by the City Manager and shall be decided by the City Manager, or their designee ("City Manager"). Owner shall provide a copy of any Fair Return Petition submitted to the City to the applicable tenant(s), and provide City with proof of completing such service to the applicable tenant(s). The tenant(s) will then have thirty (30) days from the date of receiving the Fair Return Petition to reply or provide additional materials to the City in response to the Fair Return Petition. The applicant shall bear the burden of establishing that a rate increase in excess of that provided in section 8-1998.1 is necessary to provide the applicant with a fair and reasonable return on their property, including by providing an independent financial report and verified financial data demonstrating that without such an increase, they will not realize a fair and reasonable return on their property.

(b) Applicant shall be responsible for all costs associated with the City's review of the Fair Return Petition. Upon receipt of a Fair Return Petition, the City Manager shall determine the anticipated costs of review and if the employment of expert(s) will be necessary or appropriate for a proper analysis of the applicant's request. If the City Manager so determines, the City Manager shall also determine the anticipated costs of employing such expert(s). The resulting figure shall be communicated to the applicant, and the Fair Return Petition shall not be processed until the applicant has paid to the City the estimated cost of the complete analysis. City will provide applicant with an invoice of all costs incurred after the review of the Fair Return Petition. Any unused portion of the advance payment for analysis shall be refunded to the applicant. If additional funds are required, payment will be required before applicant receives the determination on the Fair Return Petition from the City.

(c) The factors the City Manager may consider in deciding a Fair Return Petition may include, but not be limited to:

- (1) Changes in the Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Metropolitan Area published by the Bureau of Labor Statistics.
- (2) The rent lawfully charged for comparable residential real property or mobilehome spaces in the City.
- (3) The length of time since the last determination by the City Manager on a rent increase application, or the last rent increase if no previous rent increase application has been made.
- (4) The completion of any capital improvements or rehabilitation work related to the residential real property or mobilehome space or spaces specified in the Fair Return Petition, and the cost thereof, including materials, labor, construction interest, permit fees, and other items the City Manager deems appropriate.
- (5) Changes in property taxes or other taxes related to the subject residential real property or mobilehome park.
- (6) Changes in the rent paid by the applicant for the lease of the residential real property or land on which the subject mobilehome park is located.
- (7) Changes in the utility charges for the subject residential real property or mobilehome park paid by the applicant, and the extent, if any, of reimbursement from the tenants.
- (8) Changes in reasonable operating and maintenance expenses.
- (9) The need for repairs caused by circumstances other than ordinary wear and tear.
- (10) The amount and quality of services provided by the applicant to the affected tenant(s).
- (11) Any existing written lease lawfully entered into between the applicant and the affected tenant(s).

(d) A Fair Return Petition shall be decided by the City Manager within sixty (60) calendar days of the date that the application has been deemed complete, including proof of service of the Fair Return Petition on the applicable tenant(s). The decision shall be emailed and sent by mail, with proof of mailing to the subject property

owner, the owner's designated representative(s) for the Fair Return Petition, and a designated representative of the tenant(s). Any appeal of the City Manager decision on a Fair Return Petition shall proceed pursuant to the administrative appeal procedures found in Chapter 3 of the Santa Ana Municipal Code.

Section 8-1998.4 – Exemptions.

(a) Pursuant to the Costa-Hawkins Rental Housing Act, the provisions of this ordinance regulating the amount of rent that a residential real property owner may charge shall not apply to the following: any residential real property that has a certificate of occupancy issued after February 1, 1995 (*California Civil Code* section 1954.52(a)(1)); and, any other provisions of the Costa-Hawkins Rental Housing Act addressing exemptions, as applicable.

(b) Pursuant to the Mobilehome Residency Law, the provisions of this ordinance regulating the amount of rent that a mobilehome park owner may charge for a mobilehome space shall not apply to the following: any mobilehome space subject to a long term (more than one year) rental agreement (*California Civil Code* section 798.17); any newly constructed mobilehome space first offered for rent on or after January 1, 1990 (*California Civil Code* section 798.45); mobilehomes not being used as a person's primary residence that are not being leased to someone else (*California Civil Code* section 798.21); and, any other provisions of the Mobilehome Residency Law addressing exemptions, as applicable.

(c) Pursuant to the Tenant Protection Act of 2019, *Civil Code* section 1947.12(d), the provisions of this ordinance regulating the amount of rent that a residential real property Owner may charge shall not apply to the following:

- (1) Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.
- (2) Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.
- (3) Housing that has been issued a certificate of occupancy within the previous 15 years.
- (4) Residential real property that is alienable separate from the title to any other dwelling unit, provided that both of the following apply:

A. The owner is not any of the following:

- i. A real estate investment trust, as defined in section 856 of the Internal Revenue Code.
- ii. A corporation.
- iii. A limited liability company in which at least one member is a corporation.

B.

- i. The tenants have been provided written notice that the residential real property is exempt from this section using the following statement:

“This property is not subject to the rent limits imposed by Santa Ana Municipal Code section 8-1998.1 and the owner is not any of the following: (1) a real estate investment trust, as defined by section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.”

- ii. For a tenancy existing before the effective date of this ordinance, the notice required under clause (i) may, but is not required to, be provided in the rental agreement.
- iii. For a tenancy commenced or renewed on or after the effective date of this ordinance, the notice required under clause (i) must be provided in the rental agreement.

- (5) A property containing two separate dwelling units within a single structure in which the owner occupied one of the units as the owner’s principal place of residence at the beginning of the tenancy so long as the owner continues in occupancy, and neither unit is an accessory dwelling unit or a junior accessory dwelling unit.

Section 8-1998.5 – Rent Increase Ineffective.

No rent increase shall be effective if the owner:

- (a) Fails to substantially comply with all provisions of this Division, including but not limited to the failure to provide notices as required; or

(b) Fails to maintain the residential real property or mobilehome space in compliance with California Civil Code Sections 1941.1 et seq. and California Health and Safety Code sections 17920.3 and 17920.10; or

(c) Fails to make repairs ordered by the City or court of competent jurisdiction.

Section 8-1998.6 – Notice Requirements.

(a) An owner of any residential real property or mobilehome space subject to this provision shall, on or before the date of commencement of a tenancy, give the tenant a written notice in a form prescribed by the City which must include the following information:

- (1) The existence and scope of this Division 5 of Chapter 8 of the Santa Ana Municipal Code; and
- (2) The tenant's right to respond to any Fair Return Petition filed with the City by the owner pursuant to section 8-1998.3.

(b) As part of any notice to increase rent, an owner must include:

- (1) Notice of the existence of this Division 5 of Chapter 8 of the Santa Ana Municipal Code; and
- (2) The tenant's right to respond to any Fair Return Petition filed with the City by the owner pursuant to section 8-1998.3, unless such rent increase is pursuant to an approved Fair Return Petition.
- (3) No rent increase shall take effect until the requirements of this Division have been met.

(c) The owner must give notices to the tenant in the language that the owner and tenant used to negotiate the terms of the tenancy (e.g., English, Spanish, Chinese, Tagalog, Vietnamese, and Korean) as well as English.

Section 8-1998.7 – Definition of Rent.

For the purposes of this Division, "Rent" means all periodic payments and all nonmonetary consideration, including, but not limited to, the fair market value of goods or services rendered to or for the benefit of the owner under an agreement concerning the use or occupancy of residential real property or mobilehome space, including all payment and consideration demanded or paid for parking, pets, furniture, subletting and security deposits for damages and cleaning.

Section 8-1998.8 – Violations.

It shall be unlawful for any person to violate or fail to comply with any provision of the ordinance. The violation of any provision of this ordinance shall first be punished through the use of an administrative citation, as provided in Santa Ana Municipal Code section 1-21, et seq., prior to prosecution as a misdemeanor or infraction, as provided in Santa Ana Municipal Code section 1-8.

Section 5. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to sections 15060(c)(2), 15060(c)(3) and 15061(b)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, because there is no possibility it will have a significant effect on the environment, and it is not a "project", as defined in section 15378 of the State CEQA Guidelines.

Section 6. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared invalid or unconstitutional.

Section 7. The Clerk of the Council shall certify to the adoption of this ordinance and cause the same to be published in the manner prescribed by law.

ADOPTED this ____ day of _____, 2021.

Vicente Sarmiento
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

Ryan O. Hodge
Assistant City Attorney

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

NOT PRESENT: Councilmembers: _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Daisy Gomez, Clerk of the Council, do hereby attest to and certify the attached Ordinance No. NS-XXXX to be the original ordinance adopted by the City Council of the City of Santa Ana on _____, 2021.

Date: _____

Clerk of the Council
City of Santa Ana