



**City of Santa Ana**  
**20 Civic Center Plaza, Santa Ana, CA 92701**  
**Staff Report**  
**September 21, 2021**

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**TOPIC:** Rent Stabilization Ordinance and Just Cause Eviction Ordinance

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**AGENDA TITLE:**

Adoption of Rent Stabilization Ordinance and Just Cause Eviction Ordinance

**RECOMMENDED ACTION**

Receive direction from the Housing Ad Hoc Committee and consider the following options:

1. Adopt an urgency rent stabilization ordinance prohibiting residential real property and mobilehome space rental increases that exceed three percent (3%) annually, or eighty percent (80%) of the change in Consumer Price Index, whichever is less, within the City. *(Requires five affirmative votes)*
2. Adopt an urgency ordinance requiring just cause evictions. *(Requires five affirmative votes)*
3. Adopt a Resolution directing further study and implementation of the additional regulatory framework and infrastructure necessary to implement residential rent stabilization, just cause eviction, and other protections for tenants facing housing instability.
4. Authorize the City Manager to reallocate up to \$300,000 from the Revive Santa Ana Plan to create an Eviction Defense Fund by entering into an Agreement with a consultant for the administration, management and implementation of the rent stabilization ordinance and just cause eviction ordinance, and direct the City Attorney to finalize and authorize the City Manager to enter into negotiations, execute agreements, and approve any other required actions necessary with various service providers, contractors, and sub-recipients, who will implement and manage the ordinances, subject to non-substantive changes approved by the City Manager and City Attorney.

ALTERNATIVE OPTION:

1. Approve first reading of a rent stabilization ordinance prohibiting residential real property and mobilehome space rental increases that exceed three percent (3%) annually, or eighty percent (80%) of the change in Consumer Price Index, whichever is less, within the City.
2. Approve first reading of an ordinance requiring just cause evictions.
3. Adopt a Resolution directing further study and implementation of the additional regulatory framework and infrastructure necessary to implement residential rent stabilization, just cause eviction, and other protections for tenants facing housing instability.
4. Authorize the City Manager to reallocate up to \$300,000 from the Revive Santa Ana Plan to create an Eviction Defense Fund by entering into an Agreement with a consultant for the administration, management and implementation of the rent stabilization ordinance and just cause eviction ordinance, and direct the City Attorney to finalize and authorize the City Manager to enter into negotiations, execute agreements, and approve any other required actions necessary with various service providers, contractors, and sub-recipients, who will implement and manage the ordinances, subject to non-substantive changes approved by the City Manager and City Attorney.

**DISCUSSION**

On March 2, 2021, the Mayor and City Council formed a Housing Ad Hoc Committee. The Housing Ad Hoc Committee members consist of Mayor Sarmiento and Councilmembers Lopez and Phan. The Committee convened its first meeting on March 22, 2021, and has since conducted four additional meetings to discuss various housing issues. The first set of recommendations from the Committee are related to the Housing Opportunity Ordinance, which is still being reviewed and considered by City Council. The next set of recommendations from the Committee are related to rent stabilization, rental protections for tenants, just cause eviction policies, and tenant displacement and protection policies.

On September 9, 2021, and September 15, 2021, the Housing Ad Hoc Committee convened and directed staff to:

1. Draft a rent stabilization ordinance and a just cause eviction ordinance.
2. Draft a Resolution to conduct due diligence and research into the administrative formation of a rent control board following the adoption of a rent stabilization ordinance and a just cause eviction ordinance.

3. Authorize staff to reallocate Revive Santa Ana funding to create an Eviction Defense Fund, based on the model of the City's Deportation Defense Fund.

Following the direction from the Housing Ad Hoc Committee staff have drafted an ordinance adopting rent stabilization, a second ordinance adopting just cause eviction protections, a resolution, and a reallocation of Revive Santa Ana funding to create an Eviction Defense Fund as further described below. These two Ordinances are recommended by the Housing Ad Hoc Committee as an emergency measure to protect and preserve the health, safety, and welfare of the residents of the City of Santa Ana in response to the pending expiration of the State's COVID-19 emergency residential eviction moratorium on September 30, 2021. Pursuant to the disclosure of the Mayor at the City Council meeting on September 7, 2021, the Housing Ad Hoc Committee would be reviewing policies to protect tenants before the end of the State's eviction moratorium. The two Urgency Ordinances will become effective immediately if passed by the affirmative votes of at least two-thirds (2/3) of the members of the City Council.

#### Rent Stabilization Ordinance

The Housing Ad Hoc Committee recommends the adoption of an urgency rent stabilization ordinance prohibiting residential real property and mobilehome space rental increases that exceed three percent (3%) annually, or eighty percent (80%) of the change in Consumer Price Index, whichever is less, within the City (Exhibit 1 or 2).

The term Consumer Price Index means, at the time of the adjustment calculation, the percentage increase in the United State Consumer Price Index (CPI) 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 proposed rent increase/adjustment. Regarding the 80% of the percentage increase in CPI, this is equal to eighty percent (80%) of the percentage increase in the CPI (All Items, All Urban Consumers for Los Angeles-Long Beach-Anaheim, California area, or any successor designation of that index that may later be adopted by the U.S. Bureau of Labor Statistics). For example, if the percentage increase in the CPI for All Items were 2.5%, the final percentage would be calculated by multiplying 2.5% by 80%. The new amount equals 2%. The amount is then compared to 3% and a landlord may not increase their rent greater than the lower of the two percentages. In this example, the landlord would be prohibited from increasing their rent more than 2%. If the CPI is negative, no rent increase will be permitted. The Ordinance also prohibits more than one rent increase in any twelve (12) month period. A violation of the Ordinance occurs upon the service of notice or demand for a prohibited increase in rent.

The rent stabilization cap will apply to buildings built in 1995 or earlier. The rent stabilization cap for mobilehomes will apply to those mobilehome parks established in 1990 or before—regardless of ownership. (A new mobilehome park name/owner will not be a loophole to the rent stabilization ordinance.) Mobilehome parks comprise approximately 5.2% of all housing in the City according to the Mobile Home Parks Report

that was received and filed by City Council on May 21, 2019. There are twenty-nine mobilehome parks containing 3,913 spaces. Six of the mobilehome parks and 1,020 spaces in the City are currently age-restricted to persons 55 years of age or older.

Relative to the State's Tenant Protection Act of 2019 ("AB 1482"), the State's rent stabilization law caps the statewide rent increases to 5% plus the percentage change in the CPI, or 10%, whichever is lower. The City's local Ordinance will go further than AB 1482 and the protections provided in this Ordinance are more restrictive than those set forth in AB 1482.

An owner must, on or before the date of commencement of a tenancy, give the tenant or mobilehome resident a written notice in a form prescribed by the City information on the existence and scope of the Ordinance and the tenant's right to respond to any petition filed with the City as described in detail below. A rent increase cannot take effect until the notice has been provided.

#### *Fair Return in Response to Takings Clause*

In cases where a cap on rent increases poses difficulty for a particular landlord, the legal requirement for a fair return under the Fifth Amendment takings clause is satisfied so long as an adequate process is established for the landlord to seek an individualized adjustment. A CPI-based increase in the Ordinance will provide a just and reasonable return on an owner's property, and has been included in the Ordinance 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. Courts in California have long upheld the constitutionality of the maintenance of net operating income (MNOI) standard in these individualized determinations. The MNOI standard typically indexes increases to those found in the CPI, including indexing the MNOI standard at less than 100% of the change in the CPI. One reason is that such indexing accounts for the fact that a landlord's return on investment is not limited to the revenue from rent rolls, but also includes increases to the landlord's equity in the property and overall appreciation of the property. Another reason is that a major component of the CPI is determined by increases in housing costs, which are often driven by speculation rather than maintenance costs, and thus these costs unduly influence the rise in the overall CPI. Over the last 40 years, the change in the CPI for the Los Angeles-Long Beach-Anaheim region for "All Items, less shelter" was approximately 80% of the change in the CPI for "All Items." The Ordinance will index the MNOI standard at 80% of the change in the CPI for "All Items" as a reasonable guarantee that landlords will obtain a fair rate of return on their investments.

However, any owner of residential real property or a mobilehome park who contends that the limit on rental increases set forth in the Ordinance will prevent the owner from receiving a fair and reasonable return on their property, may petition for relief from the cap. The owner's petition must be on an application form prescribed by the City Manager

and shall be decided by the City Manager, or her designee. The owner shall also provide a copy of any petition submitted to the City to the applicable tenant(s), and provide the 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 petition to reply or provide additional materials to the City in response to the petition. The applicant shall bear the burden of establishing that a rate increase in excess of the rent stabilization cap 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.

The owner will be responsible for all costs associated with the City's review of the petition. Upon receipt of a fair return petition/application, the City Manager shall determine 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, she shall also determine the anticipated costs of employing such expert(s). The resulting figure shall be communicated to the applicant, and the application will not be processed until the applicant has paid to the City the estimated cost of the expert analysis (e.g. cost recovery). The entire list of factors the City Manager may consider in deciding a fair return petition/application are provided in the Ordinance. The most notable factors include consideration of the completion of any capital improvements or rehabilitation work related to the residential real property or mobilehome space; changes in property taxes; changes in reasonable operating and maintenance expenses; the need for repairs caused by circumstances other than ordinary wear and tear; or any existing written lease lawfully entered into between the applicant and the affected tenant(s). The petition will be decided by the City Manager within sixty (60) days of the date that the petition was deemed complete.

Any appeal of the City Manager decision on an application for a fair return adjustment shall proceed pursuant to the administrative appeal procedures found in Chapter 3 of the Santa Ana Municipal Code. This procedure involves the Clerk of the Council contracting with an independent hearing officer to adjudicate the appeal.

### *Exemptions*

Pursuant to the Costa-Hawkins Rental Housing Act, the provisions of the Ordinance regulating the amount of rent that a residential real property owner may charge shall not apply to any residential real property that has a certificate of occupancy issued after February 1, 1995; and, any other provisions of the Costa-Hawkins Rental Housing Act addressing exemptions, as applicable. Pursuant to the Mobilehome Residency Law (MRL), the provisions of the 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; any newly constructed mobilehome space first offered for rent on or after January 1, 1990; mobilehomes not being used as a person's primary residence that are not being leased

to someone else; and, any other provisions of the MRL addressing exemptions, as applicable.

#### Just Cause Eviction Ordinance

The Housing Ad Hoc Committee recommends the adoption of an urgency ordinance requiring just cause evictions (Exhibit 3 or 4). The Just Cause Eviction Ordinance incorporates AB 1482 as a local Ordinance in the Santa Ana Municipal Code and adds additional tenant protections. Specifically, AB 1482 provides that a local ordinance adopted after September 1, 2019, requiring just cause for termination of a residential tenancy shall supersede AB 1482 only if the ordinance is “more protective.” The Ordinance therefore adds the following additional tenant protections that are not already available to Santa Ana residents under AB 1482:

1. Reduces the prior occupancy requirement from 12 months to 30 days before qualifying for protections;
2. Adds notice of termination of tenancy requirements, including:
  - a. The owner must serve a written notice to the tenant that states that, in addition to any information required by federal or state law, the owner will terminate the tenancy, and that indicates at least one at-fault or no-fault just cause reason as provided in the Ordinance; and
  - b. The owner is not allowed to accept rent for use of property beyond the termination date; and
  - c. The owner qualifies the termination as at-fault or no-fault just cause, as specified in the Ordinance; and
  - d. A copy of the owner’s Notice of Termination of Tenancy sent to the tenant must be provided to the City within five (5) days after service of the Notice of Termination to the tenant.
  - e. The owner must provide the notice in the language that the owner and tenant used to negotiate the terms of the lease.
3. Adds a requirement that the owner must provide written notice to tenants and/or mobilehome residents of their rights under the Ordinance on a form prescribed by the City in the language that the owner and tenant used to negotiate the terms of the tenancy.
4. The following violations of leases or rental agreements shall not be grounds for evictions:
  - a. The obligation to limit occupancy, provided that the additional tenant/resident who joins the occupants of the unit thereby exceeding the limits on occupancy set forth in the rental agreement is a dependent under 18, or is a replacement tenant/resident who moved in after an approved tenant/resident vacated the rental unit, so long as the addition does not exceed the Uniform Housing Code.

- b. A change in the terms of the tenancy that is not the result of an express written agreement signed by both of the parties.
  - c. A landlord shall not take any action to terminate a tenancy based on a tenant /resident's sublease of the rental unit if certain requirements are met as described in the Ordinance.
  - d. Eviction Protections for Victims of Domestic Violence, Elder or Dependent Adult Abuse, or Sexual Assault, Human Trafficking, or Stalking.
5. Adds a requirement that the owner must provide advance notice to the tenant of the ability to reoccupy the unit upon completion of repairs or the right of first refusal of a comparable unit.
  6. Adds relocation assistance equal to three (3) months of the tenant's rent if an owner issues a notice to terminate for no-fault just cause.
  7. Adds retaliatory eviction and anti-harassment regulations.

#### *Enforcement*

In the interim period, the City of Santa Ana will not be responsible for the enforcement of the Ordinances. This is similar to how the State's Tenant Protection Act of 2019 (AB 1482) is enforced. When a landlord accepts, receives, or retains any payment or payments in excess of the lawful rent pursuant to the Ordinance, the tenant/mobile home owner/resident may file a civil suit against the landlord. A tenant/mobile home owner/resident may bring a civil suit in the court alleging that a landlord has violated any of the provisions of the Ordinance(s). A landlord found to violate the Ordinance(s) shall be liable to the tenant/mobile home owner/resident for all actual damages. Tenants/mobile home owners/residents and landlords of rental units or mobile homes may seek relief from the appropriate court in the City of Santa Ana to enforce any provision of the Ordinance(s) or its implementing regulations or to restrain or enjoin any violation of the Ordinance(s) and of the rules, regulations, orders, and decisions of the City. However, a consultant hired by the City will enforce and administer an owner's right to a fair return process under the Rent Stabilization Ordinance as required in the Ordinance.

#### Resolution to Conduct due Diligence and Research on Rent Control Board

The Housing Ad Hoc Committee recommends adoption of a Resolution directing staff to conduct further study of the additional regulatory framework and infrastructure necessary to implement residential rent stabilization, just cause eviction, and other protections for tenants facing housing instability (Exhibit 5). These measures are to include the creation and operation of a Rent Control Board or similar body, a rent registry, and the related costs thereof.

Due to the nature of this due diligence process, which could take staff from nine to 12 months to complete, the Committee determined that a resolution to conduct this due diligence would be the most effective method to adopt the Ordinances. On February 6,

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2018, City Council held a work-study session on rent control, which included a presentation by Tracy Condon, Executive Director of the Santa Monica Rent Control Board. At the time of the presentation, the Santa Monica Rent Control Board consisted of 25 staff required to administer and enforce their City's rent stabilization ordinance. Building upon this work-study and research that staff started in February 2018 regarding how to administer a rent stabilization ordinance; this resolution directs staff to conduct further study.

### Eviction Defense Fund

In response to the pending expiration of the state COVID-19 emergency residential eviction moratorium on September 30, 2021, the Housing Ad Hoc Committee recommends to reallocate up to \$300,000 of Revive Santa Ana funding to create an Eviction Defense Fund by entering into an Agreement with a consultant for the administration, management and implementation of the rent stabilization ordinance and just cause eviction ordinance. Specifically, staff will work with the City Attorney's Office to enter into negotiations, execute agreements, and approve any other required actions necessary with various service providers, contractors, and sub-recipients, who will implement and manage the City's rent stabilization ordinance and just cause eviction ordinance. This will be an interim solution to bridge the time between the effective date of the Ordinances and the full implementation of the Ordinances through the formation of a rent control board with full-time staff. The consultant will assist the City to transition the management of the rent control ordinance to the City's full-time staff and rent control board. This solution will ensure the successful and efficient implementation of the Ordinances in the short-term with the least impact to City staff. The full long-term implementation of the Ordinance may require an amendment to the Rent Stabilization Ordinance for the collection of fees from owners and the hiring of at least 25 staff, based upon the model in the City of Santa Monica.

The consultant who is selected by staff and the corresponding Agreement will not return to City Council for approval. However, staff have preliminarily identified RSG as one consultant with experience administering rent stabilization ordinances. RSG is currently administering two mobilehome park rent control ordinances. They have been administering the mobilehome park rent control ordinance for the City of El Monte and Carson. For the City of Carson, they have been directly administering their City's ordinance for over four years. For the administration of their rent stabilization ordinance, the City of Carson calculates and publishes information on the CPI adjustment each year while RSG administers the right to a fair return process for landlords. RSG also assisted the City of Hollywood in the past when their City was re-evaluating their ordinance. Currently RSG is assisting the City of Southgate to evaluate the feasibility of creating a rent stabilization ordinance. RSG is locally based in the City of Irvine. The Agreement will be a full-service contract to ensure there are no issues or delays for tenants and owners after the initial approval of the Ordinances.

Next Steps

Following adoption of the Ordinances, an Agreement will be drafted and executed with a consultant who will establish a webpage and phone line to provide clear and consistent information on the new protections under the Ordinances. A right to a fair return process will be established for owners to submit a petition as required in the Ordinance. A press release will also be issued prior to the expiration of the State eviction moratorium on September 30, 2021.

**ENVIRONMENTAL IMPACT**

There is no environmental impact associated with this action.

**FISCAL IMPACT**

Following the adoption of the Urgency Rent Stabilization Ordinance, Just Cause Eviction Ordinance and Resolution, staff will reallocate up to \$300,000 in Revive Santa Ana funding to create an Eviction Defense Fund by entering into an agreement with a consultant for the administration, management and implementation of the rent stabilization ordinance and just cause eviction ordinance. Funds will be available upon carry forward of the American Rescue Plan Act (ARPA) grant funds from FY 20-21 to FY 21-22 in account no. 18118013-62300.

The future fiscal impact of the Ordinances is unknown but may require an amendment to the Rent Stabilization Ordinance for the collection of fees from owners and the hiring of at least 25 staff following the due diligence process as directed in the Resolution.

**EXHIBIT(S)**

1. Urgency Rent Stabilization Ordinance
2. Rent Stabilization Ordinance
3. Urgency Just Cause Eviction Ordinance
4. Just Cause Eviction Ordinance
5. Resolution

Submitted By: Steven Mendoza, Assistant City Manager

Approved By: Kristine Ridge, City Manager