



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
September 6, 2022

TOPIC: Long-Term Implementation Plan for the Rent Stabilization and Just Cause Eviction Ordinances

AGENDA TITLE:

Long-Term Implementation Plan for the Rent Stabilization and Just Cause Eviction Ordinances

RECOMMENDED ACTION

1. Adopt the Long-Term Implementation Plan for the Rent Stabilization and Just Cause Eviction Ordinances.
2. Authorize the City Manager and City Attorney to begin drafting amendments to the Rent Stabilization and Just Cause Eviction Ordinances based upon the Long-Term Implementation Plan.

DISCUSSION

On October 19, 2021, City Council adopted the Rent Stabilization Ordinance ("RSO") (Ord. No. NS-3009) and the Just Cause Eviction Ordinance ("JCEO") (Ord. No. NS-3010). These two ordinances became effective November 19, 2021. The City's RSO limits rent increases to a maximum of 3%, or 80% of Consumer Price Index, whichever is less, per year for certain residential rental units and mobilehome spaces in the City. The City's JCEO provides "just cause" eviction protections for most tenants that continuously and lawfully occupy a residential real property or mobilehome space for at least 30 days. The JCEO also defines what causes are allowable for a landlord to seek eviction of a tenant.

During the adoption of these two new ordinances, City Council also adopted a Resolution (No. 2021-054) that directed 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 Santa Ana residents facing housing instability. These measures are to include the creation and operation of a Rent Board or similar body, a rental registry, and the related costs thereof." This Resolution is attached as Exhibit 1. In order to conduct this further study, the City retained RSG, Inc. ("RSG") to complete the following tasks:

1. Develop a comprehensive list of California jurisdictions with RSOs and/or JCEOs;
2. Research and analyze existing RSO and JCEO programs and best practices in selected jurisdictions; and
3. Provide recommendations for the City's long-term implementation of the ordinances.

RSG's Long-Term Implementation Plan is attached as Exhibit 2. To create this Plan, RSG researched and interviewed seven (7) of twenty-three (23) jurisdictions across the State with RSO and/or JCEOs to understand their program requirements, administrative structure and resources, program revenue and expenses, program compliance, and best practices that the City should consider for its Long-Term Implementation Plan. Based upon this research, RSG created a Long-Term Implementation Plan with ten (10) recommendations for the implementation of the City's Rent Stabilization and Just Cause Eviction Ordinances. These ten (10) recommendations for the City's Long-Term Implementation Plan are summarized below:

1. Create a Rental Housing Board

The first recommendation is to create a Rental Housing Board. A Rental Housing Board is an appointed body that is responsible for RSO and JCEO program administration. Of the 23 jurisdictions across the state with ordinances, RSG found that 65% have Rental Housing Boards or Commissions that help guide their program and review decisions, including all seven (7) Sample Jurisdictions interviewed. Rental Housing Boards generally preside over hearings and appeals, provide enforcement of the ordinances, and make recommendations for pertinent changes to the ordinance(s). The standard size of these boards range between five (5) to nine (9) members who are typically appointed by the Mayor and/or City Council and are required to be equally balanced between landlords, tenants, and at-large representatives. The board will have equity and balance between landlords and tenants. RSG's Long-Term Implementation Plan provides detailed information of the membership and scope of work of the Rental Housing Board in each Sample Jurisdiction. Examples of achieving a balanced board composition include:

- 5 members appointed by the Mayor and approved by City Council including 2 Tenants, 2 Housing Providers, and 1 Residential Property Owner but not Housing Provider. (City of Alameda)
- 6 members and 3 alternates appointed by City Council including 2 Landlords, 2 Tenants, and 2 members who are not tenants or managers or have financial interest in multi-family residential rental property. (City of Beverly Hills)
- 5 members appointed by the mayor and approved by City Council including 2 Landlords, 2 Tenants, and 1 City employee. (City of Inglewood)

Staff recommends creating a 7-member board appointed by City Council including 2 Tenants, 2 Landlords, and 3 at-large members with no financial interest.

Staff would be responsible for reviewing petition materials, analyzing information, and preparing staff reports that would be presented to the Rental Housing Board to make determinations within their authority. However, any changes to the RSO or JCEO would

remain with the City Council together with their general financial oversight in the City's budget. The Rental Housing Board would be formed after staff begin collecting a rental registry fee such that there is sufficient funding for staff to support the board.

2. Create a Rental Registry

The next recommendation is to create a rental registry. A rental registry is a database where landlords register rental properties, update rental unit information, update tenancy information, and pay annual rental registry fees. At its core function, rental registries allow tenants, landlords and city staff to know which rental units are covered under the RSO and JCEO (e.g. rent-stabilized units). Currently, the City does not collect any rent or tenancy data for individual rental units. This means the City cannot confirm or deny which specific units are covered under the RSO and JCEO and which units are exempt – an essential public service for any jurisdiction administering these ordinances on behalf of tenants and landlords.

In their analysis of seven (7) Sample Jurisdictions, RSG concluded that a rental registry is the most important tool used by jurisdictions to implement their ordinances. A rental registry would allow the City to compile key data on rent-stabilized units, track allowable rent increases, monitor compliance with the City's RSO and JCEO, and communicate rental unit data on a regular basis to both landlords and tenants. RSG found that of the 23 jurisdictions across the state with ordinances, 87% require landlords to register rental units within a rental registry and have a rental registry fee, including all seven (7) Sample Jurisdictions interviewed.

A rental registry provides the following benefits to both tenants and landlords:

- Landlords and tenants will be able to regularly access and verify their units' rental information, increasing transparency.
- A rental registry will eliminate doubt regarding which units are covered under the ordinances.
- Additional support will be available for mediating disputes and settling matters outside of the Court system, resolving issues more quickly and efficiently.
- Staff will be able to communicate with both landlords and tenants more effectively, which will allow both parties to better understand their rights and responsibilities under the RSO and JCEO.

3. Adopt a Rental Registry Fee

In order to create a rental registry and pay for the costs to administer the ordinances, the City will need to adopt a rental registry fee. This fee would be collected from landlords across the city on an annual basis, similar to the City's current Proactive Rental Enforcement Program fee. A rental registry fee is collected to offset and cover 100% of the cost of administering the ordinances, including maintaining the rental registry, program administration, and compliance activities. This fee ensures that the program is completely cost-neutral to the City (e.g. 100% cost recovery) with no impact to the City's General Fund. In their research of Sample Jurisdictions, RSG found that rental registry fees average approximately \$195 per unit, and that many of the Sample Jurisdictions

used a consultant to conduct a fee study to determine the rental registry fee amount. However, the exact rental registry fee for the City will not be known until after a work plan is created (Recommendation # 4) and a fee study is conducted (Recommendation # 5). Based upon the fee study, the rental registry fee will be set as conservatively as possible to reduce financial impacts on tenants and landlords. Specifically, the fee will be as low and lean as possible so as to not create an unnecessary burden on tenants and landlords. Where staff can identify opportunities to contract out for services to keep the fee and costs as low as possible, staff will enter into consultant agreements. Staff will also identify ways to build upon other existing activities across the city to administer the ordinances. Staff intends for this fee to have a minimal financial impact on tenants and landlords. The fee study and ultimately the rental registry fee itself will be guided by these principles.

RSG found that the program surplus and deficits varied on an annual basis in the Sample Jurisdictions that were surveyed. Years in which the programs operate at a deficit will be subsidized by the City. Years in which the program collects a revenue surplus can be addressed by holding the funding as reserves to account for future deficits, as well as reducing the rental registry fee in the subsequent fiscal year. Staff will prepare annual financial reports summarizing budgeted expenses, actual expenses, revenue, and reserves, if any.

In addition, the City will allow landlords to pass-through no more than 50% of a unit's rental registry fees to the tenant as a rent surcharge prorated over twelve months. Allowing for the cost sharing of the rental registry fee appears to be an industry standard, with the intention of promoting equity and shared responsibility amongst tenants and landlords. For example, if 50% of the registry fee is passed through to the tenant, and the total rental registry fee amount is \$180, \$90 would be passed-through to the tenant. When this is divided by 12 months, it equals an additional \$7.50 per month for the City to monitor and ensure compliance for the tenant's rent stabilized unit. The rental registry will be used to communicate the pass-through fee in a user-friendly system. Staff will also monitor landlord's compliance with charging their tenants this pass-through fee in order to mitigate the risk of landlords charging their tenants 100% of the rental registry fee.

RSG identified other considerations to be taken into account in regards to a rental registry fee. For example, the City may establish a fee for fully and partially covered units and/or make certain units exempt from paying a rental registry fee. Generally, a fully covered unit refers to rental units where both the RSO and JCEO apply, and partially covered units refer to units where only the JCEO applies. The City may also consider making certain units exempt from paying the rental registry fee, such as rental units occupied by rent-subsidized tenants (e.g. Housing Choice Voucher / Section 8).

4. Develop a Work Plan

Providing staff for a Rental Housing Board (Recommendation #1), creating a rental registry (Recommendation # 2), and collecting rental registry fees (Recommendation # 3), will be included in an overall work plan to administer the ordinances. The City currently

administers the RSO and JCEO through a consultant, RSG, and partial staff time from a Housing Programs Analyst, Housing Division Manager, and Assistant City Attorney. Before adopting a rental registry fee, staff will need to develop a work plan detailing and itemizing exactly how the RSO and JCEO will be administered (e.g. how the fee will be used). In their research of Sample Jurisdictions, the following services were provided as best practices to effectively implement rent stabilization and just cause eviction ordinances:

- Annual Registration – Process registration fees for the rental registry, maintain rental registry, and send annual notices of maximum allowable rent increases.
- Compliance – Process notices of violations and complaints, send notices of non-compliance to landlords, and pursue compliance activities as necessary for non-compliant properties.
- Evictions/Termination of Tenancy – Review notices of eviction/termination of tenancy to ensure compliance with the JCEO.
- Hearings and Appeals – Process hearings for appeals to rent amounts and petitions. This includes communicating with the tenants and landlords involved, collecting supporting documentation, coordinating with the Rental Housing Board, and writing letters of determination.
- Housing Counseling/Mediation – Provide tenant and landlord housing counseling and mediation services.
- Petitions – Receive, review, and analyze data to provide decisions on petitions, subject to appeal.
- Public Information – Provide customer service to inquiring tenants and landlords and conduct on-going community outreach and education.
- Rental Housing Board Administration – Facilitate regular meetings and complete administrative tasks related to the Rental Housing Board.

Taking into account all of these best practices, a work plan will be prepared and provided to an outside consultant to conduct a fee study to determine the rental registry fee. A detailed budget to match the work plan would also be included in the process to develop a rental registry fee. The work plan will account for the principles surrounding the rental registry fee and the most cost-effective way to implement the long-term implementation plan, including the consideration of setting the fee as low and lean as possible, utilizing consultants, and building upon other services across the city.

5. Conduct a Fee Study Based on the Work Plan and Staffing Needs

Next, a fee study will be conducted based upon the work plan (Recommendation # 4) and staffing needs identified. Based on their research of seven (7) Sample Jurisdictions, RSG found that the overall program budget is largely related to the number of units in a rental registry and the services provided. Santa Ana has approximately 36,350 rental units that may be subject to registration in the rental registry. A fee study will account for the number of units that may be included in the rental registry and the proposed budget based on the work plan to determine the fees required to fully recover costs of all budgeted operations (e.g. 100% cost recovery). Using an average rental registry fee per unit for all Sample Jurisdictions of \$195 and 36,350 rental units in Santa Ana, RSG estimates that the City

could potentially collect approximately \$6.7 million annually for a fully operating program. Currently, the City's ordinance costs over \$300,000 per year and will increase to \$500,000 in the next fiscal year with no cost recapture. The fee study will account for the most cost-effective way to implement the long-term implementation plan, including the consideration of utilizing consultants. The results of the fee study will be used to establish the amount of the rental registry fee to be collected from landlords and tenants (Recommendation # 3).

The Sample Jurisdictions provided information on the staffing needed to effectively implement their ordinances and emphasized that staffing plans are constantly evolving based on annual analysis of the rental registry fees expended and collected for departmental operations since the inception of their programs. RSG's Long-Term Implementation Plan includes organizational charts for a few of the Sample Jurisdictions. In order to effectively implement the Long-Term Implementation Plan, staff estimates a minimum of 12 staff members would be needed upon initial program implementation. By completing a fee study and analyzing annual data after program inception, the City will be able to produce a financial projection of revenue, expenses, and reserves for a fully operational program.

6. Expand Compliance Activities

The next four recommendations for the Long-Term Implementation Plan are important activities to consider as part of the work plan (Recommendation # 4) and fee study (Recommendation # 5). The City's RSO and JCEO currently states the following if any person is in violation, "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 infraction". Currently, there are limited resources within the City that can adjudicate a dispute over tenant/landlord issues or concerns, short of the Court system, which can be time-consuming and costly. Identifying how the RSO and JCEO will be monitored for compliance will allow the City to more effectively uphold the provisions of the ordinances. The positive impacts of the RSO and JCEO programs are directly correlated to effective monitoring of compliance with the ordinances. Furthermore, some Sample Jurisdictions mentioned that staffing capacity and resources were the major drivers in their ability to proactively enforce violations of the ordinances.

An analysis of the existing best practices and programs administered by Sample Jurisdictions determined that effective compliance activities include issuing notices and warnings in response to complaints and reported information in the rental registry, increasing staffing to issue citations and pursue criminal offenses, and contracting with a mediator to improve landlord-tenant relationships, among other activities.

7. Create a Landlord Capital Improvement Petition and Tenant Petition

Generally, there are three types of petitions: 1) landlord fair return petitions, 2) landlord capital improvement petitions, and 3) tenant petitions. Currently, the City's RSO only has

one type of petition, fair return petitions for landlords with capital improvements included. This fair return petition allows for relief from the maximum allowable rent increase, provided there is evidence that a rate increase in excess of the annual maximum is necessary to provide a fair and reasonable return for their property.

A landlord capital improvement petition is a request by a landlord to pass-through costs associated with certain capital improvements. A capital improvement is one that materially adds to the value of the property (this is often detailed as a specific amount in the ordinance), appreciably prolongs its useful life, or adapts it to new uses, and which may be amortized over the useful life of the improvement of the building. Creating a capital return petition is beneficial because it incentivizes landlords to improve their property knowing they can pass through some of these costs to their tenants. In general, a landlord capital improvement petition would allow a landlord to temporarily increase rents to recover the cost of capital improvements when the improvement(s) benefit the units in question and the improvement(s) were not necessitated by the current landlord's neglect or failure to maintain the property.

The RSO states that the provisions of the ordinance do not apply to residential real property in which each of the units have been substantially rehabilitated within the previous 15 years. "Substantially rehabilitated" means that the cost to rehabilitate the residential real property was at least \$40,000 per unit. Creating a landlord capital improvement petition will clear up who is responsible for approving this type of exemption in the ordinance by requiring substantive documentation of the work performed at the property.

A tenant petition is a request by tenants to assert a claim against a landlord. Examples include a decrease in rent due to a substantial decrease in housing services, failure to repair or maintain a unit, or failure to discontinue a capital or utility pass-through. Creating a tenant petition is beneficial because it gives tenants an administrative tool to address excess rent based on conditions of the rental unit, reduction in services, issues of habitability, and landlord violations of the ordinance outside of the legal system. These petitions are also beneficial for staff to monitor compliance with the ordinance and help maintain current rental data in the rental registry.

8. Establish Petition Fees and a Petition Review Process

Currently, the City's ordinance requires applicants to pay for the cost of a consultant to review fair return petitions. As a component of the fee study (Recommendation # 5), staff will assume the rental registry fee will fully cover the costs to review each type of petition while keeping the rental registry fee as low as possible. Staff do not want to layer a petition fee on top of the rental registry fee. The administrative work of reviewing and determining petition status varies widely, and as such, these costs will be included in the rental registry fee with a nominal petition deposit. By incorporating the petition fee into the rental registry fee, this will streamline the administration of the ordinance, while a nominal deposit will ensure landlords and tenants share a minimum responsibility for their petitions. The

nominal deposit for landlords could be staggered based upon the number of units they own.

Additionally, the City's ordinances currently place the decision-making responsibility for fair return petitions on the City Manager or a designee. Understanding that petitions require lengthy administrative work, communication with landlords and tenants, as well as processing time, staff will determine the most efficient use of time and resources for reviewing each type of petition. In their research of Sample Jurisdictions, RSG found that the decision-makers for petitions and appeals most commonly range from internal hearing officers, to contracted hearing officers/examiners, or the Rental Housing Board.

9. Create a Mediation Process

Mediation is defined as “a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.” Mediation differs from the conventional adversarial legal process by focusing on mutual agreement instead of trying to fight and argue against the other party in court. RSG found that mediation is beneficial as a supplement to RSO and JCEO programs in that:

- Mediation generally lasts a shorter amount of time than a trial;
- Mediation can be confidential such that nothing that is said during mediation can be used in court if mediation fails; and
- Mediation is generally more cost-effective and reduces the number of hearings.

For example, the City of Santa Monica provides voluntary mediation for rent decrease petitions, excess rent complaints, and other matters not raised by a petition. Mediation was successful during their fiscal year 2021 in which 61% of decrease petitions, 92% of construction petitions, and 92% of excess rent complaints were mediated and fully or partially resolved. Staff will develop a mediation program with contracted mediators to address landlord and tenant disputes that do not involve landlord violations. Mediation will be a public service offered to tenants and landlords as an alternative to escalating issues to the Rental Housing Board.

10. Join the Rent Stabilization Consortium

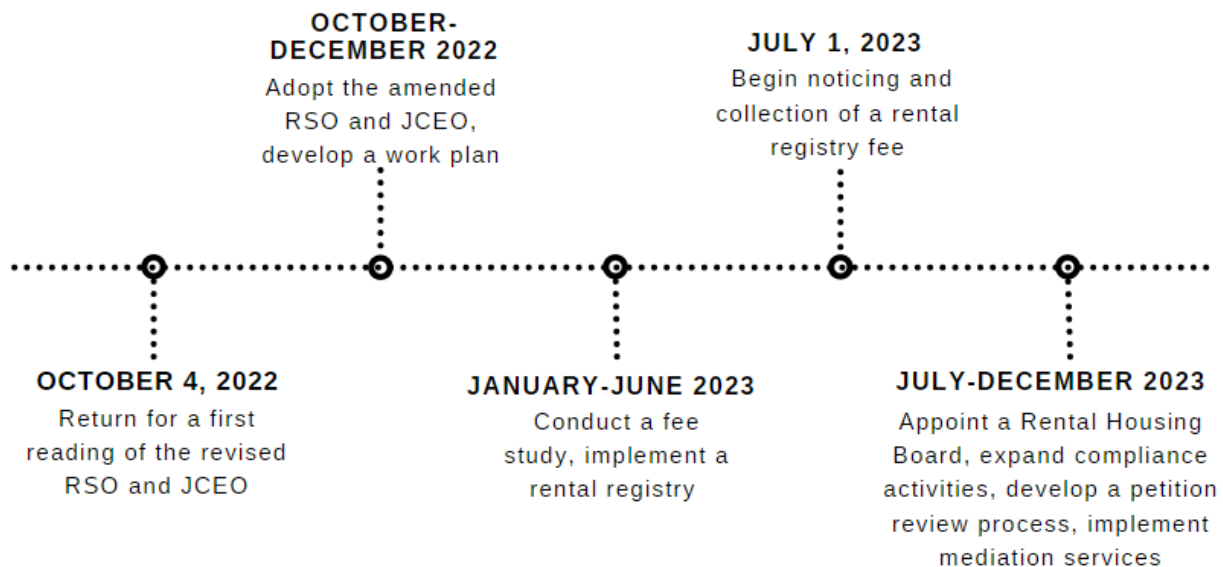
The Rent Stabilization Consortium is a group of representatives from California cities with rent stabilization programs. This consortium provides opportunities to discuss challenges, successes, and collaborate with other cities on the topic of rent stabilization. In their research of Sample Jurisdictions, RSG found an emphasis on the positive impact of being a member of the consortium. Staff will participate in the consortium to further opportunities for collaboration and knowledge of best practices for administering RSO and JCEO programs.

Next Steps

Following adoption of this Long-term Implementation Plan for the Rent Stabilization and Just Cause Eviction Ordinances, staff will return and request City Council to:

1. Adopt amendments to the Rent Stabilization and Just Cause Eviction Ordinances, including the creation of a Rental Housing Board and a rental registry, among various other amendments.
2. Authorize staff to conduct a fee study to establish a rental registry fee to cover program administrative costs.
3. Authorize staff to contract with a consultant to implement a rental registry.

The following estimated timeline of activities is provided below:



FISCAL IMPACT

There is no fiscal impact associated with this action.

EXHIBITS

1. Resolution No. 2021-054
2. Long-Term Implementation Plan for the Rent Stabilization and Just Cause Eviction Ordinances

Submitted By: Steven Mendoza, Assistant City Manager

Approved By: Kristine Ridge, City Manager