



**CITY OF SALINAS
COUNCIL STAFF REPORT**

DATE: AUGUST 20, 2024
DEPARTMENT: CITY ATTORNEY'S OFFICE
FROM: CHRISTOPHER A. CALLIHAN, CITY ATTORNEY
TITLE: RENT STABILIZATION AND TENANT PROTECTION

RECOMMENDED MOTION:

It is recommended that the City Council receive a report on a rent stabilization and tenant protection program and consider whether to direct the City Attorney's Office to prepare final drafts of a Rent Stabilization Ordinance, a Tenant Protection and Just Cause Eviction Ordinance, and a Tenant Anti-Harassment Ordinance for introduction on September 10, 2024. Should the City Council introduce final ordinances on September 10, 2024, final drafts would be brought forward for adoption by the City Council on September 24, 2024.

EXECUTIVE SUMMARY:

Beginning in October 2023, the City Council began exploring the concepts of local rent stabilization and tenant protections. Since then, the City began developing a rent stabilization and tenant protection program which generally consists of three ordinances: a Rent Stabilization Ordinance, a Tenant Protection and Just Cause Eviction Ordinance, and a Tenant Ant-Harassment Ordinance (collectively, the "Ordinances").

Since the City Council first began exploring these concepts, the City has engaged with the community to receive feedback to inform the City Council's consideration of the program and its components. Prior to this August 20, 2024, meeting, the City Council has not met as a full body to discuss or agree on criteria for a rent stabilization and tenant protection program.

To help ensure the City Council and the public have an opportunity to consider the program and its components, the City Council's consideration will be through a presentation of the program and its components on August 20, 2024. Provided the City Council agrees on criteria for a rent stabilization and tenant protection program on August 20, 2024, final draft Ordinances would be brought forward for introduction on September 10, 2024, and adoption of the Ordinances would be scheduled for September 24, 2024. As discussed below in this report, should the City Council adopt the Ordinances they would become effective thirty (30) days following the date of adoption, but would not become operative until January 1, 2025.

BACKGROUND:

Rent stabilization and tenant protection ordinances have existed at the local level in some California cities since the 1970's. Prior to existing state law, local governments were able to enact such ordinances with few constraints specifically imposed by state law. In 1995, however, the Costa-Hawkins Rental Housing Act (1995) (the "Costa-Hawkins Act") introduced three significant limitations. First, it exempted certain types of rental units from local rent stabilization (most notably single-family homes and condominiums). Second, it exempted units built after the February 1, 1995, the effective date of the Costa-Hawkins Act. Third, it prohibited "vacancy control." Vacancy control refers to regulating the amount a landlord may charge for a new lease of a vacant unit. Under the Costa-Hawkins Act, when a rental unit becomes vacant, a landlord is not restricted in the amount of rent charged in a new lease.

On January 1, 2020, rent stabilization and tenant eviction protections became state law and took effect with the enactment of the Tenant Protection Act. The Tenant Protection includes the following significant provisions:

- It applies to units that are more than fifteen years old;
- It applies to single-family homes and condominiums if those units are owned by a real estate trust or corporation;
- It establishes a ceiling or cap on rent increases in a twelve-month period of 5% plus inflation (a local Consumer Price Index) not to exceed 10%;
- It codifies definitions of "at-fault" and "no-fault" just cause evictions and establishes that when a tenant is evicted under a "no-fault" cause the tenant shall receive compensation equivalent to one month of rent; and
- The Tenant Protection Act sunsets on January 1, 2030.

The Tenant Protection Act requires no local enforcement. Disputes are resolved among the parties through the legal system.

Rent Stabilization Ordinance.

Through the community engagement process, many local residents, particularly those in low-income households, expressed their struggles with paying for rising housing costs and meeting other basic needs such as food, transportation, and health care. The effect of high rents coupled with low incomes, critical shortages of affordable housing, and rapidly rising costs for other basic necessities leaves residents vulnerable to economic hardship, housing insecurity and displacement, threatening the public health, safety, and welfare of a substantial number of City residents. The draft Rent Stabilization Ordinance is intended to provide stability with respect to rent increases and housing by establishing additional tenant protections exceeding those set forth in state law.

Although the terms "rent control" and "rent stabilization" are often used interchangeably, they are distinct. Both regulate the amount of rent that may be increased during a tenancy, but only rent control regulates the amount of rent charged when the tenancy begins. Under rent stabilization, annual increases of a tenant's rent are limited. However, when a tenant moves out, the initial amount of rent for the next tenant is not restricted.

Cities in California can no longer adopt full rent control, which would regulate the amount of initial rent, due to the Costa-Hawkins Act. Rent control ordinances that existed in 1995 when the Costa-Hawkins Act was adopted were grandfathered, resulting in only a small number of cities within full rent control on certain types and ages of units within those cities. With the Costa-Hawkins Act effectively prohibiting new local rent control, cities which choose to adopt such regulations focus instead on rent stabilization. This type of regulation protects tenants during the tenancies by limiting how much the rent may be increased each year.

The Tenant Protection Act enacted statewide rent stabilization. Beginning January 1, 2020, where applicable, rent may be annually increased no more than 5% plus the regional Consumer Price Index (CPI) or 10%, whichever is less.

Under the draft Rent Stabilization Ordinance, one increase is allowed per 12-month period. Should the City Council determine to proceed with introduction and adoption of a Rent Stabilization Ordinance, it must provide direction as to the specific amount by which rent may be annually increased. As discussed in the attached report from Economic & Planning Systems, Inc., it is recommended that the City Council set the cap or ceiling at a rate within the following range: 2.5% to 2.75% or 65% to 75% of the Consumer Price Index for all Urban Consumers (CPI-U) Series Title: All Items in West Urban, all urban consumers, not seasonally adjusted.

Applicability.

The Costa-Hawkins Act, except in very limited circumstances, prohibits local restrictions on the amount of rent a landlord can charge at the beginning of a tenancy. For this reason, among others, the City Council should consider whether to adopt a rent stabilization ordinance which regulates rent increases during a tenancy. The Costa-Hawkins Act also significantly restricts which rental units may be subject to local rent stabilization. There are two categories of rental units for which rent increases during a tenancy cannot be regulated by the City Council. The first, with narrow exceptions, is single family homes that do not have an accessory unit, condominiums, and cooperatives. The second category is rental units first receiving a certificate of occupancy after February 1, 1995.

The Rent Stabilization Ordinance complies with the Costa-Hawkins Act by exempting rental units protected thereunder and regulating rental units constructed on or before February 1, 1995, that share a property with at least one other unit that cannot be sold separately. In other words, the Rent Stabilization Ordinance would apply to multi-family rental units built before February 1, 1995. Single-family rental units, condominium rental units, multi-family dwelling units built after February 1, 1995, newly constructed dwelling units, and rental units that are deed restricted as affordable housing by a regulatory agreement or similar recorded documents are exempt from the Rent Stabilization Ordinance. The Rent Stabilization Ordinance does not have a minimum residency requirement for its rent-increase protections. The City Council may choose to consider whether to exempt certain rental units from local protection under a rent stabilization ordinance.

Rent Program Fee and Registration Requirement.

The Rent Stabilization Ordinance establishes a regulatory fee charged to landlords to fund the Rent Stabilization Ordinance program for the sole purpose of reimbursing the City for the costs of administering the Rent Stabilization Ordinance. The regulatory fee will be imposed on each rental unit which must be paid by landlords and not passed through to the tenants. Landlords subject to this Rent Stabilization Ordinance must continue to register all units on the City's Rental Registry. The City Council should consider whether to establish a single program fee to cover both the Rental Registry and the Rent Stabilization Ordinance. The Rent Program Fee will come forward to the City Council through a recommended resolution.

Tenant Petition for Rent Reduction; Landlord Petition for Rent Increase; Capital Improvements.

The Rent Stabilization Ordinance also offers a procedure for accommodating certain tenant requests for rent reductions and landlord requests for increases in rent above the established limit if needed to comply with the constitutional right of "fair return." The Rent Stabilization Ordinance establishes a petition process that is reviewed and determined by a Hearing Officer identified by the City Attorney.

A tenant may petition for a reduction of rent ("Rent Reduction Petition") if the tenant believes the landlord has charged the tenant a higher rent than is permitted by the Rent Stabilization Ordinance. The landlord shall be informed of the tenant's complaint and shall have the opportunity to respond to the tenant's claim of rent overcharge. A reduction in housing services or failure to maintain the rental unit in a habitable condition may be cause for a reduction in rent pursuant to the petition process. The tenant has the burden of demonstrating that a rent reduction is necessary to comply with the Rent Stabilization Ordinance. The Hearing Officer has sixty (60) days to make a decision on a Rent Reduction Petition. The Hearing Officer's decisions are appealable to the City Council.

A landlord may petition for a rent increase in excess of that provided in the Rent Stabilization Ordinance in order to obtain a fair and reasonable return on the landlord property ("Fair Return Petition"). The landlord will be required to provide a copy of the Fair Return Petition to the City and to the tenants. The landlord has the burden of establishing that a rent increase, in excess of that permitted in the Rent Stabilization Ordinance, is necessary to provide the landlord with a fair and reasonable return on the property. The landlord will be responsible for all costs associated with the City's review of the Fair Return Petition. A Fair Return Petition shall be decided by the Hearing Officer within ninety (90) days. The Hearing Officer's decisions are appealable to the City Council.

Landlords also have the opportunity under the Rent Stabilization Ordinance to use the Fair Return Petition process to petition the City for a pass through of certain capital improvement costs to the tenants. Should the City Council adopt the Rent Stabilization Ordinance, regulations will be developed to establish the process for a landlord to petition for pass through of capital improvement costs.

Tenant Protection and Just Cause Eviction Ordinance.

Eviction protections are generally viewed as a necessary complement to rent stabilization protections because they mitigate the incentive to evict for the purpose of increasing a rental unit's rent to market rate. Some cities do not choose to approve a tenant protection and just cause eviction ordinance without also adopting a local rent stabilization ordinance.

The Tenant Protection Act codified certain eviction protections as state law. Under the Tenant Protection Act, there are two categories of "just cause" for eviction; an eviction cannot occur without there being just cause: "At Fault" and "No Fault." Generally, a tenant is "at fault" when they violate the terms of the lease or prevailing law. A "no fault" eviction takes place when a tenant is evicted for allowable reasons that are beyond control of the tenant. Under the Tenant Protection Act, the following are identified as the "at fault" reasons why a tenant may be evicted:

- Non-payment of rent;
- Breach of a material term of the rental agreement that has not been corrected after written notice;
- Maintaining or committing a nuisance;
- Maintaining or committing waste;
- Termination of the rental agreement without renewal (i.e., the tenant refuses to sign a written extension or renewal after written request or demand from the owner);
- Criminal activity by the tenant;
- Unapproved subtenant;
- The tenant has refused to give the landlord access to the rental unit as permitted by law;
- Illegal use of the unit;
- Failure to vacate after termination of employment or agency as described in state law; and
- Failure to deliver possession after the tenant provides written notice of intent to vacate or makes a written offer of surrender that is accepted by the landlord.

The following are identified as the "no fault" reasons why a tenant may be evicted:

- The owner, spouse, domestic partner, children, grandchildren, parents or grandparents intends to occupy the Rental Unit. (For new or renewed leases entered into on or after July 1, 2020, the tenant must agree to this in writing.);
- Withdrawal of the rental unit from the rental market;
- Compliance with a government or court order or local ordinance that necessitates vacating the premises; and
- Demolition or substantial remodel of the rental unit.

The Tenant Protection Act provides for relocation assistance equal to one month of rent either paid directly to the tenant or waived by the landlord, in the event of a no-fault eviction. Relocation benefits are not required for at-fault evictions.

The Tenant Protection and Just Cause Eviction Ordinance creates local regulations that strengthen the Tenant Protection Act. Following are the significant elements of the draft Tenant Protection and Just Cause Eviction Ordinance. The ordinance applies to all rental units in the city, except

those specifically exempted. Certain transient units, units within institutional facilities, and units within properties where the owner also maintains their primary residence are exempt (Sec. 17-02.52(b).)

The following are identified as “at-fault” reasons why a tenant may be evicted (Sec. 17-02.53(a)):

- Failure to pay rent;
- Breach of the lease. However, this section of the ordinance provides certain protections for families: the tenant’s addition of their child, parent, grandchild, grandparent, brother or sister, or spouse or domestic partner to the rental unit shall not give a landlord just cause to evict the tenant (Sec. 17-02.53(a)(2)(B));
- Maintaining a nuisance or committing waste;
- Criminal activity or criminal threats;
- Assignment or subletting in violation of the rental housing agreement;
- Failure to give access; and
- Illegal use of the rental unit.

The following are identified as “no-fault” reasons why a tenant may be evicted when the landlord acts in good faith, without ulterior motives, and with honest intent (Sec. 17-02.5(b)):

- The landlord seeks to recover possession of the rental unit for use and occupancy as a primary residence by the landlord or the landlord’s spouse, domestic partner, child, grandchild, parent, or grandparent.
- The landlord, after having obtained all necessary permits and approvals, seeks to demolish or to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes affecting the health and safety of tenants or where such substantial repairs cannot be completed while the tenant continues to reside on the property.

In the event a tenancy is terminated for an “at-fault” reason, the landlord must provide notice to the tenant and an opportunity to the violation (Sec. 17-02.54(a).) In the event a tenancy is terminated for a “no-fault” reason, the landlord must provide notice to the tenant and must provide relocation assistance in an amount equal to three (3) months’ actual rent, in addition to any deposit or security amounts owed to the tenant (Sec. 17-02.54(c).) Additionally, if the rental unit is offered for rent or lease within five (5) years of the date the tenant was evicted for a “no-fault” reason the landlord shall first offer the rental unit to the tenant who was displaced by the no-fault eviction provided the tenant has taken certain steps to keep informed of the rental unit’s availability. All notices provided under the Tenant Protection and Just Cause Termination Ordinance must be provided in both English and Spanish.

Security Deposits.

The City received questions and comments from the public about including restrictions on security deposits; however, California already has strict rules about tenant security deposits that all residential landlords and property managers must follow. (California Civil Code section 1950.5). Consequently, additional restrictions on security deposits are not incorporated into the draft ordinance attached to this report. A security deposit belongs to the tenant, but the landlord is

allowed to hold on to the deposit until the tenant moves out. Security deposits must be returned when the tenant moves out, minus allowed expenses. State law limits the amount of security deposits: the limit is one month's rent. For landlords who own no more than two residential rental properties that collectively include no more than four total units for rent, the limit is two times the monthly rent, but only if the landlord is a natural person or a limited liability company in which all members are natural persons. Security deposits may not be used for other costs such (1) damages that were already there when the tenant moved in; (2) unreasonable or unnecessary expenses; or (3) ordinary wear and tear. Landlords can only use security deposits for the following specified expenses: past due rent; the cost of repairing damages caused by tenants or their guests, not including ordinary wear and tear; the cost of cleaning the property so that it is as clean as when the tenant first moved in; and the cost of replacing or restoring the landlord's personal property, such as furniture, but only if the rental agreement says this is allowed.

Tenant Anti-Harassment Ordinance.

Under state law, tenant harassment occurs when a landlord engages in specific acts with intent to cause a tenant to vacate a rental unit. The harm state law seeks to prevent is "constructive eviction," and it does not address harassing acts by landlord that are not accompanied by the specific intent to cause the tenant to vacate or where it is difficult to provide this specific intent.

A City policy prohibiting harassment by residential landlords, or "anti-harassment" policy, can focus more broadly on harmful actions by landlords that have no lawful purpose. The Tenant Anti-Harassment Ordinance identifies specific acts and omissions by landlords that constitute prohibited harassment. This encompasses situations where a landlord harasses a tenant in order to cause the tenant to leave, as well as situations where a landlord wants to avoid the expense or inconvenience of providing a tenant what they are lawfully owed or acts in a discriminatory manner. The draft ordinance includes enforcement mechanisms allowing for enforcement by an aggrieved tenant, the City, or an organization or other entity that represents the interests of aggrieved tenants. The draft ordinance also provides for minimum damages amount and enhanced damages where a tenant is disabled or age 65 or over.

The Tenant Anti-Harassment Ordinance creates local regulations that strengthen tenant protections beyond what is otherwise provided for in state law. Following are the significant elements of the draft Anti-Harassment Ordinance:

California Proposition 33: Prohibit State Limitations on Local Rent Control Initiative ("Justice for Renters Act")

California Proposition 33, an initiative measure, will be on the November 2024 ballot. This initiative measure "was designed to repeal the *Costa-Hawkins Rental Housing Act* enacted in 1995... By repealing the act, the initiative would allow cities and counties to limit rent on any housing and limit the rent for a first-time tenant. Any local laws currently inoperative under *Costa-Hawkins* would take effect upon its repeal. The initiative would also add language to California's

Civil Code prohibiting the state from limiting ‘the right of any city, county, or city and county to maintain, enact or expand residential rent control.’”¹ (emphasis in original)

The City Council should consider the local effects should the initiative measure pass and the City Council adopt the Ordinances. Specifically, the City Council should consider whether to explicitly include any elements from Costa-Hawkins, such as exempting single family homes, exempting new development, and providing vacancy decontrol. If these items are not included in the City’s Ordinances and the statewide ballot initiative passes, the City’s Ordinances would apply to *all* rental housing in the city, including single-family units and rents would not reset to market for new tenants.

Proposed Operative Date of Ordinances.

Should the City Council adopt one or more of the Ordinances, the ordinance will become effective on the thirty-first (31) day after the date of adoption. To give the City additional time to implement the program, including the identification of resources necessary to implement the program, it is recommended that the City Council make the Ordinances operative no sooner than January 1, 2025. The City will need to prepare notices, forms, and regulations identified in the Ordinances, as well as build an educational program about the Ordinances which will be posted on the City’s website. The City may also need to hire additional staff or retain consultants to implement the program on a day-to-basis. This will include responding to resident questions and providing educational materials to residents affected by the Ordinances. The City will also need to identify a Hearing Officer to receive and to decide petitions for rent increases or rent reductions by landlords and tenants, respectively. Additional information about the resource needs are discussed in the attached report prepared by Economic & Planning Systems, Inc., and in the Fiscal and Sustainability Impact section of this report.

Public Outreach and Community Engagement.

The City began the public process around the rent stabilization program on October 24, 2023, when the City Council received a report on Rent Stabilization and Tenant Protection. Following the City Council’s direction at that meeting to return to the City Council with recommendations on the establishment and implementation of a rent stabilization and tenant protection program, the City began engaging the community beginning at the March 26, 2024, Housing and Land Use Committee meeting. Following that, the City hosted a Listening Session on June 6, 2024, and two Community Engagement meetings, the first on June 13, 2024, and the second on August 1, 2024. Updates were provided to the Housing and Land Use Committee as the work progressed. The City also engaged directly with a Technical Advisory Committee (TAC) comprised of representatives of property owners, developers, property managers, and tenants. TAC meetings were held on April 30, May 15, May 29, and July 17, 2024.

The Community Development Department sent notices directly to all individuals on the Housing Division’s Distribution List, which includes 162 individuals. The City’s Community Relations

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[https://ballotpedia.org/California_Proposition_33,_Prohibit_State_Limitations_on_Local_Rent_Control_Initiative_\(2024\)](https://ballotpedia.org/California_Proposition_33,_Prohibit_State_Limitations_on_Local_Rent_Control_Initiative_(2024))

division provided notice through social media and other platforms, as well as through surveys and petitions submitted directly to the City throughout the process. Combined, these resulted in a total engagement/reach of 28,986 users as shown on the following table. In addition, 932 individuals signed up to receive direct notifications on this topic. The City’s work on a rent stabilization and tenant protection program has been well-documented by local media sources.

Date	Reach	Topic	Platform
8/1/2024	1,601	Recap of 8/1 meeting with links to presentation/resources	Facebook
8/1/2024	1,639	Recap of 8/1 meeting with links to presentation/resources	Instagram
8/1/2024	1,042	Reminder for 8/1 community meeting	NextDoor
7/31/2024	349	Reminder for 8/1 community meeting	Facebook
7/23/2024	760	Created event	Facebook
7/23/2024	913	Created event	NextDoor
7/19/2024	852	Rescheduled meeting date to 8/1	Facebook
7/19/2024	866	Rescheduled meeting date to 8/1	Instagram
7/10/2024	1,256	Final community meeting promo	Facebook
7/10/2024	756	Final community meeting promo	Instagram
6/12/2024	1,115	Meeting reminder in English	Facebook
6/12/2024	623	Meeting reminder in English	Instagram
6/12/2024	658	Meeting reminder in Spanish	Facebook
5/17/2024	1,175	June Zoom and in person meeting promo	Facebook
5/17/2024	506	June Zoom and in person meeting promo	Instagram
3/26/2024	10,940	English survey	Facebook
3/26/2024	1,345	English survey	Instagram
3/26/2024	923	Spanish Survey	Facebook
3/26/2024	533	Spanish Survey	Instagram
3/26/2024	411	English Survey Results	OpenForms Survey
3/26/2024	99	Spanish survey results	OpenForms Survey
3/26/2024	624	Survey - Paper/handwritten	Submitted to City Clerk

Housing and Land Use Committee.

At its August 13, 2024, meeting, the Housing and Land Use Committee directed the presentation of the rent stabilization and tenant protection program to the City Council on August 20, 2024, and that final draft ordinances be presented to the City Council on September 10, 2024, for introduction, and on September 24, 2024, for adoption with operative dates of January 1, 2025. In

addition, the Housing and Land Use Committee directed staff to incorporate a requirement in the Rent Stabilization Ordinance that all required notices be prepared in both English and Spanish and to consider including tenant relocation assistance for Ellis Act evictions under the Tenant Protection and Just Cause Eviction Ordinance. Should the City Council move forward with introduction of the Ordinances with those changes, the draft Ordinances will be updated to incorporate those changes.

Public Comments and Questions.

Written public comments received through this process are attached to this report for the City Council's reference. In addition, questions and comments recorded during the Housing and Land Use Committee meetings, TAC meetings, Listening Session, and Community Engagement Meetings are attached to this report for the City Council's reference.

CEQA CONSIDERATION:

Not a Project. The City Council's adoption of the ordinances is not a project subject to environmental review under the California Environmental Quality Act (CEQA Guidelines section 15061(b)(3).) Additionally, the City Council's adoption of the ordinances is exempt because it does not meet the definition of a "project" under CEQA, pursuant to CEQA Guidelines sections 15060(c)(1) and 15378(a), because it has no potential to result in a direct or reasonably foreseeable physical change in the environment.

STRATEGIC PLAN INITIATIVE:

The City Council's consideration of whether to establish and to implement rent stabilization and tenant protection strategies is consistent with the City Council's goal of promoting Housing/Affordable Housing (City of Salinas Strategic Plan 2022-2025).

DEPARTMENTAL COORDINATION:

City Administration, the City Attorney's Office, and Community Development Department will continue to coordinate on the implementation of the rent stabilization program following the City Council's action.

FISCAL AND SUSTAINABILITY IMPACT:

Should the City Council adopt the rent stabilization and tenant protection program, the City will need to augment its existing staffing and support in order to effectively implement and manage the program. Staff has identified two potential ways to accomplish this. The first is to add between 3 and 6 staff members which is estimated between \$621,404 and \$1,246,976. The second option is to explore working with a consultant to provide the services. The City would have to perform additional research to determine the cost. The ordinances contemplate the City will recover its costs through the adoption of a fee paid by the property owners renting units. Should the City Council adopt the rent stabilization and tenant protection program, a resolution will be brought

forward at a later date to establish the program fee. At which time the budget would be established for this program and brought forward to the Council for adoption.

If this moves forward and a program fee is established, there will be a delay in the revenue received by the City, which is not uncommon when setting a new program; but it will impact the City's cash position in the short term and perhaps long term based on the fee ultimately established and the collection rate. Short-term the City would need to rely on its cash flow or general reserves²

ATTACHMENTS:

Draft Rent Stabilization Ordinance
Draft Tenant Protection and Just Cause Eviction Ordinance
Draft Tenant Anti-Harassment Ordinance
Economic & Planning Systems, Inc. Report
Economic & Planning Systems, Inc., PowerPoint Presentation
Public Comments and Questions

² The City maintains a General Reserve of 12% of the Operating Budget, which currently is at \$20.7 million.