



**STAFF REPORT**

**MEETING**

**DATE:** January 9, 2024

**TO:** City Council

**FROM:** Gary Bell, City Attorney

**SUBJECT: MOBILEHOME RENT CONTROL ORDINANCE**

**REQUEST**

Give direction to staff as to any changes the City Council may wish to make to existing mobilehome rent control ordinance.

**BACKGROUND**

In 1997, the City Council adopted a mobilehome rent control ordinance. This followed on the heels of many months of discussions and analysis by staff, the City Attorney’s office, park residents, park owners, and a Council subcommittee. In addition, a mediator was retained to assist in facilitating discussions concerning how best to balance the interests and right of the property owner to earn a just and fair return against the legitimate interests of the residents in being charged a reasonable and stabilized rent, particularly important for mobilehome owners whose ability to leave a park to secure more favorable rental terms is hobbled by the reality that moving a mobilehome is oftentimes not practically possible nor inexpensive.

The ordinance that resulted from this process controls mobilehome space rents in the following manner. First, it rolled back allowable rents to those in effect in January 1996 (called the “base rent”), but allows increases in those rents in four ways: (1) the park owner can increase rents each year by the change in the CPI; (2) certain utility fees (electrical, gas, cable TV, garbage) and governmental assessments can be passed through directly to the residents (technically speaking, under the ordinance these are not considered “rent”); (3) if the net operating income (“NOI”) of a park falls below the NOI enjoyed by the park in the base year, adjusted by the CPI, then rents may be increased to ensure the park owner a “just and reasonable return” on the owner’s investment; and (4) amortized costs of beneficial capital improvements, plus a reasonable rate of interest on those costs, can be passed on to the residents in the form of rent increases in addition to the rents established under items (1) and (3) but such rent increases do not become part of the base rent upon which annual, CPI adjustments are made nor do they play a role in determining whether the park owner is earning a just and reasonable return. Capital improvement rent increases must terminate upon cessation of the amortization period upon which the increase is based. Increases under items (3) and (4) above can only be implemented if the park owner receives consent from a majority of the park residents or upon the successful completion of a rent increase petition.

The above represents a short summary of some of the important provisions of Novato’s mobilehome rent control ordinance. A more detailed description will be provided below. This report will also explore the nature, scope, and limits of the Council’s discretion in adopting and modifying its rent control ordinance. In addition, examples of other cities’ rent control ordinances shall be briefly explained, followed by a short list of some modifications to Novato’s rent control

ordinance that staff and the City Attorney's office offer to the Council for its consideration. In major part, this staff report has been prepared to assist the Council in better understanding how the City's rent control ordinance works, thus providing background facts to the Council in the event it wishes to suggest modifications to the ordinance.

At the outset, it would be important to describe the foundational legislative and Constitutional powers that the City Council possesses in adopting rent control legislation so that the limits of that authority are understood and can guide the Council in making its decisions regarding this matter.

## **DISCUSSION**

- 1. The City Council's power is as broad as the State Legislature's, subservient to conflicting State and Federal law and constrained by the State and Federal Constitutions. The ultimate test is whether the regulation guarantees the park owner a fair and reasonable return on the owner's investment.**

In upholding the City of Berkeley's power to adopt a rent control ordinance, the California Supreme Court stated:

"The Constitution itself confers upon all cities and counties the power to 'make and enforce within [their] limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.' [cite omitted.] A city's police power under this provision can be applied only within its own territory and is subject to displacement by general state law but otherwise is as broad as the police power exercisable by the Legislature itself." *Birkenfeld v. City of Berkeley* (1976) 17 Cal.App.3d 129, 140.

In response to Berkeley's property owners' objection to the imposition of rent control because it singled out owners of rental property for special and burdensome treatment, the California Supreme Court stated:

"The fact that the [rent control ordinance imposes] certain burdens upon landlords can hardly be deemed a ground for holding the legislation invalid. It is of the essence of the police power to impose reasonable regulations upon private property rights to serve the larger public good." *Id.* at 146.

- 2. Rent Control Ordinances come in many shapes and sizes, containing a variety of different provisions dealing with vacancy control, annual automatic rent adjustments, and the like. The fact that they differ does not make one ordinance better or more lawful than another.**

There are approximately 104 jurisdictions in California which have adopted some form of mobilehome rent control. The California Supreme Court has stated (see below) what it believes makes a rent control law lawful:

"Rent control laws must be reasonably calculated to provide landlords with a just and reasonable return on their property. In order to satisfy this standard, rent control laws incorporate any of a variety of formulas for calculating rent ceilings. Rent control agencies are not obligated by either the state or federal Constitution to fix rents by application of any particular method or formula. Rather, selection of an administrative standard by which to set rent ceilings is a task for local governments and not the courts. . . .

"The state and federal Constitutions prohibit government from depriving a person of property without due process of law. . . .

"In the context of price control, which includes rent control, courts generally find that a regulation bears a reasonable relation to a proper legislative purpose so long as the law does not deprive investors a fair return and thereby become confiscatory. . . .

“Though the state and federal Constitutions do not mandate a particular administrative formula for measuring fair return, we [the Cal. Supreme Court] did note certain characteristics that would weigh in favor of a finding of constitutionality. For example, due to the effects of inflation, [a rent control ordinance] may not indefinitely freeze the dollar amount of profits without eventually causing confiscatory results. In addition, when a rent control law establishes a “base rent” by reference to rents on a specified date, the law should permit adjustments of that base rent for those rental units that had artificially low rents at that time. Similarly, the [ordinance] should permit individualized rent adjustments in appropriate cases even if base rent was not artificially low . . . and the procedural mechanism by which landlords may obtain any of these adjustments must not be prohibitively burdensome. Among other things, this process may not entail a substantially greater incidence and degree of delay than is practically necessary. In this regard, we recommended that the law permit general rental adjustments for all or any class of rental unit space on generally applicable factors. We also indicated rent control laws should (1) allow landlords to petition for rent adjustments without having to prove building code compliance, (2) allow the governing agency to consolidate petitions for rental units in the same building, and (3) allow the governing agency to delegate hearings on petitions to hearing officers. . . .

“The economic judgments required in rate proceedings are often hopelessly complex. The Constitution is not designed to arbitrate these economic niceties. Thus, courts do not examine piece meal the subsidiary aspects of a state agency’s rate making methodology. And flexibility in one part of a regulatory scheme may offset restrictiveness in another. We see no reason why a reasonable annual limit on rent increases cannot be consistent with a fair return.

“Furthermore, [a city can prohibit] certain capital improvements altogether, perhaps as a way of keeping a stock of housing available for low income residents. Thus, [a city] could at its option permit those capital improvements, but encourage landlords to limit their magnitude by prohibiting rent increases in excess of [a certain percentage per year] regardless of the improvements’ costs.

“Finally, the essential inquiry in due process cases involving price controls is whether the regulatory schemes’ result is just and reasonable. Regulated prices must fall within a broad zone of reasonableness to be constitutional. . . .”

*Kavanaugh v. Santa Monica Rent Control Board* (1997) 16 Cal.4th 761, 768-780 [emphasis added].

### **3. Novato’s Ordinance Addresses all of *Kavanaugh’s* Criteria in Assessing the Constitutionality of a Rent Control Regulation**

In *Kavanaugh*, the California Supreme Court acknowledged that the type of formula currently utilized by the City of Novato in its rent control ordinance is a recognized and accepted methodology for regulating rents in a reasonable and constitutional manner. The *Kavanaugh* Court examined Santa Monica’s rent control ordinance which, like Novato’s, uses a “maintenance of net operating income” (“MNOI”) formula for calculating rent ceilings.

“A typical maintenance of net operating income formula presumes the landlord’s net operating income at the time rent control began provided a just and reasonable return. In order to maintain this net operating income at a constant level, the [ordinance] permits rent increases that will enable the landlord to recoup increases in ongoing operating expenses. The landlord may also amortize the costs of capital improvements over the useful life of those improvements and pass those costs through to tenants. Of course, if the [ordinance] holds net operating income constant, inflation will erode the real value of that income. Thus, many maintenance of net operating income formulas permit a periodic inflation adjustment.”

*Kavanaugh*, supra, 16 Cal.4th at 769.

In short, and as shown below, the City of Novato used *Kavanaugh* as a framework for fashioning its rent control regulations. Novato's MNOI formula is not unusual, is followed in many rent control ordinances adopted by other cities throughout the state, and if applied and implemented properly should provide landlords governed by its provisions a fair and reasonable return.

The following features of Novato's ordinance demonstrate its harmony with the *Kavanaugh* ruling:

a. Base rent and base year NOI: Under Novato's ordinance, rent cannot exceed the rent which was in effect on January 1, 1996 unless adjusted in accordance with the ordinance. And, the ordinance presumes that NOI earned in 1995 or the average NOI earned between 1992-1994, whichever was less, was fair and reasonable unless the landowner can prove to the hearing officer the applicable, "base year" NOI yielded other than a fair return, in which case the base year NOI is to be adjusted accordingly.

b. Annual CPI adjustments: The *Kavanaugh* Court recommended that rent control ordinances allow landowners to annually increase rents by changes in the CPI. Novato's ordinance follows the Court's recommendation. This feature assists in (1) maintaining park owners' NOI without forcing park owners to regularly petition for rent increases based on decreasing NOI, and (2) reducing the City's administrative burden in facilitating and overseeing rent increase petitions and hearings. Although permitting annual, automatic adjustments in rent based on changes in the CPI is not legally required (provided there is a separate mechanism to obtain rent increases), experience in Novato has shown that such automatic adjustments has had the beneficial effect of reducing individual rent increase petitions to a trickle.

c. MNOI: The ordinance presumes that the base year NOI, adjusted by 100% of the change in the CPI since the base year, yields a fair return to the park owner. If the actual NOI earned in a given year falls below the presumptive "fair return" rental level, then the park owner may apply for a rent increase based upon a showing that its actual NOI does not produce a fair return. And even if a park owner's actual NOI is equal to or greater than the park owner's base year NOI adjusted by 100% of the CPI, if the park owner can show, through a petition procedure, that its NOI does not yield a fair return, the park owner would be entitled to a rent increase.

d. Capital Improvement Pass-Throughs: Apart from and in addition to rent increases based on the maintenance of a park owner's NOI, Novato's ordinance also allows the park owner to petition for increases in rent based on the costs of capital improvements that ensure that common areas and facilities are safe and decent or continue existing park services/facilities. Such a rent increase, along with a reasonable rate of interest, is to be spread (amortized) over the life of the improvement. Once the amortization period has ended, the rent increase must terminate. Rent increases based on capital improvement costs cannot be included in the rent that is subject to the annual CPI adjustments.

e. Individual rent adjustments are allowed through petition and the petition process is reasonably prompt: As stated above, park owners may annually increase rents by 100% of the change in the CPI without obtaining approval of the City or a hearing officer. Park owners are also entitled to pass through to residents utility costs, again, without obtaining approval of the City or a hearing officer. However, in order to increase rents based on MNOI or capital improvement costs, the park owner must file a petition, go to hearing before a hearing officer and obtain a favorable decision from that officer. The ordinance specifies that the hearing officer's decision must be made within 120 days after the petition is deemed complete by the City.

f. A hearing officer renders decisions that are not appealable to the Council: *Kavanaugh* sanctions the appointment of hearing officers to decide rent increase petitions for, as *Kavanaugh* acknowledges, they can be "hopelessly complex." In 1997, the City Council made the conscious decision to use hearing officers, skilled in business and legal matters, to decide

rent increase petitions without appeal to the Council, thus removing, as much as is possible, politics from the decision-making process. This was viewed as sound public policy because decisions that fail to ensure park owners a fair, economic return are unconstitutional and expose the City to litigation based on the taking of private property without just compensation.

Novato's ordinance contains provisions protective of park residents in addition to those identified by the *Kavanaugh* Court.

g. Vacancy control: Novato's ordinance prohibits a park owner from increasing rents upon the sale, transfer, change in ownership or subletting of a mobilehome; provided, however, that space rents charged to a new resident may be increased to market levels upon the lawful termination of the previous tenant or the previous tenant's voluntary removal of his/her mobilehome from the park.

h. Majority approval of rent increases: Under Novato's ordinance, park owners can avoid having to go to hearings on their petitions for individual rent increases (based on MNOI or capital improvement costs), if a majority of residents consent, in writing, to the increase.

i. Disclosure to new tenants: To each tenant-to-be, park owners must disclose the rent that is being charged to the existing tenant whose mobilehome is occupying the space desired by the tenant-to-be and be given a copy of the rent control ordinance. In addition, every tenant-to-be must be given the opportunity to execute a lease agreement controlled by the City's rent control ordinance.

**4. Novato's Rent Control Ordinance appears to be accomplishing its stated purposes of stabilizing rents at reasonable levels while at the same time ensuring park owners a reasonable return.**

While park owner petitions for rent increases based on MNOI occurred for several years after the ordinance was first adopted in 1997, since about 2004, no such petitions have been filed.

The most recent petition filed by the Los Robles Mobilehome park owner sought rent increases based on capital improvement costs the park owner incurred over a year ago. Although a number of residents objected to the increases and complained about the process, the ultimate decision of the hearing officer allowed a monthly increase for each mobilehome space of \$13.37, which said increase will terminate in increments over the next 15-27.5 years. Moreover, the process followed by the park owner and hearing officer in timely informing the residents of the proposed nature and amount of the increases followed (and in some instances, exceeded) the procedural requirements of the ordinance. Finally, neither the park owner nor the residents requested that the hearing officer re-consider his decision; and no lawsuit has been filed challenging the decision.

**5. Attachment A contains summaries of other cities' mobile home rent control ordinances for the Council's consideration. In addition, staff offers some new provisions that the Council may wish to be studied further.**

Attached as **Attachment A** is a chart comparing other cities' mobilehome rent control ordinances. The Council is encouraged to review this chart, for it may foster ideas of additional or different provisions to those codified in Novato's ordinance.

In particular, staff offers the following, additional provisions that the Council may wish to consider.

a. Reduction in service or facilities petition: Novato's ordinance contains a provision granting to residents the authority to file complaints against parks objecting to rent increases or seeking to enforce the ordinance. But it does not expressly sanction residents filing petitions seeking to reduce rents due to a reduction in park services or facilities (such as the closure of a community swimming pool or clubhouse). Including a rent reduction procedure for a



reduction in services is commonplace. For example, the cities of Sonoma, Rohnert Park and Watsonville include such provisions in their ordinances.

b. Banking annual adjustments: Novato's annual CPI adjustment must be noticed (90 days' advance notice) to take effect on January 1. If such a notice is not timely delivered, the opportunity to adjust rents based on that year's CPI is lost forever. Some cities permit the adjustment to take effect during a larger window of time during each year; and some cities allow park owners to skip annual adjustments but permit them to "bank" the increase to be implemented at a later time, subject to conditions.

c. Resident-park owner settlement arrangements: Once a park owner has filed a petition for a rent increase, some cities, including Sonoma and Watsonville, include provisions that encourage the parties to try to settle their differences prior to a final decision being made on the petition. Under such schemes, either (or both) the park owner or the tenant representative (more on this below) are entitled to submit a written settlement offer to the other party. If the offer(s) are rejected or not timely accepted, and the outcome achieved by the party rejecting the settlement is less favorable than the rejected offer, the rejecting party's attorney's fees incurred post-offer cannot be recovered as part of the rent increase petition (if the rejecting party is the park owner) and the rejecting party must pay the legal expenses of the other party incurred after the offer was made.

d. Selecting tenant representative: One of the issues that arose in the midst of the recent Los Robles rent increase petition was the identity of the person(s) with whom the park owner was supposed to meet and communicate about the petition. In other words, was there a resident representative who could be counted on to speak for a majority of the residents?

The cities of Sonoma and San Marcos provide a procedure for selecting a tenant-homeowners' representative. In Sonoma, every mobilehome park's residents are required to annually select, by majority vote (one vote per space), such a representative who is authorized to receive all notices and documents which are required to be delivered to the representative under the ordinance as well as to make settlement offers in the context of a park owner's rent increase petition. If no such person is willing to serve in this capacity, then there shall be no such resident representative and the park owner must communicate with all the park's residents in connection with issues involving the city's rent control ordinance.

## **PUBLIC OUTREACH**

As part of initial outreach efforts for this item, staff sent this published report to the property owners/managers and park liaisons of the Los Robles Mobile Home Park and Marin Valley Mobile Country Club. Additionally, Mayor Milberg has met with Los Robles Homeowner Association and Owner representatives to discuss this item. If the Council directs changes to the current ordinance, additional outreach is recommended. At a minimum, staff recommends meeting with various stakeholders to facilitate an inclusive dialogue and receive feedback on proposed updates to the ordinance. Other options could include creation of a limited-term task force comprised of mobilehome park residents, park owners, and other stakeholders to gather input on updates to the mobilehome rent control ordinance.

This item was also noticed per standard City of Novato City Council agenda noticing procedures including posting the agenda 72 hours in advance on the City Community Service Board at 922 Machin Ave, posting on the City's website at [novato.org/councilagendas](http://novato.org/councilagendas) and sending an email notification to all e-notification subscribers.

## **FISCAL IMPACT**

There is no fiscal impact associated with this action. There will be additional costs if the Council directs further action be taken to amend the City's current ordinance.

## **RECOMMENDATION**

Council direction.

## **ALTERNATIVES**

1. Make no changes to the rent control ordinance.
2. Direct staff to study amendments to the ordinance.

## **ATTACHMENTS**

1. Attachment A: Chart comparing cities' rent control ordinances.