



**CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT**

4/10/2017

SUBJECT:

Council Consideration of Resolution Calling a Special Election on Tuesday, November 7, 2017, and Submitting to the Electors of the City of Pacifica a Proposed Ordinance Entitled Pacifica Community Preservation, Rent Stabilization, and Renters' Rights Act; and Introduction of an Interim Ordinance Establishing a Temporary Moratorium on Certain Residential Rent Increases in the City and Requiring Just Cause for Tenant Evictions Within the City.

RECOMMENDED ACTION:

Following deliberations:

- 1) Move to adopt the Resolution Calling a Special Election on Tuesday, November 7, 2017, and Submitting to the Electors of the City of Pacifica a proposed Ordinance entitled Pacifica Community Preservation, Rent Stabilization, and Renters' Rights Act; and
- 2) Move to waive the first reading and introduce an Interim Ordinance Establishing a Temporary Moratorium on Certain Residential Rent Increases and Requiring Just Cause for Tenant Evictions Within the City.

ALTERNATE ACTIONS:

The following alternative actions are available for consideration:

- A. Adopt the Resolution Submitting to the Voters at a Special Election on November 7, 2017, a proposed Ordinance entitled Pacifica Community Preservation, Rent Stabilization, and Renters' Rights Act; but do not introduce the Interim Ordinance Establishing a Temporary Moratorium.
- B. Direct staff to bring back at a future meeting introduction of a Pacifica Community Preservation, Rent Stabilization, and Renters' Rights Act without submitting it to the voters.
- C. Take no action.

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BACKGROUND:

City staff received direction from the City Council to draft a Rent Stabilization and Just Cause for Eviction Ordinance for consideration and possible adoption by the City Council or the Pacifica electorate. Outside of certain mobile home units and newly-converted condominium units, the

City of Pacifica currently does not regulate rental amounts, rent increases, or evictions from residential housing.

Staff has confirmed the following facts regarding the state of rental housing in Pacifica:

- It has been determined in a March 2017 report by RealAnswers, a rental market data provider, stated that the inflation-adjusted average monthly asking rent in Pacifica has risen 51 percent from 2010 to 2015.
- The U.S. Census Bureau 2011-2015 American Community Survey stated that the inflation-adjusted median household income for renter households in Pacifica has only risen by 2.7 percent during that same period.
- More than half of renter households in Pacifica are classified as “extremely low,” “very low,” or “low” income households, earning less than 80 percent of the Area Median Income (“AMI”) for San Mateo County, per data published by the U.S. Department of Housing and Urban Development.
- The U.S. Census Bureau 2011-2015 American Community Survey also found that: 1) 32 percent of all households in Pacifica were renter households, 2) 33 percent of all renter households in Pacifica have children under 18 years old, and 3) Pacifica’s low rental housing vacancy rate decreased to just 0.5 percent in 2015.
- While Pacifica’s population has increased by 5.4 percent from 2010 to 2015, the number of total housing units available in Pacifica only increased by 1.6 percent during that same period.
- Since 2013, the City of Pacifica has not issued a building permit to construct any multi-family housing projects of five or more units. Market conditions suggest that the high demand for rental housing is likely to persist.

It is also evident that no-fault evictees incur sudden and unexpected expenses associated with relocating, including but not limited to: moving costs, rental housing application fees, and upfront costs associated with securing a new lease, such as the payment of security deposits and several months’ advance rent. These concerns and others regarding the state of the rental housing market in Pacifica including no-fault evictions, which leave Pacifica residents vulnerable to displacement from the community and homelessness, have been raised on multiple occasions by members of the community. It is clear that all of the foregoing housing and economic conditions create a detrimental effect on substantial numbers of renters in Pacifica, and thus constitute a threat to the public health, safety, and welfare.

In light of the above and to allow the Council to consider a possible ballot measure to allow the electors of Pacifica to decide whether they want to adopt rent stabilization, staff has prepared a Resolution which calls a special election in November 2017 to submit to the voters the adoption of an ordinance entitled Pacifica Community Preservation, Rent Stabilization, and Renters’ Rights Act (“Ordinance”). In the event the City Council adopts the attached Resolution calling a special election, staff has also prepared an Interim Ordinance Establishing a Temporary Moratorium on Certain Residential Rent Increases and Requiring Just Cause for Tenant Evictions Within the City.

DISCUSSION:

General Provisions of Rent Stabilization Ordinances:

Most rent stabilization ordinances provide two basic mechanisms that are designed to prohibit landlords from instituting excessive rent increases: 1) annual general adjustment (“AGA”), which allows landlords to implement annual rent increases at a certain percentage fixed by the City; and 2) individualized determinations, which require landlords to obtain permission from the City before instituting rent increases higher than the allowed AGA. The Ordinance contains these provisions.

Rent stabilization and just cause eviction ordinances are typically adopted concurrently to avoid creation of two main loopholes: landlord-initiated “no-fault” or “without cause” evictions to trigger vacancy decontrol, which enables the landlord to set rents at market rate; and, large rent increases to trigger cause for eviction. As a consequence, the Ordinance contains just cause for eviction provisions. The Ordinance stipulates that landlords may evict a tenant only for the following reasons: 1) Failure to pay rent; 2) Breach of lease; 3) Nuisance; 4) Criminal activity; 5) Failure to give the landlord access to the unit; 6) Necessary and substantial repairs requiring temporary vacancy; 7) Owner move-in; and 8) Withdrawal of the unit permanently from the rental market. Jurisdictions adopting Just Cause Eviction ordinances may also include provisions for relocation assistance which allow for payment of any upfront costs associated with relocation due to no-fault evictions. The Ordinance provides for the payment of these upfront costs upon the following no-fault evictions: 1) Necessary and substantial repairs requiring temporary vacancy; 2) Owner move-in; and 3) Withdrawal of the unit permanently from the rental market. The Ordinance applies these just cause for eviction protections only to those units subject to rent stabilization, which does not include single-family homes.

In addition, most rent stabilization legislation creates a new regulatory rent stabilization board or commission that oversees the administration of any ordinance and processing of rent increases.¹ It is important to note that the adoption of a rent stabilization program and creation of a rent stabilization commission would create additional administrative staffing obligations and costs, some of which are difficult to estimate at this time. Staff has provided an estimate of resources required to develop and implement a rent stabilization program under the Fiscal Impacts section of this report.

Legal Framework

Courts have repeatedly affirmed the notion that cities have broad powers to enact just cause for eviction and rent stabilization ordinances.² However, local rent stabilization laws involve complex concepts in U.S. and California constitutional law, and implicate state statutory schemes governing rental housing. For example, any rent stabilization ordinance must provide landlords a “just and reasonable return” on their investment or it will be considered to be an “unconstitutional taking.”

In addition, the California State Legislature has enacted legislation in the area of landlord-tenant relations. The Costa-Hawkins Rental Housing Act passed in 1995 exempts the following units from rent stabilization (California Civil Code § 1954.50-1954.535):

¹ It is important to note that the just cause for eviction provisions in the Ordinance provide a civil remedy for tenants but do not involve the Commission in disputes related to just cause evictions.

² *Pennell v. City of San Jose* (1988) 485 U.S. 1, 12.

- Multi-family units with a certificate of occupancy issued after February 1, 1995
- Single-family homes
- Condominium units sold separately to a purchaser for value

The Costa-Hawkins Rental Housing Act (§ 1954.50, *et seq.*) and the Ellis Act (Cal. Gov. Code § 7060, *et seq.*), also explicitly provide California landlords with certain rights that local governments may not interfere with. For example, under the Costa-Hawkins Rental Housing Act, landlords have the right to set “initial rental rate[s],” which means that when a unit is vacant, the landlord may offer the unit for rent at any amount of the landlord’s choosing.³ This is commonly referred to as “vacancy decontrol.”

Under the Ellis Act, landlords have the right to go out of business and withdraw rental units from the rental housing market altogether.⁴ Courts have held that local ordinances that interfere or otherwise place burdens on these rights are legally invalid, and any defensible rent stabilization ordinance must consider the requirements of these laws.

Pacifica Rental Housing Stock and Renter Households

The following data provides estimates regarding the number of units potentially subject to rent stabilization in Pacifica.

Potential Number of Units Subject to Rent Stabilization	
Multi-family units built prior to Feb. 1, 1995	2,645*
Exempt deed-restricted affordable housing units	357
Units subject to rent stabilization	2,288**
Source: 2000 U.S. Census; City of Pacifica Planning Dept. * Adjusted to reflect demolition of 52 apartment units on Esplanade Avenue and 170-unit condominium conversion at Marymount-Gateway Apartments **Estimated. Total units subject to rent stabilization may vary	

A rent stabilization ordinance would affect approximately 16 percent of the City’s housing stock. According to 2011-2015 American Community Survey data, 11,620 units in Pacifica were detached or attached single-family residences and, thus, would not be subject to rent stabilization (79 percent of housing stock). However, the Ordinance would apply to the nearly 58 percent of renter households who live in buildings with three or more units. Only 42 percent of renter households occupy units exempt from rent stabilization, such as single-family residences, condominiums, and townhomes.

³ Cal. Civ. Code §1954.52(a).

⁴ Cal. Gov. Code § 7060(a).

Rent Advisory Task Force

On January 25, 2016, City Council directed formation of an advisory committee consisting of tenants, landlords, and neutral parties to develop an advisory measure, similar to one developed by the City of Healdsburg, addressing landlord-tenant relations. Based on this direction from Council, staff invited six members of the community – two each representing Pacifica tenants, apartment owners, and impartial community members – to participate on the Rent Advisory Task Force (“Task Force”).

The Task Force has emphasized the importance of being informed by facts when developing the rent advisory measure. Accordingly, it has evaluated various data about Pacifica’s rental housing stock and renter population. The data evaluated by the Task Force has included trends related to population growth, vacancy rates, household income, and median rent. As directed by Council, the Task Force also discussed the provisions contained in the City of Healdsburg’s *Rent Stabilization Advisory Measure* and their applicability to the rental housing environment in Pacifica.

In its four meetings prior to the City Council’s meeting of April 10, 2017, the Task Force reached consensus on the topic areas that Pacifica’s rent advisory measure should address:

- Predictable, modest rent increases
- Appropriate causes for terminating tenancies
- Amortized cost recovery for landlord capital improvements
- Expedited City permitting for improvement projects
- First right of return for tenants displaced by repairs to their unit
- Timely response to tenant repair and maintenance requests
- Landlord consideration of tenant hardships
- Creation of a housing resource list, including local providers of emergency financial assistance
- Short-term rental guidelines
- Development of additional rental housing

While the Task Force has agreed on these topic areas, it has yet to discuss in depth the particular provisions that should comprise each topic area. The Task Force members hope to continue their work with the Council.

Ballot Measure Language

Should the City Council proceed with placing the Ordinance on the ballot for November 2017, it must establish the ballot measure language for the question presented to the voters. The ballot measure is limited to 75 words and must be answered by Yes or No. The proposed ballot measure language is as follows:

Shall the Ordinance entitled Pacifica Community Preservation, Rent Stabilization, and Renters' Rights Act which provides restrictions on certain residential rent increases and protections to certain residential tenants from no-fault evictions, be adopted?	YES
	NO

Calling the Election

The City of Pacifica does not have an election scheduled for November 2017. Therefore, in order to present the Ordinance to the voters, the City Council must call a special election. The City needs to request that the County of San Mateo consolidate the City's special election with the County's consolidated municipal school and special district election on November 7, 2017. The attached Resolution calls the City's special election and requests the County to consolidate the City's special election with the County's election on November 7, 2017.

Interim Temporary Moratorium

In the event the Council decides to place the Ordinance on the November 2017 ballot, a temporary moratorium on residential rent increases is necessary to prevent landlords from immediately increasing rents to even higher levels before the voters could determine whether rent stabilization would be adopted in Pacifica. Rent increases in anticipation of adoption of rent stabilization would defeat the intent and purpose of any potential future regulation and substantially impair its effective implementation. It is also likely that in light of the moratorium on rent increases, landlords will have an immediate incentive to serve notices to terminate certain tenancies without cause, thereby displacing many tenants in Pacifica who, because of a critically low vacancy rate, will be compelled to find housing elsewhere and at higher rents.

Accordingly, staff has drafted an Interim Ordinance Establishing a Temporary Moratorium on Certain Residential Rent Increases and Requiring Just Cause for Tenant Evictions Within the City ("Interim Ordinance"). The Interim Ordinance allows up to a 3.4 percent annual increase in rent during the moratorium period. This figure is based upon the current percentage increase in the Consumer Price Index for the Bay Area of California. Moreover, this Interim Ordinance is only temporary as it will sunset either on September 1, 2017, if no measure is placed on the ballot or upon certification of the election results of the November 2017 election. Thus, the Interim Ordinance is found and determined to provide a fair return. This Interim Ordinance additionally requires that landlords have a just cause for terminating tenancies during the moratorium period.

RELATION TO CITY COUNCIL GOALS AND WORK PLAN:

Priority 1: Rent Stabilization & Just Cause Eviction: Council indicated its interest in revisiting rent stabilization and just cause for eviction ordinance for further discussion.

FISCAL IMPACT:

Election Costs: The cost of placing the measure on the November 7, 2017, ballot assessed by San Mateo County is estimated to be \$85,000. This is an estimate and may increase as fewer cities will be holding elections in odd numbered years.

Program Costs: Staff has prepared staffing and cost estimates for initial development and ongoing administration of a rent stabilization program based on its assessment of the provisions contained in the Ordinance, the number of housing units which would be subject to the Ordinance, and information from other cities which have or are developing rent stabilization programs. Total start-up and on-going program costs are estimated to be \$697,300. This figure includes two program analysts and one administrative assistant. It also includes necessary professional contracts to administer the program such as a Hearing Officer for tenant petitions, supplies and services, and community education, etc. These costs will be offset by the per-unit fee discussed in the Ordinance. The initial per-unit fee does not include one-time program startup costs. These one-time costs will be amortized and included into the fee in future years by City Council action.

It is important to note that costs associated with a landlord petition for rent increase will be paid by the petitioner. The fee discussed above and in the ordinance does not subsidize landlord petitions.

Potential for Litigation: Other cities that have adopted rent stabilization and just cause for eviction ordinances have been sued. If the electorate passes a measure there is a high potential that the City of Pacifica will be involved in litigation. The City Attorney's Office estimates that litigation defense would cost between \$150,000-\$250,000.

ORIGINATED BY:

City Attorney's Office
Planning Department

ATTACHMENT LIST:

Exhibit A - Pacifica Community Preservation, Rent Stabilization, and Renters' Rights Act
(DOCX)
Interim Ordinance Establishing Moratorium on Rent Increases and Just Cause for Evictions
(DOCX)



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA CALLING AND GIVING NOTICE FOR THE HOLDING OF A SPECIAL ELECTION ON TUESDAY, NOVEMBER 7, 2017, AND REQUESTING THE COUNTY CLERK TO CONSOLIDATE THE CITY'S SPECIAL ELECTION WITH THE NOVEMBER 7, 2017, CONSOLIDATED MUNICIPAL, SCHOOL AND SPECIAL DISTRICT ELECTION AND REQUESTING THE COUNTY OF SAN MATEO TO PROVIDE ELECTION SERVICES AND ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY OF PACIFICA A PROPOSED ORDINANCE ENTITLED PACIFICA COMMUNITY PRESERVATION, RENT STABILIZATION, AND RENTERS' RIGHTS ACT AT THE CONSOLIDATED MUNICIPAL, SCHOOL AND SPECIAL DISTRICT ELECTION TO BE HELD ON TUESDAY, NOVEMBER 7, 2017

WHEREAS, the County of San Mateo will be conducting a Consolidated Municipal, School and Special District Election on November 7, 2017; and

WHEREAS, the City Council of the City of Pacifica desires to call a Special Election on Tuesday November 7, 2017, for the purposes of submitting to the qualified electors of the City of Pacifica a proposed Ordinance entitled Pacifica Community Preservation, Rent Stabilization, and Renters' Rights Act; and

WHEREAS, it is in the best interest of the City of Pacifica to consolidate the City's Special Election with the County election to be conducted on November 7, 2017; and

WHEREAS, pursuant to Elections Code Section 10002, the City Council of the City of Pacifica hereby requests the County Clerk of San Mateo County to provide election services to the City of Pacifica; and

WHEREAS, the City Council of the City of Pacifica hereby requests the consolidation of a special election for the purpose of submitting to the voters at the November 7, 2017, election a question relating to the adoption of an Ordinance entitled Pacifica Community Preservation, Rent Stabilization, and Renters' Rights Act; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFICA THAT:

SECTION 1. Pursuant to the requirements of the laws of the State of California relating to general law cities, there is called and ordered to be held in the City of Pacifica, California, on Tuesday, November 7, 2017, a Special Election for the purpose of submitting to the voters the following question:

Shall the Ordinance entitled Pacifica Community Preservation, Rent Stabilization, and Renters' Rights Act which provides restrictions on certain residential rent increases and protections to certain residential tenants from no-fault evictions, be adopted?	YES
	NO

SECTION 2. The full text of the proposed measure submitted to the voters is attached as Exhibit A to this Resolution, which is incorporated herein as reference.

SECTION 3. That the City Clerk is hereby directed to transmit the Measure to the City Attorney and the City Attorney is directed to prepare an impartial analysis of the Measure in accordance with Elections Code section 9280 and to file that analysis no later than the deadline established by the San Mateo County elections official.

SECTION 4. That the full text of the Measure shall be printed in the voter information pamphlet.

SECTION 5. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 6. That the City Clerk is authorized, instructed, and directed to contract for the procurement and furnishing of any and all official ballots, notices, printed matter, and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 7. That pursuant to the requirements of section 10403 of the Elections Code, the Board of Supervisors of the County of San Mateo is hereby requested to consent and agree to the consolidation of the election for the Measure with the Consolidated Municipal, School and Special District Election to be held on Tuesday, November 7, 2017, for the purpose of submitting the Measure to the voters.

SECTION 8. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to Election Code section 10242, except as provided in section 14401 of the Elections Code of the State of California.

SECTION 9. The City Council of the City of Pacifica hereby requests the San Mateo County Board of Supervisors and Registrar of Voters to provide all services necessary to conduct the Election and to conduct and canvass the results of the election. The City will reimburse San Mateo County for the actual cost incurred in conducting the election when the work is completed and upon receipt of a bill stating the amount due as determined by the elections official.

SECTION 10. That the City Clerk is directed to forward without delay to the Board of Supervisors and the County Election Department, each a certified copy of this resolution.

SECTION 11. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 12. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 13. That ballot arguments and rebuttals shall be filed in accordance with the following:

- A. That the primary arguments for and against this ballot measure shall be submitted to the City Clerk by 5:00 p.m. on the date established by the San Mateo County elections official for primary arguments.
- B. That rebuttal arguments shall be submitted to the City Clerk by 5:00 p.m. on the date established by the San Mateo County elections official for rebuttal arguments.
- C. That all arguments shall be filed with the City Clerk, signed, with printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.

SECTION 14. That a statement shall be printed in the ballot pursuant to Elections Code Section 9223 advising voters that they may obtain a copy of the Measure, at no cost, upon request made to the City Clerk.

SECTION 15. That the City of Pacifica's election shall occur as normal on that date pursuant to the other provisions of the Elections Code.

BE IT FURTHER RESOLVED that the City of Pacifica shall separately send information regarding the specifics of its November 7, 2017, election to the San Mateo County Chief Elections Officer.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica on April 10, 2017, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Mike O'Neill, Mayor

ATTEST:

Kathy O'Connell, City Clerk

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney