

Mobile Home Park Rent Stabilization Program

Presentation to

***Mobile Home Park Rent Review Board
December 2020***



Oxnard's Mobilehome Community

- 20 Mobilehome Parks
- 2816 Total Spaces (nearly all owner-occupied)
- 10,000 – 11,000 Total Residents (about 5% of Oxnard's total population)
- 91% of Oxnard's mobilehome owners are protected by Oxnard's Rent Stabilization Ordinance



Rent Stabilization in Oxnard

- First adopted in 1983
- Ordinance amended four times
- Current ordinance resulted from a negotiated agreement between park owners and elected representatives of homeowners (1998 Task Force)



What is “Rent Stabilization”?

Rent Stabilization is not:
a government subsidy for low-income
persons or senior citizens



What is “Rent Stabilization”?

Rent Stabilization is:

A system of administrative law adopted by the City Council

Rent Stabilization is:

government regulation of the price that a business may charge for a product (i.e., increases in space rent)



What is “Rent Stabilization”?

A key element in preserving the affordability of housing for approximately 5% to 6% of families in the City of Oxnard. Those households constitute 10% of all homeowners in Oxnard.



THIS YEAR'S REPORT

- Annual presentation usually goes into great detail on legal framework of rent stabilization, history of rent stabilization in Oxnard, and description of Discretionary Rent increase application process
- This year's report will focus on CPI rent increase data and information on Water Utility Passthrough processes



OUTLINE OF THIS REPORT:

1. Formula for Calculating the Annual CPI Formula Rent Increase Amount
2. Summary of Calendar Year 2020 CPI Applications
3. Challenging Rent Increases; and impacts of COVID-19
4. Utility Passthrough Applications



Calculation of CPI Increase

- Inflation rate for Southern California from August to August determines permissible CPI rent increase for following calendar year
- From August 2019 to August 2020, the Southern California CPI increased by 2.02%
- The permissible CPI increase for calendar year 2021 will be 2.02%.



C.P.I. Rent Increase Applications

- Permissible amount is the same for every park in any given year. For 2021, it will be 2.02% (down from 2.97% in 2020)
- For 2019, it was 3.87%; and in 2018, 2.82%
- Previous years: 2012 increase: 2.41%
- 2013 increase: 2.32%
- 2014 increase: 0.84%
- 2015 increase: 1.81%
- 2016 increase: 1.14%
- 2017 increase is 1.43%
- Homeowners may protest a park's C.P.I. Rent increase.



Rent Increase Applications 2020

- Each of the 20 mobile home parks has an established eligibility date for its annual CPI rent increase; 18 parks have eligibility dates which fall in the first six months of the calendar year
- Applications must be filed at least 60 days before rent increase date
- ***Most 2020 applications were submitted prior to the onset of the pandemic***



2020 CPI Applications

- Nineteen parks submitted CPI applications in 2020
- One park did not seek an increase
- One park sought a smaller increase than amount to which it was entitled
- One park has delayed filing by three months; another has delayed filing early 2021 application indefinitely



Challenging CPI Rent Increases

- ***Sole legal basis for homeowners to challenge a CPI rent increase is by proving in an evidentiary hearing that the park has reduced services provided and has saved money by reducing those services***
- **Impacts of COVID-19 on 2021 CPI applications to be discussed in separate report**



UTILITY PASSTHROUGHS



Pass-throughs

- Park owners may “pass through” to homeowners the cost of utilities, following application to the City and a hearing to determine required rent reduction and future utility cost allocation system
- *Oxnard’s ordinance does not contain provision for passthroughs of Capital Improvement costs*



Utility Passthrough Hearings

- A park which currently pays for utilities from rents collected may apply for “pass through” to have utility costs directly paid by each homeowner
- Application review requires detailed financial analysis of past utility consumption, an evidentiary hearing to determine space rent reduction, and development of a formula for apportionment of future utility costs



More on Utility Passthroughs

- Hearing Officer must determine what percent of utility consumption is for park's common areas (to be paid by park) and what percent is distributed among all homeowners in the park
- Also must decide how to apportion utility costs among homeowners (who may or may not have individual sub-meters to measure their consumption)



Water Passthroughs: A Forecast

- **State law requires all parks to implement, by 2025, a system whereby individual homeowners pay for their own consumption**
- **Only 5 parks already have submeters installed; fifteen do not**
- **Conclusion: numerous passthrough applications must be processed in next 3 years**



Recent Water Passthroughs

- Water passthrough hearings for 4 parks conducted and since 2016
- Data collection, analysis, and public hearings were extensive and lengthy.
- Example: Imperial Oxnard M.E. installed 186 sub-meters, staff analyzed over 18 months of data.
- Process: from the filing of the application to the issuance of the Decision took ten months, 3 hearings



***(End of December
2020 Presentation)***



HISTORICAL AND LEGAL FRAMEWORK OF MOBILEHOME RENT STABILIZATION:

The following slides from previous years' presentation provide detailed historical information Oxnard's rent stabilization, including hearing processes, and the legal and Constitutional framework that impacts the City administration of the rent stabilization program.



Constitutionality of Rent Control

Any local government ordinance which regulates space rents must do so in accordance with the Fifth Amendment of the U. S. Constitution



Program Administration

- City staff, in coordination with City Attorney's office, processes rent increase applications and provides staff support to independent Hearing Officer and to Mobile Home Park Rent Review Board
- Program costs paid by mobile home community via monthly administrative fee (\$2.34 per space per month, split 50/50 between park owners and homeowners; City Code Chap. 24-21)



Who is covered by the Ordinance?

- Owner-occupied mobilehomes which are
- The homeowners' primary residence
- Not subject to a long-term leases

(A long-term lease is any lease over 12 months in duration)



Long-Term Leases

- Six parks in the City have some of their residents on long-term leases
- Since 1998, the number of homeowners on long-term leases has gradually declined
- As of December 2019, a total of 2556 mobilehome owners were covered by the Ordinance, and 151 were subject to long-term leases



Two Types of Space Rent Increase Applications

C.P.I. (Consumer Price Index) Rent Increase.

- Amount of permissible increase determined by the southern California inflation rate.
- Most parks apply for a C.P.I. increase on an annual basis.

Discretionary Rent Increase Application (“Fair Rate of Return”)

- Only nine discretionary rent increase applications since 1981.



Other Ways

Rents may be Increased

- When a mobilehome owner sells their mobilehome to another person who will be living in the mobilehome (a “change of occupancy” increase).
- C.O.O. increase is equal to 15% of the average space rent in the park
- Maximum C.O.O. increase is \$80.00
- Also known as “Vacancy Control”



Mobilehome Park Space Rents Compared to Apartment and House Rents

- Compounded permissible CPI rent increase, 1998 to 2012, Oxnard mobilehome space rents: 43.5%
- Average compounded apartment rent increase in Oxnard, 1998-2013: 81%
- Average compounded house rent increase in Oxnard, 1998-2013: 98%



C.P.I. Protests

- Homeowners may file a protest of a park's C.P.I. Application on the grounds of reduction in services.
- Evidentiary hearing on protest is conducted by a City-appointed Hearing Officer
- Homeowners must prove a reduction in services **and** a monetary savings to the park owner as a result of the service level reduction.



History of C.P.I. Protests

- Seven protests went to evidentiary hearings in the past ten years.
- Most recent were four protests filed in 2016-17 and 2018-19
- Hearing Officer decisions were not appealed in any protests since 2014
- But park owner attorneys have challenged Hearing Officer rulings regarding subpoenas for production of records in two recent cases, resulting in hearings on scope and enforcement of subpoenas



Discretionary Rent Increases

- Since 1998 Ordinance amendments, only one park has sought a discretionary rent increase
- In 2004, Royal Palms Mobilehome Park filed an application for a discretionary rent increase of 71%
- Following appeals to court, remand, and further Board proceedings, rent increase of 3.97% granted in April of 2009



Rent Increase Applications Processed in 2019-20

- 18 of the 20 mobilehome parks applied for 2019 C.P.I. Rent increases, and 18 parks filed in 2020
- Most applications were reviewed and approved administratively
- Two protests of C.P.I. applications were heard by the Hearing Officer
- No Discretionary Rent Increase applications filed since 2017; one was filed in 2015 and one in 2016



Discretionary Rent Increases

- Sought when a Park Owner asserts that the park needs a larger rent increase in order to achieve a fair rate of return
- Based on comparison of “Base Year” income and current income
- Preferred methodology requires use of 1982 as Base Year
- Alternate methodologies may be proposed by park owner



Discretionary Rent Increase Application Process

- Park Owner must file Discretionary application simultaneously with C.P.I. application (C.P.I. processed first)
- Park Owner's CPA must certify data on Base Year and current year income and expenses
- City retains an independent C.P.A. to review data and report to the Hearing Officer (cost of independent C.P.A. is borne by the Park Owner)



Discretionary Rent Increase Process (Continued)

- Evidentiary hearing on application must be conducted before Hearing Officer
- Homeowners have right to participate in the evidentiary hearing
- C.P.A. reports to Hearing Officer on financial data and calculation of permissible discretionary increase
- C.P.A. review, calculations and Hearing Officer decision guided by City Council Resolution No. 11,468



Evidentiary Hearing

- City pays for Hearing Officer and court reporter
- Park Owner has burden of proof to show need for rent increase due to current income not generating sufficient income to maintain a fair rate of return
- City staff is neutral (does not take sides nor assist either party in presentation of case)
- Independent CPA reviews park data, makes calculations, and reports to Hearing Officer
- Hearing Officer evaluates data and testimony of CPAs and any other witnesses, along with any briefs submitted, and issues findings and decision with calculation of permissible Discretionary Rent Increase



Decision of Hearing Officer

- Hearing Officer must issue written findings and decision within 35 days after conclusion of Hearing
- At Hearing Officer's option, City staff and City Attorney services may be requested to assist in calculations and drafting of language
- Hearing Officer Decision may be appealed to the full Rent Review Board



Admissible Evidence

- First-hand, specific testimony (“I observed” statements, rather than “Somebody told me...”)
- Photographs (authenticated by the photographer)
- Documents (authenticated), written estimates, e-mails, etc.
- Expert witness testimony



At the Discretionary Hearing...

- CPA presents report to Hearing Officer via sworn testimony, documents, written submissions, photographs, etc.
- Park Owner presents testimony and evidence in support of its request for Discretionary increase
- When Park has finished presenting its case, the homeowners have the opportunity to rebut the Park's case, via presentation of evidence, witnesses, documents, etc.
- Hearing Officer, Park owner representative, and designated homeowners' representative may cross-examine witnesses
- Hearing Officer may require or allow post-hearing briefs



What the Hearing Is About:

Whether the current income of the park is sufficient to provide the park owner with a fair rate of return, based on a comparison of Base Year vs. Current Year income and expenses; and if not, what percentage rent increase is required to provide fair return



What the Hearing is NOT about:

- Whether the homeowners are senior citizens
- Whether the homeowners are low-income, or can afford the increase
- Whether the homeowners like the park manager



Authority of Hearing Officer

- The Hearing Officer will decide whether the park receives the requested discretionary rent increase, or something less than the requested increase (but in no event less than the approved C.P.I. rent increase)
- Council Resolution No. 11,468 sets forth amortization tables and discretionary formula to be applied
- Hearing Officer does not have the authority to reduce rents below their current levels



LEGAL ISSUES PRESENTED IN DISCRETIONARY CASES

- Determination of appropriate “Base Year”
- Availability of Base Year financial data to current park owner
- Claims of regulatory taking



Physical vs. “Regulatory” Takings

- Government can take property provided that the property owner is fairly compensated (Fifth Amendment)
- Example: new freeway interchange -- government must pay landowner fair market value for the land taken
- If a local government’s ordinance is found to deny a landlord a fair rate of return and thus constitute an unlawful regulatory taking, that local government must pay the landlord for any earnings lost as a result of the unlawful taking



Federal Court Decisions

- U.S. Supreme court has held that excessive regulation of rents can constitute a “regulatory taking” of a landlord’s property.
- Landlord must be allowed to earn a “fair rate of return” (defined case-by-case)
- Key cases:
 - Lingle v. Chevron* (USSC, 2005)
 - Cashman v. Cotati* (9th Circuit, 2004)
 - Penn Central v. New York City* (USSC, 1978)
 - MHC Financing v. City of San Rafael* (9th Circuit, 2013)



RENT REVIEW BOARD

- Five-member unpaid Board, appointed by City Council
- Current Board has 4 appointees; there is one are vacancy on Board
- Board members can have no connection or financial interest in a mobile home park or in a mobile home
- Meets to hear appeals of Hearing Officer Decisions



BOARD DECISIONS

- After conducting appeal Hearing, Rent Review Board issues a written decision
- Decision must explain Board's reasons
- That Decision can be appealed to the courts (not to City Council)



BOARD MEMBER APPLICANTS

- City is currently seeking applicants to serve on the Mobile Home Park Rent Review Board
- Must be registered to vote in the City of Oxnard
- Must have “no financial interest in any mobile home or mobile home parks...and not connected with the real estate or rental housing industry for their personal financial gain” (City Code Sec. 24-5)



QUESTIONS?



RESOURCES

City of Oxnard Mobilehome Rent Stabilization Ordinance

(Oxnard City Code, Chapter 24)



More Resources...

**State of California
Mobilehome Residency Law**

**California Civil Code
Chapter 798**



Thank you!

Rent Stabilization Program
805-385-8095

Karl Lawson
karl.lawson@oxnard.org

