



CITY OF LARKSPUR
Staff Report

September 6, 2023, City Council Meeting

DATE: August 30, 2023
TO: Honorable Mayor Paulson and the Larkspur City Council
FROM: Dan Schwarz, City Manager
Sky Woodruff, City Attorney
SUBJECT: RENT STABILIZATION ORDINANCE

ACTION REQUESTED

Waive second reading and adopt an ordinance amending the Larkspur Municipal Code to add Chapter 6.20, establishing rent stabilization regulations including prohibiting residential real property rental rate increases that exceed five percent plus a consumer price index or seven percent, whichever is lower, in a twelve-month period annually, and defining a base rent as the rent in effect on May 8, 2023.

SUMMARY

At its July 19, 2023 meeting, the City Council introduced and waived the first reading of Ordinance 1067, which establishes rent stabilization regulations including prohibiting residential real property rental rate increases that exceed five percent plus a consumer price index or seven percent, whichever is lower, in a twelve-month period annually, and defining a base rent as the rent in effect on May 8, 2023.

BACKGROUND AND DISCUSSION

All prior staff reports on these topics are incorporated by reference and should be considered as part of the record.

Rent Stabilization

The draft before the Council creates local regulations that strengthen the Tenant Protection Act in the following ways:

AGENDA ITEM 8.1

- It establishes that in a 12-month period, rent may not be increased more than five percent (5%) plus a Consumer Price Index (CPI) or seven percent (7%), whichever is lower. The Tenant Protection Act is five percent (5%) plus the CPI or ten percent (10%).
- It establishes a process for a landlord to petition for a fair rate of return that justifies exceeding the local rent increase ceiling. Landlords cannot exceed the state rent increase ceiling under any circumstances.
- It establishes that the Council may charge a fee to administer this program. Landlords would be required to file annually and the information from those filings would be maintained in a database (a rental registry).

Additionally, the ordinance empowers the City Manager to establish an administrative process to review petitions for a rent increase above the ceiling and creates a board to consider any appeals of the administrative review. It also explicitly adds Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU).

STAFF RECOMMENDATION

Approve the attached ordinance.

Respectfully submitted,
Dan Schwarz, City Manager

Attachments

1. Ordinance 1067

**CITY OF LARKSPUR
ORDINANCE 1067**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LARKSPUR
AMENDING THE LARKSPUR MUNICIPAL CODE TO ADD CHAPTER 6.20,
ESTABLISHING RENT STABILIZATION REGULATIONS INCLUDING
PROHIBITING RESIDENTIAL REAL PROPERTY RENTAL RATE INCREASES THAT
EXCEED FIVE PERCENT PLUS A CONSUMER PRICE INDEX OR SEVEN PERCENT,
WHICHEVER IS LOWER, IN A TWELVE-MONTH PERIOD ANNUALLY, AND
DEFINING A BASE RENT AS THE RENT IN EFFECT ON MAY 8, 2023**

WHEREAS, beginning in the summer of 2022, the City Council began to explore the concepts of rent stabilization and eviction protections. At its meeting on March 15, 2023, the City Council decided to transition from exploring these topics to specific terms and regulations. The City Council held public hearings on May 8, 2023, and May 22, 2023, at which Council discussed specific proposals to address rent increases on residential real property and displacement. Throughout the workshops and public hearings, the City Council heard testimony from tenants and property owners regarding the scope of rent increases and resident displacement, both as a result of rent increases and aspects of eviction protections in State law;

WHEREAS, the housing shortage and rising costs of living in Marin County has detrimentally impacted a substantial number of residents in Larkspur;

WHEREAS, the housing shortage, rise in cost of living expenses including rent, and displacement of residents constitutes a threat to public health, safety and welfare, and imposes a particular hardship on senior citizens, persons living on fixed incomes, and other vulnerable persons living in the City of Larkspur ("City");

WHEREAS, the average household in the City has a median annual income of \$135,260, slightly above the Marin median annual income of \$131,008, and well-above the California median annual income of \$84,087;

WHEREAS, Marin County Assessor Data shows that the median home price in the City in 2022 was \$2.4 million for a single-family home and \$805,000 for a condominium, which are prices that are extremely difficult for households at or below the median income to finance;

WHEREAS, the average monthly rents in the City range from \$2,436 for a studio apartment to \$4,721 for a three bedroom apartment, and the median gross rent in Larkspur over the five years ending in 2021 was \$2,610;

WHEREAS, U.S. Census Bureau data shows that 23.0% of renters in the City spend 30-50% of their income on housing and 26.3% of renters spend 50% or more of their income on housing and are considered "severely cost burdened";

WHEREAS, the cost burden rate in the City is sufficiently high to create anxiety about rent increases as the increasing housing rent burden and poverty faced by many residents in the City threatens the health, safety, and welfare of its residents by forcing them to choose between paying rent and providing food, clothing, and medical care for themselves and their families;

WHEREAS, the Tenant Protection Act of 2019 is a statewide law that limits annual rent increases to no more than five percent (5%) plus local Consumer Price Index, or ten percent (10%), whichever is lower, is not applicable to units that are more than fifteen (15) years old on a rolling basis, applies to single family homes and condominiums if those units are owned by a real estate trust or a corporation, and is set to sunset on January 1, 2030;

WHEREAS, the recent and ongoing spike in the inflation rate has resulted in permissible rent increases of up to 10% under the Tenant Protection Act, which caused some residents to relocate or become fearful of needing to relocate for financial reasons;

WHEREAS, this fear of displacement has been determined to be a threat to the City’s health and well-being;

WHEREAS, it is in the interest of the City, owners, residents, and the community as a whole that the City adopt rent stabilizations regulations that establish a ceiling for how much rent may increase in a given period for residential real property in order to ensure a rental rate that tenants can still afford while still allowing for the landlord to still realize a fair rate of return;

WHEREAS, pursuant to the City’s police power, as granted broadly under Article XI, section 7 of the California Constitution, the City Council has the authority to enact and enforce ordinances and regulations for the public peace, health and safety of the City and its residents; and

WHEREAS, for the preservation of the public peace, health and safety, the City Council finds that it is necessary to adopt an ordinance stabilizing rents for the reasons set forth above, which are hereby incorporated by reference.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LARKSPUR DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by reference.

Section 2. Amendment of Larkspur Municipal Code to Add Chapter 6.20. The Larkspur Municipal Code is hereby amended by adding a new Chapter 6.20 to Title 6, which shall read as follows:

6.20.010 Title.

This ordinance shall be known as the Larkspur Rent Stabilization Ordinance.

6.20.020 Purpose and Intent.

A. It is the purpose and intent of this chapter to adopt a rent stabilization ordinance for the City that ensures affordable rental rates for tenants while still allowing for landlords to realize a fair and reasonable rate of return as defined herein.

B. The City Council finds that the prohibitions herein are necessary for the preservation and protection of the public health, safety and/or welfare. These prohibitions are within the authority conferred upon the City Council by state law and are an exercise of its police powers to enact and enforce regulations for the public health, safety and/or welfare.

6.20.030 Definitions.

A. "Base Rent" shall mean the reference point from which the lawful Rent shall be determined and adjusted in accordance with this Chapter.

(1) The Base Rent for tenancies that commenced before May 8, 2023, shall be the rent in effect on May 8, 2023.

(2) The Base Rent for tenancies that commenced on or after May 8, 2023, shall be the initial rental rate charged upon initial occupancy, provided that amount is not a violation of this Chapter or any provision of state law. The term "initial rental rate" means only the amount of Rent actually paid by the Tenant for the initial term of the tenancy.

B. "Fair return petition" shall mean a petition made by an owner of residential real property for a rent increase in excess of that provided in Section 6.20.040 in order to obtain a fair and reasonable return on their property.

C. "Reasonable rate of return" shall have the meaning assigned the term by California and Federal courts in precedential published opinions regarding rent stabilization ordinances for residential tenancies. Generally, within the context of a rent stabilization ordinance, the term refers to a rate of just and reasonable return on an owner's property that is high enough to encourage and reward efficient management, discourage the flight of capital, maintain adequate services, and enable operators to maintain and support an owner's credit status, but not so high as to defeat the purpose of curtailing excessive rents and rental increases.

D. "Rent" shall mean all periodic payments and all nonmonetary consideration, including, but not limited to, the fair market value of goods and services rendered to or for the benefit of the owner under an agreement concerning the use or occupancy of residential real property, including, but not limited to, all payment and consideration demanded or paid for parking, pets, furniture and subletting.

6.20.040 Stabilization of Rent and Prohibited Increases.

A. Upon the effective date of this Chapter, no owner of residential real property shall charge Rent in an amount that exceeds the sum of the Base Rent plus any lawful Rent increases actually implemented pursuant to this Chapter.

B. Increases in rent on residential real property in the City in excess of five percent (5%) plus the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-Hayward or seven percent (7%), whichever is lower, and more than one rent increase in any 12 month period, are prohibited, unless approved pursuant to a fair return petition pursuant to this Chapter or expressly exempt under the Costa Hawkins Rental Housing Act codified in Cal. Civil Code, Section 1954.50 et seq.

6.20.050 Reasonable Rate of Return.

The adjustment of residential real property rent of up to five percent (5%) plus the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-Hayward or seven percent (7%), whichever is lower, is found and determined to provide a just and

reasonable return on an owner's property. Notwithstanding the foregoing, however, any owner of residential real property who contends that the limit on rental increases set forth in Section 6.20.040 above will prevent the owner from receiving a fair and reasonable return on their property may petition for relief from the cap set forth in Section 6.20.040 pursuant to the procedures set forth in Section 6.20.060 below.

6.20.060 Fair Return Petition for Rent Increase.

A. An owner of residential property may petition for a rent increase in excess of that provided in Section 6.20.040 in order to obtain a fair and reasonable return on their property. Such a fair return petition shall be on an application form prescribed by the City Manager and shall be decided by the City Manager, or their designee. The owner shall provide a copy of any fair return petition submitted to the City to the applicable tenant(s) and provide the City with proof of completing such service to the applicable tenant(s). The owner shall be responsible for accurately translating the return petition into the primary language(s) spoken by the applicable tenant(s). The tenant(s) will then have 30 days from the date of receiving the fair return petition to reply or provide additional materials to the City in response to the fair return petition. The owner shall bear the burden of establishing that a rate increase in excess of that provided in Section 6.20.040 is necessary to provide the owner with a fair and reasonable rate of return on their property, including by providing an independent financial report and verified financial data demonstrating that without such an increase the owner will not realize a fair and reasonable rate of return on their property.

B. The owner shall be responsible for all costs associated with the City's review of the fair return petition. Upon receipt of a fair return petition, the City Manager shall determine the anticipated costs of review and whether the employment of expert(s) will be necessary or appropriate for a proper analysis of the owner's request. If the City Manager so determines, the City Manager shall also determine the anticipated costs of employing such expert(s). The resulting figure shall be communicated to the owner, and the fair return shall not be further processed until the owner has paid to the City the estimated cost of the complete analysis. The City shall provide owner with an invoice of all costs incurred after the review of the fair return petition. Any unused portion of this advance payment for analysis shall be refunded to the owner. If additional funds are required, payment of such funds shall be required before owner receives the determination on the fair return petition from the City.

C. The factors the City Manager may consider in deciding a fair return petition may include, but not be limited to:

(1) Changes in the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-Hayward, CA Area published by the Bureau of Labor Statistics.

(2) The length of time since the last determination by the City Manager on a rent increase application, or the last rent increase if no previous rent increase application has been made.

(3) The completion of any capital improvements or rehabilitation work related to the residential real property specified in the fair return petition, and the cost thereof, including materials, labor, construction interest, permit fees, and other items the City Manager deems appropriate.

(4) Changes in property taxes or other taxes related to the subject residential real property.

(5) Changes in the rent paid by the owner for the lease of the residential real property.

(6) Changes in the utility charges for the subject residential property paid by the owner, and the extent, if any, of reimbursement from the tenants.

(7) Changes in reasonable operating and maintenance expenses.

(8) The need for repairs caused by circumstances other than ordinary wear and tear.

(9) The amount and quality of services provided by the owner to the affected tenant(s).

D. A fair return petition shall be decided by the City Manager within 60 calendar days of the date that the application has been deemed complete, including proof of service of the fair return petition on the applicable tenant(s). The decision shall be emailed and sent by mail, with proof of mailing to the subject property owner, the owner's designated representative(s) for the fair return petition, the applicable tenant(s), and the designated representative of the tenant(s), if any. The decision shall be translated into the primary language(s) spoken by the applicable tenant(s).

E. The City Council shall appoint a five-member rent review board consisting of two owners of residential property in Larkspur who actively rent property to residential tenants, two tenants of residential real property who reside in Larkspur, and one resident who is neither an owner of residential rental property nor a tenant of residential property. Members of the rent review board shall serve four-year terms and may be reappointed by the City Council.

(1) Within 30 calendars days of the City Manager's decision on a fair return petition, the applicant or the affected tenants may file an appeal of the decision with the rent review board. A hearing on an appeal shall be held within 30 days of filing. The board may continue a hearing to obtain additional information relevant to the appeal. The board shall issue a written decision on an appeal within 30 days of closing the hearing. The decision of the City Manager shall be the final decision in the event of no appeal to the rent review board.

(2) By resolution, the City Council shall enact rules and regulations governing such appeal hearings.

(3) In deciding an appeal, the rent review board shall consider the factors listed in subsection (C) above, in addition to any others stated in the City Council resolution enacting rules and regulations for appeal hearings.

(4) On appeal, the rent review board may affirm, reverse, or modify the decision of the City Manager.

6.20.070 Exemptions.

A. Pursuant to the Costa-Hawkins Rental Housing Act, the provisions of this chapter regulating the amount of rent that a residential real property owner may charge shall not apply to the following: any residential real property that has a certificate of occupancy issued after February 1, 1995 (Cal. Civil Code, Section 1954.52(a)(1)), and any other provisions of the Costa-Hawkins Rental Housing Act addressing exemptions, as applicable.

B. Pursuant to the Tenant Protection Act of 2019, Cal. Civil Code, Section 1947.12(d), the provisions of this chapter regulating the amount of rent that a residential real property owner may charge shall not apply to the following:

(1) Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low or moderate income, as defined in Cal. Health and Safety Code, Section 50093 or comparable federal statutes.

(2) Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.

(3) Residential real property that is alienable, separate from the title to any other dwelling unit, provided that both of the following apply:

(a) The owner is not any of the following:

1. A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.

2. A corporation.

3. A limited liability company in which at least one member is a corporation.

(b) At the time the tenancy is created:

1. The tenants have been provided written notice that the residential real property is exempt from this section using the following statement:

“This property is not subject to the rent limits imposed by Larkspur Municipal Code Chapter 6.20, and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.”

2. For a tenancy existing before the effective date of this chapter, the notice required under Subsection (1) above may, but is not required to, be provided in the rental agreement.

3. For a tenancy commenced or renewed on or after the effective date of this chapter, the notice required under Subsection (1) above must be provided in the rental agreement.

(4) A property containing two separate dwelling units within a single structure in which the owner occupied one of the units as the owner’s principal place of residence at the beginning of the tenancy so long as the owner continues in occupancy, and neither unit is an accessory dwelling unit or a junior accessory dwelling unit.

C. The provisions of this chapter regulating the amount of rent that a residential real property owner may charge shall not apply to the following:

(1) A unit in a hotel, motel, inn, tourist home, or rooming and boarding house which is rented primarily to transient guests for a period of less than 30 days, and other transient occupancies as defined in Cal. Civil Code, Section 1940(b).

(2) A unit in an institutional facility, including a hospital, medical care facility, residential care facility, asylum, group home for seniors or the disabled; a rental unit in a transitional housing program that assists homeless persons as defined in Cal. Civil Code, Section 1954.12; a convent or monastery owned and operated by a religious organization; and a fraternity or sorority house affiliated with a college or university.

(3) A unit that the owner or the owner’s immediate family occupied as their principal place of residence at the beginning of the tenancy so long as the owner or the owner’s immediate family continues in occupancy.

(4) A unit permitted as an Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling Unit (JADU).

6.20.080 Rent Increase Ineffective.

No rent increase shall be effective if the owner:

A. Fails to substantially comply with all provisions of this chapter, including but not limited to the failure to provide notices as required; or

B. Fails to maintain the residential real property in compliance with Cal. Civil Code, Sections 1941.1 et seq. and Cal. Health and Safety Code, Sections 17920.3 and 17920.10; or

C. Fails to make repairs ordered by the City or court of competent jurisdiction.

6.20.090 Notice Requirements.

A. An owner of any residential real property subject to this chapter shall, on or before the date of commencement of a tenancy, give the tenant a written notice in a form prescribed by the City which must include the following information:

(1) The existence and scope of this Chapter 6.20 of the City Code; and

(2) The tenant’s right to respond to any fair return petition filed with the City by the owner pursuant to Section 6.20.060.

B. As part of any notice to increase rent, an owner must include:

(1) Notice of the existence of this Chapter 6.20 of the City Code; and

(2) The tenant's right to respond to any fair return petition filed with the City by the owner and right to appeal a City Manager decision on a reasonable fair return petition pursuant to Section 6.20.060.

(3) No rent increase shall take effect until the requirements of this chapter have been met.

C. When the owner and tenant have entered into a written lease, the owner must give notices to the tenant in the language used in the lease. When the owner and tenant have not entered into a written lease, the owner must give notices to the tenant in the language that the owner and tenant used to negotiate the terms of the tenancy. Notwithstanding the foregoing, the owner must give notices to the tenant in the primary language spoken by the tenant, if known to the owner.

6.20.100 Violations.

A. It shall be unlawful and a public nuisance for any person to violate or fail to comply with any provision of this chapter. The City may enforce and seek compliance with the provisions of this chapter using the criminal, civil, and administrative remedies set forth in Chapter 9.24 of this Code in addition to any other legal remedy available to the City. Any violation of any provision of this chapter may be subject to the criminal, civil, and administrative penalties set forth in Chapter 9.24 of this Code.

B. Any owner who intentionally demands, accepts or retains any payment in violation of the provisions of this chapter shall be liable in a civil action to the tenant from whom such payment is demanded, accepted or retained for damages in the sum of three times the amount by which the payment demanded, accepted or retained exceeds the maximum amount which could be lawfully demanded, accepted or retained together with reasonable attorneys' fees and costs as determined by the court.

6.20.110 Fees Established.

Owners subject to this chapter shall pay a rent stabilization program fee annually as established by City Council resolution. The rent stabilization program fee is to fund the City's cost to implement and enforce the provisions of this Chapter.

Section 3. Compliance with the California Environmental Quality Act. The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). The rent stabilization regulations imposed by the adoption of this Ordinance are to prohibit increases in excess of a certain amount of rent on an annual basis; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the regulations are not a project within the meaning of CEQA because it creates a regulatory mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

Section 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 5. Effective Date and Publication. This Ordinance shall become effective thirty (30) days after it is adopted and shall be posted or published as required by State law.

IT IS HEREBY CERTIFIED that the foregoing ordinance was duly introduced at a regular meeting of the Larkspur City Council held on September 6, 2023 and thereafter passed and adopted by the Larkspur City Council.

AYES: COUNCILMEMBER:

NOES: COUNCILMEMBER:

ABSENT: COUNCILMEMBER:

ABSTAIN: COUNCILMEMBER

Gabe Paulson, Mayor

ATTEST:

Shannon O'Hare, Interim City Clerk