



SPECIAL TOWN COUNCIL MEETING STAFF REPORT

MEETING DATE	February 29, 2024
PREPARED FOR	Mayor and Town Council
PREPARED BY	Jeffrey Beiswenger, Planning and Building Services Director, and Janet Coleson, Town Attorney
SUBJECT	Discuss partial implementation for rent stabilization program; consider adoption of a resolution to start partial implementation of the rent stabilization program; and consider introduction of an ordinance to amend Chapter 5.55 (Rent Stabilization Program) of the Town Code.
CEQA STATUS	This Resolution and Ordinance are exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines.

RECOMMENDATION

Staff recommends that the Town Council:

1. Discuss partial implementation for rent stabilization program, including simple introductory registration system and telephone information line.
2. Consider adoption of a resolution to start partial implementation of the rent stabilization program.
3. Consider reading by title only and introducing an ordinance amendment to Chapter 5.55 (Rent Stabilization Program) of the Town Code to provide for an interim \$1000 petition fee to cover the cost of providing a hearing conducted by a hearing examiner.

These actions would allow for partial implementation of the rent stabilization ordinance, until full implementation is approved by the Council at a later date.

BACKGROUND

The Council has adopted three ordinances related to just cause eviction and rent stabilization:

1. [Ordinance No. 870](#) (Adopted November 2, 2022). Added Title 5, Chapter 5.54 (Just Cause Evictions) of the Town Code. The stated purpose of this chapter is to promote neighborhood and community stability, healthy housing, and affordability for renters in Fairfax by regulating arbitrary evictions to the greatest extent allowable under California, while ensuring landlords a fair and reasonable return on their investment.
2. [Ordinance No. 871](#) (Adopted November 2, 2022). Replaced Title 5, Chapter 5.55 (Mandatory Mediation for Rental Increases) of the Town Code with Chapter 5.55 (Rent Stabilization Program). The stated purpose of this chapter is to increase certainty and fairness in the residential rental market within the Town. This chapter only governs disputes between landlords and tenants of certain rental dwelling units, as defined in the ordinance (primarily multifamily units constructed prior to 1995).

3. [Ordinance No. 882](#) (Adopted September 6, 2023). Amended both Chapter 5.54 (Just Cause Evictions) and Chapter 5.55 (Rent Stabilization Program). The amendments to Chapter 5.55 (Ordinance 871) included changing the Annual General Adjustment (AGA) factor from 60% of the percentage increase in the Consumer Price Index (CPI) to 75% of CPI. The AGA sets the cap on the annual rent increases allowed without a petition.

The above ordinances are in effect but have not yet been fully implemented. What this means is that tenants and housing providers currently have a *private right of action* to seek resolution in county court based on these ordinances. Housing providers who wish to raise their rents above the maximum allowable increase set by the Annual General Adjustment procedure and tenants who object to such increase, likely will need to use the judicial system to resolve the issue.

Since utilizing the county court system could be cost prohibitive, the Town could provide the less expensive option of a hearing examiner. For the Town to have a more active role in the implementation of the ordinances, such as providing a hearing examiner, a Town Council resolution authorizing partial implementation is needed. For Council consideration, staff has prepared an ordinance amendment and a resolution to initiate partial implementation of the rent stabilization program.

Description of the Current Rent Stabilization Program

The functioning of the program is codified in Chapter 5.55 of the Town Code. It should be noted that the code does not apply to all rentals in Fairfax and many housing and residency types are exempt. For example, the ordinance does not apply to single family homes, condominiums or dwelling units built after 1995. More information on applicability of the ordinance can be found on the web site at: <https://www.townoffairfax.org/applicability-charts/>

For housing that is subject to rent stabilization, the following provision are included in the Town Code:

1. Annual general adjustment (AGA) process. The rent may be increased starting on September 1 of each year, but the rental increase allowance is limited. For September 1, 2024, the maximum amount of increase is established at 75% of the annual consumer price index (CPI) increase.
2. Petitions. Both tenants and landlord may submit petitions. A tenant may submit a petition to contest a rent increase and a landlord may submit a petition to request a rent increase beyond the AGA. The ordinance establishes a hearing process which includes an application process, a hearing with a hearing examiner and an appeal to the Town Council.
3. Landlords' right of reasonable return. The ordinance establishes factors for the hearing examiner to consider when establishing a reasonable return on investment.

To help fund the rent stabilization program, the Town code allows for the collection of a rental housing fee, which is to be collected annually along with the business license that is required for rental units. This fee has not been established and would be necessary prior to initiating full implementation of the rent stabilization program. The fee would help defray some of the cost of the rent stabilization program. Without fees, the Town's general fund would need to absorb the expense of the rent stabilization program.

The Town does have some existing staffing resources that could be used to partially implement the program. The Town is in the process of recruiting a housing specialist. Some of this employee's time

could be allotted to partial implementation of the rent stabilization program. This position is included in the adopted FY 23/24 Town Budget.

DISCUSSION

Under the current rent stabilization ordinance, a private right of action is available to both tenants and landlords to address rent issue. Recognizing that the court system may be more expensive than using a local hearing officer, Town staff is recommending a partial implementation program that would activate a hearing examiner, prior to the establishment of a registration system, thus reducing costs for housing providers. This implementation strategy would require adoption of minor updates to the rent stabilization ordinance and adoption of a resolution setting a date for partial implementation of the rent stabilization program. This recommended program (Option A) would include the following low-cost components:

- Inhouse Public Outreach. This option would use approximately one-quarter to one-half of the Housing Specialist time to answer questions from tenants and housing-providers, produce articles for the Town Newsletter and Website, assist with scheduling hearings and appeals to Council. A Housing Specialist is anticipated to begin work by early April. Town Attorney and Planning Director will help train the Housing Specialist to answer questions regarding the Town's ordinances. No additional cost is anticipated for this portion of implementation in Option A because the Housing Specialist was previously budgeted in the FY 23/24 Town Budget.
- Limited registration. Use of a paper-based system, a simple form to register housing providers and their rental units could be used. This would only register residential units that were the subject of a petition. Paper forms would be kept secure at Town Hall and would not facilitate analysis of the rental market in Fairfax, nor help expedite implementation of other parts of the rent stabilization program. No registration fee would be charged, so any costs would be General Fund expenses.
- Petition process. An attorney with experience providing rental hearings has been identified, whose per hour fee is \$225, and who estimates the entire hearing process would take three to four hours, including documents needed to finalize the hearing. The Town could limit the hearing cost to the housing provider to no more than \$1,000 per hearing, for those few cases that come to the hearing stage and would collect the funds from the landlord prior. In addition to the costs of the hearing examiner, staff time will be needed to communicate documents to the hearing examiner and schedule the hearing. Minor costs for copying and meeting room accommodation would be incurred.
- Complaint based system. The rent stabilization program would be operated on a complaint-based system only, as is typical of other Fairfax programs. Information on paper forms would be assumed to be correct, unless there was a complaint. Minimal time would be spent on records maintenance.
- Appeal process. The hearing examiner decision would be final, unless appealed. In the case of an appeal, the Town Council would review the submitted documentation and make a final decision at a noticed public meeting. Limited staff time would be needed to redact and scan documents, and prepare a staff report, for Council review. Minimal copying and printing costs would be incurred along with costs for any legal advice needed by the Council provided by the Town Attorney.

- Cost Recovery. Without a registration fee, proactive collection method, and monitoring system, most of the costs of this option would be covered by the Town's General Fund. However, the costs would likely be low, due to the paper-based system, and most of the labor cost could be accommodated with existing Town Staff (such as the previously approved 1 FTE planner position added in the 2023/24 FY budget). The recommended \$1,000 for hearings may be sufficient to cover simple petitions, but hearings could exceed this amount if more complex and the Town would need to cover the additional cost.

Staff recommends Option A as a short-term solution. The paper-based approach will become cumbersome and unmanageable over time, and a switch to an electronic registration and management system is recommended for implementation starting in January of 2025, unless Ordinance 871 is replaced by voters in November of 2024.

Staff has developed two other options for consideration by the Town Council: Option B (Additional Staff) and Option C (Technology Based). The Council may choose to implement all or parts of these options now or at some point in the future as the rent stabilization program evolves over time. Here is the primary difference between each:

- A. Low-cost Partial Implementation. As described above in detail, this is considered a short-term, pilot approach to stand-up a rent stabilization program at a low cost. This would be paper based system and rely on existing staff to implement. No registration fees would be collected, and a \$1,000 deposit would be collected if a petition was filed. While it is possible that \$1,000 would cover the work of the hearing examiner, it may not cover the cost of a more complex petition, nor cover all of the administrative costs that may arise to support the hearing examiner. Staff recommends anticipating a \$5,000 impact on the General Fund to account for the expense of more complex petitions above the \$1,000 threshold, as well as administrative tasks that support the hearing examiner. Staff would also be required to complete other tasks as directed in the ordinance, such as establishing the annual general adjustment (AGA) to rental rates and operating a warm-line for questions.

Primary Advantages: No cost for most housing providers. Low cost for housing providers desiring a hearing to increase rents more than the allowed amount. Quick start-up. Provides low-cost implementation experience before the November vote.

Primary Disadvantages: Low compliance rate. No registration system. Cumbersome paper-based system.

- B. Additional Staff. This option anticipates the hiring of one additional staff person to implement the program (1 FTE), in addition to the existing housing specialist. This option would also include a basic Customer Relationship Management (CRM) system to help with public outreach and registration. It is expected that this option would be more labor intensive than Option A or Option C. Since one staff person would be assigned to exclusively implement the program the registration / compliance rate would be much higher than Option A and comparable to Option C.

Primary Advantages: Provide more rental data collection and analysis than Option A. Dedicated staff to provide service.

Primary Disadvantages: Labor intensive. Limited CRM system or limited use of County system, which is not designed for rent stabilization.

- C. Technology Based. This option would rely on a registration system that is designed specifically for rent stabilization programs. This option would use technology to create web-based tools and interfaces with the public, tenants and landlords seeking to register. Labor from new Town staff would be used to manage the systems and interface with consultants.

Primary Advantages: Robust data collection in a user-friendly format. Robust service.

Primary Disadvantages: Higher technology expense. Reliance on outside consultants.

Table: Comparison of Program Options

Implementation of Rent Control Program

Task	A - Low-Cost Partial Implementation (Recommended)	B – Additional Staff	C – Technology Based*
Public Outreach	Warm line answered by Town Staff. Web site updated as needed.	Warm line answered by Town Staff. Web site updated as needed.	Warm line staffed by consultant
<i>Town Cost</i>	0.25 existing FTE	1.0 new FTE	\$25,000
Registration	Registration required by landlord to file a petition for a rent increase.	Staff would send letter to landlords requesting registration and directing them to the CRM system	Consultant would send letter to landlords requesting registration and directing them to the on-line system
<i>Town Cost</i>	Part of petition process	See below	See below
Proactive on-line registration system	Staff recommends the start of proactive registration in January of 2025. This could involve the utilization of a simple web based platform for registration of apartment units	This option envisions an inexpensive CRM system. More labor would be involved to set up and operate	This option envisions a more robust system that is designed for rent stabilization programs and enforcement. Less Town labor would be required.
<i>Town Cost</i>	(\$10,000 (3 rd quarter)) not included in total below	\$10,000	\$25,000 set-up / \$24,000 annual
Petition Process	Staff recommends a \$1,000 fee paid by the landlord (for either a tenant or landlord petition)	Staff recommends a \$1,000 fee paid by the landlord (for either a tenant or landlord petition)	Staff recommends a \$1,000 fee paid by the landlord (for either a tenant or landlord petition)
<i>Town Cost</i>	\$1,000 - \$5,000 (this represents the amount expected in excess of the \$1,000 fee, and it depends on the number and complexity of petitions)	\$0 (petition fee and registration fees would likely cover Town expense)	\$0 (petition fee and registration fees would likely cover Town expense)
Estimated Additional Annual Cost (Town Expenses)	\$5,000** + labor costs of existing staff	\$155,000** (\$135,000 for new FTE and \$20,000 for basic CRM and registration system)	\$209,000** (\$135,000 for new staff (1 FTE) or consultant equivalent, plus \$74,000 for customized web based technology)
Notes:	<p>* Based on the summary in the FY 23/24 Town Budget on page 27. **Note that the registration fee could be calibrated to cover all or part of the expense of the rent stabilization program</p>		

Resolution:

A Resolution is included for Council consideration to set a date for partial implementation on April 5, 2024. This partial implementation includes an interim petition fee for rent increase adjustments above the allowed amount, a simple introductory registration system and an informational telephone line. The informational telephone line is expected to require approximately one quarter of the time of the Housing Specialist.

Ordinance:

The ordinance amendment is included for consideration of first reading. The minor amendment provides for an interim petition fee of \$1000 to be paid by landlords if they need to request a rent increase above the allowed amount or if the tenant desires to object to the rent increase. Should the actual cost of the hearing be less than \$1000 fee amount, the difference shall be refunded to the landlord.

FISCAL IMPACT

Staff is proposing Option A to limit the initial fiscal impact on the Town, landlords and tenants. Some General Fund expenses are expected to cover the costs of hearings beyond the \$1,000 deposit and to cover the staff costs to administer the program.

ATTACHMENT

- A. Resolution of the Town Council of the Town of Fairfax establishing a date of April 5, 2024, for a partial implementation of rent stabilization provisions including an interim petition fee for rent increase adjustments above the allowed amount. A simple introductory registration system and an informational telephone line pursuant to Chapter 5.55 (Rent Stabilization Program) of the Town Code.
- B. Ordinance of the Town Council of the Town of Fairfax amending Chapter 5.55 “Rent Stabilization Program” of Title 5 of the Fairfax Municipal Code.

RESOLUTION NO. 24-

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ESTABLISHING AN IMPLEMENTATION DATE OF APRIL 5, 2024, FOR A PARTIAL
IMPLEMENTATION OF RENT STABILIZATION PROVISIONS INCLUDING AN INTERIM PETITION
FEE FOR RENT INCREASE ADJUSTMENTS ABOVE THE ALLOWED AMOUNT, A SIMPLY
INTRODUCTORY REGISTRATION SYSTEM AND AN INFORMATIONAL TELEPHONE LINE
PURSUANT TO CHAPTER 5.55 (RENT STABILIZATION PROGRAM) OF THE TOWN CODE**

WHEREAS, on November 2, 2022, the Fairfax Town Council adopted Ordinance No. 871 establishing a rent stabilization program codified at Chapter 5.55 of the Town Code, to set maximum annual rent increases and a procedure for individual rent adjustments by landlords and tenants through a petition process; and

WHEREAS, though effective as of December 2, 2022, the uncodified Section 5 of Ordinance No. 871 provides that the program will not be implemented until such time as the Council approves agreements to support the implementation petition and hearing process; and

WHEREAS, on September 6, 2023, the Town Council adopted Ordinance No. 882 amending the rent stabilization program to, among other provisions, increase the annual maximum rent increase from 60% to 75% of the Consumer Price Index (CPI); and

WHEREAS, under the rent stabilization program, landlords are required to pay a Rental Housing Fee to fund enforcement of the program, which fee will be set by Council resolution; and

WHEREAS, no fee study has yet been completed to establish the Rental Housing Fee and the Town Council is not yet in a position to approve all agreements necessary for full implementation of the program; and

WHEREAS, Town staff, based on quotes from a hearing examiner, has estimated that the maximum reasonable costs of a hearing on a rent increase petition is \$1000.00, and that such cost is significantly lower than a landlord's attorney costs to defend a rent increase in a civil action; and

WHEREAS, the Town Council finds that rental units described in rent increase petitions may be added to a simple introductory registration system; and

WHEREAS, the Town Council finds that an informational telephone line would provide a means for residents to receive answers to their questions about the rent stabilization program.

NOW THEREFORE, the Town Council of the Town of Fairfax hereby resolves as follows,

SECTION 1. Recitals. The recitals above are each incorporated by reference and adopted as findings of the Town Council.

SECTION 2. Partial Implementation Date. Effective April 5, 2024, the Town Council hereby implements an interim petition fee for rent increase adjustments, a simple introductory registration system and an informational telephone line using approximately one quarter of the Housing Specialist's time.

SECTION 3. Fee. A fee of \$1000 is established by ordinance for petitions for a hearing on rent increase adjustments filed pursuant to Chapter 5.55 of the Town Code.

SECTION 4. Compliance with CEQA. The Town Council finds that adoption of this Resolution is exempt from the California Environmental Quality Act (“CEQA”) pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of the Resolution may have a significant effect on the environment, in that this Resolution partially implements a program to existing residential units in the Town of Fairfax, which is solely an administrative process resulting in no physical changes to the environment.

The foregoing Resolution was duly passed and adopted at a Special Meeting of the Town Council of the Town of Fairfax held in said Town on the 29th day of February 2024, by the following vote:

AYES:

NOES:

ABSENT:

Barbara Coler, Mayor

Attest:

Christine Foster, Deputy Town Clerk

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING CHAPTER 5.55 “RENT STABILIZATION PROGRAM” OF TITLE 5 OF THE
FAIRFAX MUNICIPAL CODE**

The Town Council of the Town of Fairfax finds and declares that:

WHEREAS, on November 2, 2022, the Town Council adopted Ordinance No. 871 establishing a rent stabilization program codified at Chapter 5.55 of the Town Municipal Code, to set maximum annual rent increases and a procedure for individual rent adjustments by landlords and tenants through a petition process; and

WHEREAS, though effective as of December 2, 2022, the uncodified Section 5 of Ordinance No. 871 provides that the program will not be implemented until such time as the Council approves agreements to support the implementation of the petition and hearing process; and

WHEREAS, on September 6, 2023, the Town Council adopted Ordinance No. 882 amending the rent stabilization program to, among other provisions, increase the annual maximum rent increase from 60% to 75% of the Consumer Price Index (CPI); and

WHEREAS, under the rent stabilization program, landlords are required to pay a Rental Housing Fee to fund enforcement of the program, which fee will be set by Council resolution; and

WHEREAS, no fee study has yet been completed to establish the Rental Housing Fee and the Town Council is not yet in a position to approve all agreements necessary for full implementation of the program; and

WHEREAS, Town staff, based on quotes from a hearing examiner, has estimated that the maximum reasonable costs of a hearing on a rent increase petition is \$1000.00, and that such cost is significantly lower than a landlord’s attorney costs to defend a rent increase in a civil action; and

WHEREAS, the Town Council now desires to amend Chapter 5.55 to add a petition fee of \$1000 to be paid by landlords for rent increase adjustments until such time of the Rental Housing Fee is implemented.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The recitals above are each incorporated by reference and adopted as findings of the Town Council.

SECTION 2. Amendment. Subsections (D) of Chapter 5.55.070 is hereby amended in its entirety to read as follows (where underlined text denotes additions):

“(D) Collection of Rental Housing Fee. All Landlords shall pay the business license fee required by the Town Code section 5.16.010, if applicable, in addition to the Rental Housing Fee. The Town may charge the Rental Housing Fee at the same time as the business license fee. The Rental Housing Fee will be set by resolution of the Town

Council. Enforcement of this Chapter shall be funded by the Rental Housing Fee. **Notwithstanding the foregoing, Landlords shall pay a fee of \$1000 to petition for a rent increase adjustment pursuant to section 5.55.080 (D) or if such petition is filed by a tenant. Landlords shall pay this fee until such time as the Rental Housing Fee is set. Should the actual costs on the hearing be less than \$1000, Landlords shall be refunded the difference between \$1000 and actual costs.**

SECTION 3. Compliance with CEQA. The Town Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of the Ordinance may have a significant effect on the environment, in that this ordinance applies residential tenant protection to existing residential units in the Town of Fairfax, which is solely an administrative process resulting in no physical changes to the environment.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The Town Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Effective Date and Posting. This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women’s Club.

The foregoing Ordinance was introduced at a special meeting of the Town Council on the 29th of February 2024, and duly adopted at the next regular meeting of the Town Council on the 6th day of March 2024, by the following vote, to wit:

AYES:
NOES:
ABSENT:

Barbara Coler, Mayor

Attest:

Christine Foster, Deputy Town Clerk