

## **What Should Be Done To Slow Florida's Skyrocketing Rent Prices?**

Over the last two years, Floridian renters experienced a seismic shift from a relatively affordable cost of living to staggeringly high rents. Statewide, there was a 29% increase in rent over 2021, with the most pronounced rent inflation hitting Florida's major cities. Tallahassee fared among the best, experiencing only a 25% hike, whereas cities like Jacksonville, Orlando, and St. Petersburg experienced over a 30% hike. Tampa and Sarasota experienced an approximate 40% increase over the last year. Topping the list are the metro areas of South Florida, where rents have skyrocketed over 50% in one year.

Approximately one-third of Floridians are renters, with renters accounting for over half of the residents of some cities like Tampa and Hialeah. Renters generally tend to be younger and have lower income, so these trends could spell disaster for many already struggling to make ends meet. Moreover, wages in Florida have failed to follow at such a rapid pace. Last year wages rose by 8.7% state-wide, which after considering general inflation of 8.5%, is more so stagnancy than progress. Thus, even a prudent renter in 2020, spending less than a third of their income on rent, is likely well beyond the "cost-burdened" threshold. For many individuals, this rapid increase in rent has gone further than an inconvenience and instead priced them out of their own cities and homes. Those who can afford to stay worry how much higher rent will get next time around. Although rent control seems like it might be an easy fix, rent control could have unintended consequences. Renters face a big problem now and in the near future, and the solution lies in each local government's land development regulations.

While everyone can agree that there is an affordable housing problem, there is little consensus on what needs to be done to slow the rising rents. While tenants demand rent control protections, developers and landlords often suggest density bonuses and inclusionary zoning measures. This article explains the history of rent control nationwide and why less restrictive zoning laws and benefits such as density bonuses at the local level are the answer to keeping rental costs low.

### **I. History of Rent Control.**

The first instance of rent control in America concerned rents for grain storage facilities following the Civil War. However, the first wave of "true" rent control for housing came in the wake of World War I and the Spanish Influenza Pandemic. At that time, D.C. and New York enacted measures to prevent the rapid inflation in rent. The Supreme Court considered multiple challenges to such measures. While the Court noted that rent control in perpetuity would be a constitutionally problematic hinderance to property rights, a time limitation in response to an emergency made such measures permissible. However, just two years later the Court confronted an attempt to extend these measures beyond that initial emergency and held that in the absence of some emergency creating a compelling interest, these measures could not stand.

Nearly 65 years later, rent control came before the Court again in *Pennell v. City of San Jose*, 485 U.S. 1, 4 (1988). Here the important question before the Court was whether rent control violated the Takings Clause. The Court ruled that this rent control could not violate the Takings Clause because rent had never been reduced, but simply prevented from rapidly increasing. In addition, the Court noted that the government has the authority to intervene in the economy to address matters of supply and demand discrepancies. With such clarity from the Supreme Court, jurisdictions across the United States have successfully implemented rent control measures for a century.

In Florida, the history of rent control began in the 1970's as soaring rent in the Miami metropolitan area led the City of Miami Beach to enact its first rent control ordinance. In 1972, the City's first ordinance was challenged on the basis of an improper delegation of legislative power to municipalities. In *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801 (Fla. 1972), the Florida Supreme Court held that the City had constitutionally valid home rule authority. However, the Court found that the ordinance itself was invalid because it was arbitrary and confiscatory. The City went back to the drawing board with the clarification that any rent control measure would have to be tailored to meet the demands of a properly identified finding. The City studied conditions surrounding housing shortages and made an explicit finding that rent control was necessary to fight an existing housing affordability crisis.

However, the victory for rent control activists was short lived. Despite the half-decade long crusade to reel in rent inflation, tides changed in Miami Beach as late Mayor Harold Rosen entered the political sphere. As a candidate and Mayor, he lambasted rent control as a force driving development out of the city and leading landlords to neglect the condition of their properties. Thus, Mayor Rosen ended the era of rent control in Miami Beach in 1976.

In 1977, the Florida Legislature enacted Florida Statutes § 125.0103 and § 166.043. Under these statutes, the local government must find that a housing emergency exists that is "so grave as to constitute a serious menace to the general public" making a rent control measure necessary and proper to eliminate the emergency. If such a finding is properly made and a housing emergency is declared, the local government may enact a rent control ordinance that will expire within one year only if the citizens of the jurisdiction vote in favor of the measure. The law also prohibits rent control for vacation and tourism housing. Lastly, the law explicitly prohibits the imposition of rent control on "luxury" apartments, which are defined as those for which rent is \$250 or more as of January 1, 1977. This luxury apartment carve out was challenged and upheld by the Florida Supreme Court in *City of Miami Beach v. Frankel*, 363 So. 2d 555, 559 (Fla. 1978).

## **II. Local Governments Considering Rent Control Measures.**

At the State level, momentum is gathering to prevent rent control as a hindrance to business profits. Senate Bill 620 and its House companion, HB 6017, propose a cause of action for "lawful businesses" who suffer a reduction of at least 15% in profits due to local ordinance, allowing developers and property management to recover damages from individual counties and

municipalities. This proposal could exact a significant cost on jurisdictions that successfully take a hardline approach to rent control. On the other hand, Florida Senator Torres and Representative Eskamani led an effort to expand the rent control powers of local governments, though these proposals died in committee this past March.

The majority of proposals, however, are manifesting at the local level. Orange County Commissioner Bonilla proposed a declaration of a housing emergency in 2020, but only received one vote from her colleagues. At the time, Mayor Demings noted that the proposal was moving too quickly. With the rent spiraling since then, it's unclear if the proposal will be revisited. In St. Petersburg, a group of activists dubbed the "People's Council" successfully petitioned the City Council to vote in favor of exploring rent control options in December of 2021. The City appears to have tabled that consideration, but residents continue to push for rent control.

While Orange County and St. Petersburg officials were first to propose rent control, Miami-Dade County now leads the charge. In March, Miami-Dade County decided to explore rent control just as St. Petersburg did. On March 17<sup>th</sup>, Mayor Levine Cava signed an ordinance requiring landlords to give a minimum 60-day notice for any increase in rent greater than 5%. A similar notice requirement was proposed by the People's Council of St. Petersburg. While Miami-Dade County has yet to enact a true limitation on rental increases, the notice requirement is a significant win for county residents who on average experienced over 50% hikes over the past year. A notice requirement is unlikely to halt rents from spiking further, but now renters have more time to carefully consider their next move when faced with sticker shock on next year's rent.

### **III. Rent Control May Have Unintended Consequences.**

Even though a properly promulgated rent control may be possible, there is also a public policy concern in the impact any rent control would have on housing quality, scarcity, and non-qualifying properties. First, there is ample anecdotal evidence from Miami Beach, San Francisco, and Cambridge to suggest that landlords tend to neglect the condition of properties that are rent controlled. Second, many fear that developers will be discouraged from building more rental housing, leading to relatively stagnant supply as the demand continues to grow. This includes a probable decrease in developers' willingness to build what qualifies as affordable housing, which will negatively affect low-income individuals. Lastly, there is substantial evidence from nearly all jurisdictions that the entire cost of rent control is offset by a then-increase in rent for properties not covered by the applicable ordinance. So, if most renters do not qualify under the luxury apartment exemption, then most renters may in fact bear the cost burden of any measure. Thus, if rent control is implemented, renters will not actually get what they want and need: affordable, livable properties. Instead, there will be even more instability as there will be fewer properties to choose from, worsening conditions, and a likely increase in price of a majority of rental properties.

Instead, Local governments should implement development-friendly zoning laws to increase density in highly populated areas. Restrictive land development codes are the true barrier to rent control and rental equality, as restrictions increase developer cost and discourage growth.<sup>1</sup> Advocating for changes to zoning laws should begin as soon as possible. In St. Petersburg, over 150 City residents attended City Council meetings in 2021-22 to support rent control measures, and over 600 people signed the People's Council petition demanding rent control. With that type of momentum, it would be wise for developers and landlords to propose their own solutions to local governments.

Implementing rent control would be similar to wrapping a bandage on a broken bone—a temporary fix that will eventually cause a more destructive problem. What developers and landlords should be proposing to local governments are less restrictive zoning codes that will quickly increase the housing supply to keep up with the increase in population growth. For example, density allowances should be maximized either within their land use plan or increased.<sup>2</sup> A maximization of density allowances would give developers the freedom to build higher in clustered areas—where housing is needed. Local governments could offer or increase density bonuses to developers with inclusionary zoning requirements per § 420.615, F.S., to encourage affordable housing development.<sup>3</sup> Local governments can also lower permitting fees and reduce conditional approval processes, which would increase production and reduce costs.<sup>4</sup>

Across the state, renters are facing an uphill battle to secure affordable housing in these inflationary times. Public pressure on local governments is likely to continue, and many jurisdictions may be considering rent control ordinances over the next year. Stearns Weaver Miller has extensive experience in advocating for developers before local and state authorities. [Contact us](#) for more information.

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<sup>1</sup> C. Plerhoples Stacy, E. Noble, T. Hodge, T. Komarek, J. Morales-Burnett, *Rent Control*, URBAN INSTITUTE (July 2021).

<sup>2</sup> P. Dazeley & O. LaFave, *Guest Column: Rent Control Sounds Good in Theory, but Long-Term Impact Leads to Higher Rents and Wider Disparities*, TAMPA BAY BUSINESS JOURNAL, (Jan. 7, 2022).

<sup>3</sup> P. Dazeley & O. LaFave, *Guest Column: Rent Control Sounds Good in Theory, but Long-Term Impact Leads to Higher Rents and Wider Disparities*, TAMPA BAY BUSINESS JOURNAL, (Jan. 7, 2022).

<sup>4</sup> C. Plerhoples Stacy, E. Noble, T. Hodge, T. Komarek, J. Morales-Burnett, *Rent Control*, URBAN INSTITUTE (July 2021).