

The Proposed Orange County Rent Stabilization Ordinance

A step towards solving affordable housing, or a misstep
into wasting limited resources?

§125.0103(5), F.S.

(With emphasis added)

(5) **No** municipality, **county**, or other local government entity **shall adopt** or maintain in effect **any law, ordinance, rule, or other measure which would have the effect of imposing controls on rents unless:**

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(b) **Such governing body makes and recites in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.**

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The Burden of Proof

Ordinarily, a local government's legislative findings are presumed correct. If someone wants to challenge an adopted ordinance he, she or they bear the significant burden of coming forth with evidence of such quality, and such quantity, that it not only overcomes such presumption but also persuades the court that the purported legislative findings do not factually, logically or legally support the government's exercise of its police power.

When it comes to rent control ordinances, however, §125.0103(6), F.S., “flips the script” by:

- (i) removing the customary presumption of correctness related to legislative findings;
- (ii) lifting the heavy burden of proof off of the challenger's shoulders; and,
- (iii) placing that **burden squarely upon** the shoulders of **the local government**.

Iipse Dixit

Iipse dixit is a Latin phrase that basically means, “because I said so.”

The presumption of validity County ordinances usually enjoy is the legal version of ipse dixit – courts don’t have to check supporting facts or authority, it’s enough that the County said so.”

§125.0103(6), F.S., however, is the anti-ipse dixit.

When the judge asks why she should find, as a matter of law, that there is a housing emergency in Orange County that is “so grave as to constitute **a serious menace to the general public**” and why this ordinance “is **necessary and proper to eliminate such grave housing emergency,**” there will be no ipse dixit.

You will have to **prove** both of these things, **with facts**, and the proof you offer will be **subject to cross-examination**.

Here are just a few of the questions the County will likely have to answer.

Legislative finding:

There is a shortage, scarcity, and insufficient supply of dwelling houses and apartments in Orange County, Florida. Relative to population, national production of housing units has declined from approximately 0.82 homes per person in the 1970s to approximately 0.45 homes per person in 2019. In Orange County, there is a shortage of as many as 26,500 housing units relative to the County's need; and

A few potential questions:

How large was the average home in the 1970s and how large was the average home in 2019?

If the average home in 2019 was larger than the average home in the 1970s, isn't it logical more persons would fit in a 2019 home, thereby requiring less homes per person?

So, isn't that a possible explanation for the smaller percentage of homes per person in 2019?

Your finding states there is a shortage of "as many as" 26,500 units. Does that mean it could be less than 26,500? Could it be 20,000? 15,000? 10,000? 5,000?

Statistics, without context, are meaningless.

Legislative finding:

According to the 2020 census, Orange County has seen an approximate 25% increase in population since 2010 – from approximately 1.15 million people to approximately 1.43 million people; and

A few potential questions:

How many housing units that existed in Orange County in 2010 no longer existed in 2020?

How many housing units that did not exist in Orange County in 2010 were in existence in 2020?

Assuming that there was a net increase in units, how many people could legally be housed in existing housing units in Orange County in 2020?

So, what was the actual housing deficiency in Orange County in 2020?

The funny thing about statistics.

Legislative finding:

The shortage of housing is further evidenced by the low vacancy rate for rental properties in Orange County which reached 5.2% in 2021 - the lowest on record since at least the year 2000;

A few potential questions:

If there is a shortage of “as many as 26,500 units,” why is one in every 20 existing units still available?

How do you know the higher vacancy rate in previous years was not actually evidence of a housing surplus?

What types of units were included in the 5.2% and what type of units were excluded?

**“There are three kind of lies:
Lies, Damned Lies and Statistics.”
- Mark Twain**

Legislative finding:

Tenancies are being terminated and eviction rates are increasing. For the first half of 2022, there have been 6,970 eviction case filings, which is a 70.1% increase over the same period in 2021; and

A few potential questions:

There was a federal moratorium placed on evictions during the pandemic which didn't end until August 28, 2021, correct?

How did that affect eviction filings in the first half of 2021?

How did that affect eviction filings in the first half of 2022?

What percentage of the 230,000 rental units in Orange County does 6,970 evictions represent?

Is it the county's position that a 3% eviction rate has created “a housing emergency so grave as to constitute a serious menace to the general public”?

Are all 6,970 of those eviction actions based on failure to pay rent or are some for non-monetary defaults?

Conclusory statements and non-attributed estimates unsupported by empirical data and analysis is not competent evidence.

Legislative finding:

The housing conditions have resulted in widespread distress among Orange County residents. It is estimated that 80.3% of households earning at or below the Average Median Income (AMI) in Orange County are considered “cost burdened” which the U.S. Department of Housing and Urban Development defines to include households who pay more than thirty-percent (30%) of their income for housing and may have difficulty affording necessities such as food, clothing, transportation, and medical care; and

A few potential questions:

What empirical evidence does the county have supporting its finding that “housing conditions have resulted in widespread distress among Orange County residents?” Did the county take a county-wide survey?

Are there physical manifestations of this distress which makes it objectively observable?

What is the source of the 80.3% estimate regarding “cost-burdened” households and was empirical data gathered to support such estimate?

Assuming the estimate was derived from representative data, what was the margin of error?

Has county staff seen any conflicting estimates? Has it looked?

Do all households paying more than 30% of their income for housing have difficulty affording other necessities?

Legal conclusions must be built on meticulously constructed logical foundations. You can't assume underlying facts. You have to prove them.

Legislative finding:

The widespread distress in housing conditions is further evidenced as Orange County residents were awarded more funds from the State of Florida's Emergency Rental Assistance Program 1 ("Emergency Program") than any other county in the state. The Emergency Program has since ended while the County's housing conditions continue to worsen; and

A few potential questions:

What were the criteria for the award of these funds, e.g., was it based on population? percentage of unemployment? individual applications?

How did Orange County do compared to other counties on a per capita basis?

How long did it take to disperse the ERAP 1 funds awarded in Orange County?

Did the timing of disbursement of such funds affect the County's eligibility for receipt of other housing funds?

Was the money awarded used just for delinquent rent, or is it still being used to pay current rent?

Wouldn't the award of these funds have actually reduced the level of "widespread" distress because the recipients now had the money needed to pay their rent?

When it comes to proving your case, it's hard to break the ipse dixit habit.

Legislative finding:

The findings made and recited in this ordinance establish the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public; and

A few potential questions:

Do you have any empirical data showing that crime has increased due to the current housing situation?

Do you have any empirical data that disease has increased as a result of the current housing situation?

How, exactly, do the findings in this ordinance establish the existence in fact of a housing emergency so grave as to constitute a menace to the **general public**?

The shortage of housing has clearly created a serious hardship for some, and that needs to be addressed. A hardship to some, however, is not the same as a serious menace to all - and that's what the County must prove.

Legislative finding:

There are approximately 584,000 total housing units in Orange County, of which 230,000 are occupied by renters; and

A few potential questions:

How many of those renting the existing 230,000 units cannot currently afford their rent?

What percentage is that of the county's population?

How many cannot afford a 5% increase?

What percentage is that of the total population?

How many cannot afford a 9.1% increase?

What percentage is that of the total population?

Did I mention that it's hard to break the ipse dixit habit?

Legislative finding:

The Board finds that a rent stabilization measure is necessary and proper to eliminate the County's housing emergency which is so grave as to constitute a serious menace to the general public.

Potential questions:

How do you define the phrase, "necessary and proper," in the context of the proposed ordinance?

Will adoption of the proposed ordinance eliminate the County's housing emergency?

How, exactly, is a one-year cap on rent increases going to eliminate the County's housing emergency?

Have you reviewed any studies or empirical data which show that the development of new housing units tends to decrease in jurisdictions which adopt rent control ordinances, thereby exacerbating existing housing shortages?

Ipse dixit is out, and the relevant evidence requirement is in

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Legislative finding:

The Orange County Board of County Commissioners finds that this grave housing emergency cannot be dealt with effectively by the ordinary operations of the private rental housing market. In jurisdictions in Florida comparable to Orange County that do not have rent stabilization measures in place, rent increases continue to spiral. For example, in Hillsborough County, Duval County, and Broward County, the year-over-year asking rent has increased by over 20%; and

A few potential questions:

Did the County retain any experts to study and analyze the current rental housing situation in Orange County? If so, what was such expert's conclusion regarding that situation?

Did the County consider the opinion of any other experts qualified to provide an opinion on the operations of the private rental housing market? If so, what were their opinions?

What other evidence has the County evaluated which it contends supports its finding that the "this grave housing emergency cannot be dealt with effectively by the ordinary operations of the private rental housing market"?

How far from Orange County are Hillsborough County, Duval County and Broward County?

Can you explain how their rental housing markets impact Orange County's rental housing market?

How are those three counties' year-over-year asking rents relevant to whether Orange County has a "housing emergency so grave as to constitute a serious menace to the general public in Orange County?"

The question of inflation – asked and answered.

Legislative finding:

Inflation, housing prices, and rental rates in Orange County are increasing, accelerating, and spiraling. The Consumer Price Index for All Urban Consumers in the South was 9.2% from May 2021 to May 2022. The median existing home sales price in Orange County was \$275,000 in May 2020 and \$392,500 in May 2022 which represents a 43% increase. Asking rent per unit in the County was \$1,357 in 2020 and \$1,697 in 2021 which represents a 25% year-over-year increase—the highest increase since 2006 when it was 6.7%; and

A few potential questions:

Are you aware that Florida courts have already ruled that an inflationary spiral does not meet the criteria imposed by the Legislature for imposing rent control ordinances?

Were housing prices depressed in May, 2020 when most people were locked down because of the pandemic?

Have average household incomes risen between May, 2020 and now? If so, by what percentage?

Did unemployment in Orange County increase or decrease between May, 2020 and May, 2022?

How much of the increase in rental rates between 2020 and 2021 was due to increased landlord expenses such as taxes, insurance, labor and material costs and how much of it was landlord profit?

Definitions are important in litigation.

Legislative finding:

Orange County was in a housing crisis prior to the COVID-19 pandemic. In May 2018, Central Florida's interjurisdictional Regional Affordable Housing Initiative said, "National and regional home prices and rents are pushing well above historic limits when compared to income and affordability. The situation has passed the point of concern and is now a crisis." The housing crisis has worsened since the COVID-19 pandemic; and

A few potential questions:

What is the definition of "housing crisis" as that term is used in this legislative finding?

What metric was used to reach the conclusion that, "the situation has passed the point of concern and is now a crisis"?

What metrics were used by the county in reaching the conclusion that, "the housing crisis has worsened since the COVID-19 pandemic"?

What is the difference between a "housing crisis" and a "housing emergency so grave as to constitute a serious menace to the general public"?

The draft ordinance seems to be missing some fairly critical information.

Legislative finding:

Jurisdictions with rent stabilization measures in effect and otherwise comparable to Orange County have been successful in protecting tenants by establishing limits on rent increases while still providing landlords with a fair and reasonable return on their investment. For example, in California, Alameda County and Sacramento County contain rent control measures and have limited their year-over-year asking rent increases to approximately 5%-10% despite low vacancy rates; and

A few potential questions:

Who gets to define what is a fair and reasonable return on landlord investment in Alameda County?

In addition to being “successful in protecting tenants” has Alameda County been successful in protecting landlords?

Do Alameda County landlords agree?

How many new rental units have come online in Alameda County per year since it adopted rent control?

Is that number up or down from years prior to rent control?

Has Alameda County’s rent control ordinance impacted its population growth?

Same questions for Sacramento County.

The Legislature has stacked the deck against you.
Please don't waste taxpayer money placing a sucker's bet.

- Your attorneys have done as good a job as anyone could in preparing the proposed ordinance, probably better than most.
- They've put as much lipstick on the pig as they could, but if it gets into court that lipstick is going to get wiped off pretty quickly.
- We urge you to help people in ways the law clearly allows, and not by using limited resources to fight a battle pretty much every other jurisdiction in the State has recognized can't be won.