

COMMUNITY DEVELOPMENT AGENCY
HOUSING AND FEDERAL GRANTS DIVISION

Marin County Civic Center
3501 Civic Center Drive
Suite 308
San Rafael, CA 94903
415 473 6269 T
415 473 7880 F
415 473 2255 TTY

Building and Safety
Environmental Health Services
Planning
Environmental Review
Housing
Sustainability
Code Enforcement
GIS
Federal Grants

www.marincounty.org/cda

February 9, 2021

Board of Supervisors
County of Marin
3501 Civic Center Drive
San Rafael, California 94903

SUBJECT: Urgency Ordinance temporarily barring rent increases in certain census tracts due to the Public Health Emergency arising from the COVID-19 virus.

Dear Board Members:

RECOMMENDATION: Consider adopting urgency Ordinance enacting a temporary moratorium on rent increases for tenants residing in certain residential units and in census tracts most disproportionately impacted by, or at risk of, COVID-19.

SUMMARY: To prevent housing displacement while the significant increase in COVID-19 cases is occurring, the proposed urgency Ordinance (Attachment 1) would temporarily prohibit rent increases for tenants residing in certain residential units and in specific census tracts in order to support the long-term recovery of those most disproportionately impacted by COVID-19, lower the risk of displacement through eviction, and to limit the accumulation of debt related to COVID-19. The temporary prohibition on rent increases (rent freeze) would expire on December 31, 2021.

DISCUSSION: The proposed Ordinance would provide stability to the residential renter community in Marin County who are impacted by COVID-19 by preventing rent increases in certain census tracts disproportionately impacted or at risk of COVID-19. The Ordinance would only apply to specified census tracts within the unincorporated areas of the County. With employment and income decreasing over the course of the pandemic, any rent increase could place an unsustainable strain on households who have been disproportionately impacted by COVID-19.

Currently, rent increases in Marin are limited by the California Tenant Protection Act of 2019 ("AB 1482"). AB 1482 establishes a statewide rent cap on certain residential units which is set at 5% plus a Cost-of-Living-Adjustment (COLA) based on regional Consumer Price Index (CPI) published by the California Department of Industrial Relations in April of each year. In Marin, this figure is currently 6.1% (5% base + 1.1% CPI), meaning that rent cannot be increased by more than 6.1% within a 12-month period on residential units subject to the AB 1482¹.

While other communities in the Bay Area have seen substantial declines in rent due to increased vacancy levels from COVID-19, Marin rents have remained stable or

¹ AB 1482's statewide rent cap applies to residential units in multifamily properties constructed more than 15 years ago (this is a rolling date meaning units built in 2006 are covered by AB 1482 in 2021, units built in 2007 would be covered in 2022, and so on); duplexes if the owner does not live in either unit; units in condominiums and single family homes if they are owned by a corporation or REIT; and units in which the tenant has resided for one year or more.

increased over the course of the pandemic. The average rent increase over the past year in Marin has been 1.8%.² While many landlords have not increased rent during the pandemic, there have been some notable exceptions.

Table 1: Average Monthly Rents and Potential Rent Increases

	Monthly Rent	Allowable increase under current laws (6.1%)	Impact of average rent increase (1.8%)
Average Cost of One Bedroom Apartment	\$2,470 a month	\$2,621 a month <i>A monthly increase of \$151 (\$1,812 a year)</i>	\$2,514 a month <i>A monthly increase of \$44 (\$534 a year)</i>
Average Cost of Two Bedroom Apartment	\$3,110 a month	\$3,300 a month <i>A monthly increase of \$190 (\$2,280 a year)</i>	\$3,166 a month <i>A monthly increase of \$56 (\$672 a year)</i>

With employment and income decreasing over the course of the pandemic, any rent increase compounds the accumulated debt which renters that have been disproportionately impacted by COVID-19 face. As of October 15, 2020, unemployment rates for low wage earners in Marin have increased more than 40% since the beginning of the year³.

The proposed Ordinance would apply to two census tracts in the unincorporated county (Attachment 2). One is in West Marin, census tract 1330, with a comparatively higher rate of cumulative COVID cases, placing it above the 70th percentile compared to all other County census tracts. This census tract includes Dillon Beach, Tomales, Marshall, Point Reyes Station and Nicasio, in addition to some areas of unincorporated Novato (Attachment 3). The other is Marin City, census tract 1290, which has a higher prevalence of overcrowding which can put households at higher risk of COVID. This census tract is also above the 70th percentile compared to all other County census tracts (Attachment 4).

Staff will continue to monitor other areas of the County, and if other census tracts are disproportionate impacted by COVID-19, your Board may want to consider expanding the proposed applicability of this Ordinance.

State law limits local jurisdictions from regulating rent on certain units, including single-family dwellings and condominiums, and apartments built after 1995⁴. Therefore, these units would be exempt from the proposed rent freeze.

Enforcement

Enforcement of the proposed rent freeze would be clear and straightforward, as any rent increase in the affected census tracts would be considered a violation of the

² Zillow 2019-2020

³ <https://tracktherecovery.org/>

⁴ The Costa–Hawkins Rental Housing Act of 1995

Ordinance. Legal Aid of Marin has indicated that they would serve as the first point of contact for tenants that believe their rent has been illegally increased.

BACKGROUND: Your Board has taken actions to protect tenants during the pandemic in three significant areas detailed below: eviction protections, rental assistance and legal assistance. However, despite these efforts, renters in the specific census tracts continue to be at higher risk of COVID and displacement.

County Eviction Protections & Rental Assistance

Eviction Protections: Beginning on March 24, 2020, your Board barred evictions of residential tenants for nonpayment of rent due to the Public Health Emergency arising from COVID-19. Prior to expiration of those protections, on August 31, 2020 the California Legislature extended similar eviction protections statewide through January 31, 2021 under Assembly Bill 3088, as described in greater detail below. On January 12, 2021, your Board adopted Ordinance 2021-00 preventing evictions countywide through June 30, 2021. On January 29, 2021 Governor Newsom signed Senate Bill 91 which effectively extended the protections provided under AB 3088, barred late fees, and preempted local jurisdictions from taking action to prevent evictions related to unpaid rent due to COVID-19. Therefore, the Resolution your Board adopted barring evictions is no longer in effect.

Rental Assistance: The County and the Marin Community Foundation established an Emergency Rental Assistance Program with funds from County General funds, Marin Community Foundation, and the Federal CARES Act through the Community Development Block Grant (CDBG) program. The program received an additional \$2,800,000 in funding through a combination of Marin Community Foundation and CDBG CARES Act funds considered by your Board in December 2020. These funds act in alignment with California’s eviction moratorium (Assembly Bill 3088) by prioritizing assistance to households that have been unable to meet the financial prerequisite of this law for protection from eviction, which includes paying at least 25% of total rent due between September 1, 2020 and January 31, 2021 by January 31, 2021. As part of the Consolidated Appropriations Act of 2021, the County received \$7,695,346.50 in emergency rental assistance which will be available in February and must be spent by 12/31/2021.

Approximately 10,700 households in Marin are at imminent risk of displacement and/or eviction, with an estimated 8,270 children living in those households. In addition to the threat of eviction, many households are facing an overwhelming accumulation of rental debt due to pandemic-related job and income loss. According to a study published by the Federal Reserve Bank of Philadelphia in October 2020, the estimated average rent debt accumulated in California during COVID-19 is \$6,953 per household, equating to a total of about \$74,000,000 for Marin’s vulnerable population⁵.

While it is difficult to completely evaluate the total need for rental assistance in the community, based on the applications for rental assistance received since mid-December (as illustrated in table 2 below), the demand continues to grow and is anticipated to exceed our current program. Rental assistance is applied for by tenants

⁵ October 2020 Federal Reserve Bank of Philadelphia “[Household Rental Debt During COVID-19](#)”

and has been used for no more than 25% of rent due in alignment with State legislation, AB 3088. This program also provides financial relief to landlords as the payments are made directly to the property owner.

Table 2: Rental Assistance Funding Sources

	CDBG funds	MCF funds	County general funds	Treasury Dept. Funds	Total
Round I: April – May 2020	\$938,000	\$1,000,000	\$1,000,000	-	\$2,938,000
Round II December 2020	\$1,343,246	\$1,500,000	-	-	\$2,843,246
Round III: February 2021	-	-	-	\$7,695,346	\$7,695,346
Total funding	\$2,243,246	\$2,500,000	\$1,000,000	\$7,695,346	\$13,476,592

Table 3: Rental Assistance Demand and Distribution as of 01/21/2021

Demand	
Total Requests Received	4,429*
--Requests received from March – June 15, 2020	--2,430
--Requests received from December 17, 2020 onward	--2,432
Average Weekly Requests	370**
Current Open Waitlist List	1,400
Distribution	
Households Served to date	1,551
Funds Spent to Date	\$3 million
Funds Available	\$2.8 million
Treasury Funds	\$7.6 million***

* This figure may include some duplicates

** Average calls per week 12/17/20 – 1/19/21

*** These funds will be available for rent and utility assistance

Legal Assistance: On September 15, your Board authorized an additional \$310,000 to Legal Aid of Marin for legal services to low-income renters regarding rental modification agreements, rental repayment plans, and potential evictions, and \$90,000 in additional support to the District Attorney’s Consumer Protection Unit to provide mediation services to landlords and tenants to help facilitate rental repayment to modification agreements prior to the initiation of eviction proceedings.

Canal Policy Working Group

The proposed Ordinance would support the work of the Canal Policy Working Group (CPWG). In August 2020, a coalition of organizations representing community, health, education, and business sectors sent a letter to local elected officials highlighting the disproportionate impact that the COVID-19 pandemic has had on low income Latinx communities in Marin County. The collaboration called for action to protect Marin County residents hardest hit by the COVID-19 pandemic, with the aim to best position the community for recovery. With local elected officials and staff from the City of San Rafael and the County, they formed the Canal Policy Working Group to consider policies to address the needs of those hardest hit by the pandemic. On November 3, 2020 your Board adopted Ordinance 2020-119, affirming the Board's commitment to support the historically marginalized residents who have been disproportionately impacted by the COVID-19 pandemic.

The policies under consideration by the CPWG which are focused on housing include:

- Temporary extension of eviction moratorium
- Temporary expansions of protections provided under the current eviction moratorium
- Temporary rent freeze or cap

As noted above, on January 12, 2021, Ordinance 2021-00 was adopted preventing evictions countywide through June 30, 2021. On January 19, 2021, the San Rafael City Council adopted an urgency Ordinance barring rent increases in two census tracts most impacted by COVID-19 (1122.01 and 1122.02) and on January 26, 2021 the Novato City Council adopted an urgency Ordinance barring rent increases in three census tracts most impacted by COVID (1032, 1042, 1022.03).

CONCLUSION: If adopted, this urgency Ordinance would provide tenants in the impacted census tracts with a measure of needed financial relief. Staff will continue to work closely with tenants and landlords to be sure they are aware of the rental assistance available. Because the public health emergency arising from COVID-19 is a fluid and on-going situation, staff and the Board Subcommittee will continue to monitor the situation and may come back to your Board with recommended amendments based on COVID-19 related circumstances affecting the stability of renters in Marin.

EQUITY IMPACT: The 2020 Marin County Analysis of Impediments to fair housing choice illustrated racial disparities in housing, largely tied to the impacts of historic housing policies and practices that prevented equal opportunity in housing accessibility, quality, and financing. Marin County presents the starkest racial inequities in housing tenure throughout the nine Bay Area counties: while over two thirds of non-Hispanic white residents are homeowners, roughly three quarters of both Black/African American and Hispanic/Latinx communities in Marin are renters. The proposed Ordinance barring rent increases will protect renters, who are disproportionately people of color, against displacement. Staff will continue to provide information to tenants and landlords impacted by the proposed Ordinance, including information in Spanish and English, and other languages as needed.

FISCAL/STAFFING IMPACT: No Impact on the general fund.

REVIEWED BY:

- | | |
|---|---|
| <input type="checkbox"/> Department of Finance | <input checked="" type="checkbox"/> N/A |
| <input checked="" type="checkbox"/> County Administrator's Office | <input type="checkbox"/> N/A |
| <input checked="" type="checkbox"/> County Counsel | <input type="checkbox"/> N/A |
| <input type="checkbox"/> Human Resources | <input checked="" type="checkbox"/> N/A |

Respectfully submitted,

Leelee Thomas

Leelee Thomas
Planning Manager

Attachments:

1. Urgency Ordinance barring rent increases due to the Public Health Emergency arising from the COVID-19 virus
2. Map of Census tracts impacted by rent increase moratorium
3. Map of Tract 1330 Boundary
4. Map of Tract 1290 Boundary

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE COUNTY OF MARIN ENACTING A TEMPORARY MORATORIUM ON RENT INCREASES FOR TENANTS RESIDING IN CERTAIN RESIDENTIAL UNITS AND IN U.S CENSUS TRACTS MOST DISPROPORTIONATELY IMPACTED BY AND AT RISK OF COVID-19 AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

WHEREAS, there is a widespread, ongoing global outbreak of respiratory illness known as COVID-19 that can be spread from person-to-person, and on February 26, 2020, community transmission was confirmed by the Centers for Disease Control and Prevention (CDC) in the Bay Area; and

WHEREAS, on March 4, 2020, California Governor Newsom declared a state of emergency in the State of California on March 4, 2020; and

WHEREAS, on March 16, 2020, a Shelter in Place Order for all of Marin County was issued by the Marin County Health Officer; and

WHEREAS, the COVID-19 pandemic has disproportionately impacted historically marginalized and under-resourced communities, and whose contributions are critical to the success of our local and regional economies as they are clients to our local businesses, and are members of the essential workforce; and

WHEREAS, the disproportionate impacts of COVID-19 have only reaffirmed the inequalities that exist in our County and have highlighted the urgent need to pursue bold, collaborative solutions that place equity at the forefront of our actions; and

WHEREAS, this Ordinance is a temporary moratorium intended to promote stability and fairness within the residential rental market in the County during the COVID-19 pandemic, and to prevent avoidable homelessness by temporarily preventing rent increases that would increase financial instability for thousands of individuals and families struggling during this time to pay their bills and feed their families due to being out of work, thereby serving the public peace, health, safety, and public welfare; and

WHEREAS, displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing, which could lead to increases in health issues (including COVID-19 infection), exacerbation of existing health issues, and increase in risk of earlier death; and

WHEREAS, the County Board of Supervisors have found that certain geographic locations, specifically two census tracts (1330.00 and 1290.00) have been disproportionately impacted by, or at higher risk of, COVID-19; and

WHEREAS, such geographic locations have suffered and continue to suffer disproportionate impacts from, or are at higher risk of, COVID-19, which have materialized in higher risk of COVID-19 transmission and number of cases compared to the national average, and higher risk of economic and housing instability as compared to the remainder of the County; and

WHEREAS, in designating applicable census tracts, the County of Marin relied upon data from the Marin County Health and Human Services regarding COVID-19 positivity rates, and relied upon U.S. Census American Community Survey 2018 5-year estimates regarding rates of overcrowding; and

WHEREAS, this data showed that two U.S. Census Tracts within the County of Marin have suffered the most disproportionately high rates of, or higher risk of, COVID-19 positivity since March 2020, and are statistically more overcrowded than other Census Tracts within the County of Marin; and

WHEREAS, overcrowded households are also more likely to include individuals with lower wage occupations which cannot be performed remotely, increasing the likelihood of COVID-19 exposure; and

WHEREAS, to limit the exponential spread of COVID-19, County Public Health Guidelines require any individual testing positive or coming into contact with someone who has tested positive to quarantine for at least ten (10) days, and due to these Public Health requirements individuals and entire households may be required to quarantine, thereby losing income; and

WHEREAS, this combination of overcrowded housing, occupations that can only be performed in person, and increase risk of displacement creates a vicious cycle where overcrowded households are at increased risk for COVID-19 exposure, are financially unable to respond to the quarantine requirements if exposed, and are more likely to be displaced to a situation at even greater risk of COVID-19 exposure; and

WHEREAS, Census Tract 1330.00 has the highest rates of COVID-19 infections in the unincorporated County and have higher rates of COVID-19 infections than 70% of all Census Tracts in the County of Marin, and Census Tract 1290.00 has a higher rate of overcrowding than 70% of all Census Tracts in the County of Marin, placing these two Census Tracts in the top 30% of the entire County of Marin in terms of COVID-19 case rates and overcrowding; and

WHEREAS, in reliance on this data and so as to strike a balance between the economic stability of property owners and landlords within the County and the grave risks that residents of Census Tracts 1330.00 and 1290.00 face, the County finds that the rent freeze should apply only to Census Tracts 1330.00 and 1290.00 which are at higher risk of displacement, financial instability, and COVID-19 infection rates within the County; and

WHEREAS, the facts, research, and conclusions utilized by the Federal and State governments and the County of Marin as described more fully above, establish that poverty, overcrowding, and high COVID-19 infection rates in U.S. Census Tracts 1330.00 and 1290.00 have led and will continue to lead to disproportionate risks of displacement, COVID-19 infection rates, and financial and economic instability; and

WHEREAS, in reliance on this data and the facts establishing that residents of Census Tracts 1330.00 and 1290.00 are disproportionately at risk of displacement, debt, and contraction of the COVID-19 virus, the County finds and declares that there is an urgent risk to take measures to protect residents of these Census Tracts against further risk of displacement, debt, disease; and

WHEREAS, implementation of a complete rent freeze in these two vulnerable Census Tracts will reduce the likelihood of displacement, debt, and continued increases in COVID-19 positivity rates by limiting the accumulation of debt due to rent increases, thereby supporting the long-term recovery of these residents; and

WHEREAS, for the reasons set forth herein, there is currently an urgent and imminent threat necessitating the immediate need to freeze rents in certain geographic locations in the County; and

WHEREAS, this Ordinance will lower the risk of displacement of vulnerable populations, which is essential for public health, will keep tenants from falling even further behind during the state of emergency and will help tenants experiencing poverty and high segregation in good standing after the Ordinance expires; and

WHEREAS, so too will this Ordinance help ameliorate the broader public health, safety, and welfare effects of the emergency; failure to suspend rent increases in geographic locations disproportionately impacted by COVID-19 will worsen the already severe impacts of COVID-19 in these areas; and

WHEREAS, this Ordinance is temporary and not a general ordinance in force required to be codified; and

WHEREAS, this Ordinance is expressly authorized by State law because the Ordinance is more protective than the provisions of section 1946.2 of the California Civil Code, which was adopted pursuant to the Tenant Protection Act of 2019, because this ordinance provides tenant protections that are neither prohibited by nor established by other provisions of applicable law.

NOW THEREFORE, BE IT ORDAINED BY THE COUNTY OF MARIN:

SECTION 1. Declaration of Threat to Public Health, Safety, and Welfare Necessitating Urgency Ordinance

The Board of Supervisors of the County of Marin hereby finds and declares that there is a current and immediate threat to the public health, safety and welfare and a need for the immediate preservation of the public health and safety that warrants this urgency ordinance, which finding and declaration is based upon the facts, findings, and declarations stated in the recitals of this Ordinance, and all oral and written testimony presented at the February 9, 2021 Board of Supervisors meeting.

SECTION 2. Title

This Ordinance shall be known as the “COVID-19 Temporary Rent Freeze Ordinance.”

SECTION 3. Term

This Ordinance shall become effective on February 9, 2021 upon its adoption by a 4/5 vote of the County Board of Supervisors pursuant to the California Government Code and shall

remain in effect until December 31, 2021 unless repealed or extended by the County Board of Supervisors.

SECTION 4. Definitions

“Condominium” means an estate in real property described in subdivision (f) of Section 1351 of the Civil Code.

“Dwelling Unit” means one (1) or more rooms occupied as living quarters, with a kitchen, sleeping facilities, and sanitary facilities for the exclusive use of one (1) household.

“Housing Services” means all services provided by a Landlord related to use or occupancy of a Rental Unit, including without limitation insurance, repairs, replacement, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, refuse removal, parking, storage, furnishings, and security services.

“Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit or portion thereof.

“Rent” means the consideration, including any funds, labor, bonus, benefit, or gratuity, demanded or received by a landlord for or in connection with the use and occupancy of a Rental Unit and the housing services provided therewith, or for the assignment of a rental agreement for a Rental Unit. A decrease in Housing Services is considered an increase in Rent, except where such decrease is due to State or local orders mandating discontinuation of certain Housing Services.

“Rental Unit” means any Dwelling Unit in any real property, including a building, structure, or part thereof, and the land appurtenant thereto, rented or available for residential occupancy, and located in the County. The following shall not be considered Rental Units:

1. Units in hotels, motels, inns, tourist homes, and rooming and boarding houses which are rented primarily to transient guests for a period of fewer than thirty days;
2. Units in any hospital, convent, monastery, extended care facility, emergency residential shelter, residential care facility, residential service facility, nonprofit home for Senior Citizens (as defined in the Unruh Act, as may be amended), or in dormitories owned and operated by an institution of higher education, a high school or elementary school;
3. Units which a government entity owns, operates, or manages, or in which governmentally-subsidized Tenants reside, if applicable federal or state law or administrative regulation specifically exempt such units from municipal rent control.
4. Single family homes;
5. Units in a building, structure, on a single property, or part thereof, containing only one (1) or two (2) Dwelling Units;
6. Condominiums;
7. Accessory Dwelling Units as that term is defined in Government Code section 65852.2;
8. Units for which an initial certificate of occupancy was dated on or after February 1, 1995.

“Single-Family Home” means a detached building containing a single residential dwelling unit separately alienable from any other dwelling unit.

“Tenant” means a person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Rental Unit.

"Tenant household" means all tenant(s) who occupy any individual Rental Unit, and each minor child, dependent, spouse or registered domestic partner of any tenant whose primary residence is the Rental Unit.

SECTION 5. Geographic Scope

This Ordinance applies to all Rental Units located within the following U.S. Census Tracts, which are depicted in Figure A of this Ordinance (U.S. Census Tracts Subject to Scope of Ordinance) and have been identified based on the declared threat to public health, safety and welfare within these U.S. Census Tracts:

U.S. Census Tract Number	Location
1330.00	Unincorporated Marin County; West Marin
1290.00	Unincorporated Marin County; Marin County

SECTION 6. Moratorium on Rent Increases

A. During the Term of this Ordinance, a Landlord may not increase the Rent for any Rental Unit except pursuant to the provisions and procedures set forth in Section 7 of this Ordinance (Right to Petition for Fair Return).

B. Any pending increase in Rent and/or increase in Rent which becomes effective during the Term of this Ordinance, whether such increases are authorized pursuant to a lawfully served notice or an existing written or oral rental agreement, shall not be collected and shall not become effective during the Term of this Ordinance.

C. No requests, notices or demands for increases in Rent which would become effective after the Term of this Ordinance, shall be served, given or provided to any Tenant or Tenant Household during the Term of this Ordinance.

D. Upon repeal or expiration of this Ordinance a Landlord's right to impose rent increases on Tenants and Tenant Households of Residential Units shall immediately resume, subject to any other applicable federal, state, or local limitations that may be in place.

E. Notwithstanding the limitations in subsections A through E of this Section, a landlord may establish any new, base Rent for tenancies which commence after the effective date of this Ordinance.

SECTION 7. Right to Petition for Fair Return

A. Fair Return Petition. To effectuate the purposes of this Ordinance and the requirements of law, a Landlord may file a petition for an upward adjustment of the Rent for any given Rental Unit to ensure a fair and reasonable rate of return. There is a rebuttable presumption that maintenance of net operating income on the date of adoption of this Ordinance, as adjusted by inflation over time, provides a Landlord with a just and reasonable

rate of return on a Rental Unit. It is the intent of this Article that individual upward adjustments in Rent be granted only when the Landlord demonstrates that such adjustments are necessary to provide the Landlord with a fair rate of return.

B. Procedures for Petition. A Landlord may file a petition for a fair return hearing pursuant to this Section on a form provided by the County. The Board of Supervisors hereby delegates authority to and directs the Director of the Community Development Agency (CDA), or their designee, to adopt policies and procedures to implement the fair hearing petition process that are consistent with this Section.

C. Hearing Officer Appointed. A Hearing Officer, appointed by the CDA Director, shall conduct a hearing to act upon a petition for an upward adjustment of the Rent for any given Rental Unit. The Hearing Officer shall have the power to administer oaths and affirmations, and to render a final decision on the merits of the petition, subject to the provisions of this Section and the petition procedures established by Resolution.

D. Mediation Prior to Hearing. Upon receipt of a petition for fair return, the Hearing Officer shall refer the petition for a mandatory mediation session that will be set prior to the hearing. The mediation will be conducted by an entity, who shall not be the same hearing officer assigned to conduct a hearing for the petition of fair return following completion of the mediation. Attendance is required by the petitioning landlord and affected tenants, or their respective representatives, upon written authorization of the affected party. Mediation shall be completed prior to the hearing on the petition for fair return, and shall conclude upon execution of a legally enforceable mediation agreement, or upon agreement of all parties.

D. Failure to Comply with Ordinance. No upward adjustment of Rent shall be authorized by a Hearing Officer under this Section if the Landlord has failed to comply with any provision of this Ordinance or regulations adopted by separate resolution of the Board of Supervisors or implementing policies and procedures adopted by the CDA Director, or has failed to maintain the Rental Unit in compliance with any applicable Federal, State, or local law or administrative regulation.

E. Upward Adjustment of Rent. In making an upward adjustment of Rent based on a Landlord's Petition to ensure a fair rate of return, the Hearing Officer shall approve an adjustment in accordance with the following criteria:

1. Right to Fair Return. No provision of this Ordinance shall be applied so as to prohibit the Hearing Officer from granting a fair return adjustment of Rent that is demonstrated by the Landlord to be necessary to provide the Landlord with a fair rate of return.

2. Maintenance of Net Operating Income. The Petition shall establish and the Hearing Officer shall consider a Landlord's ability or inability to maintain a fair rate of return on any given Rental Unit. The Hearing Officer shall consider a Landlord's ability to maintain net operating income for any given Rental Unit. Net operating income equals gross income minus operating expenses.

3. Gross income equals the following:

- a) Gross rents; plus
- b) Interest from security or other deposits, except to the extent that said interest is payable to the Tenant; plus
- c) Income from services or parking; plus

- d) All other income or consideration received or receivable in connection with the use or occupancy of Rental Units;
 - e) For purposes of calculating gross income, the Hearing Officer may take into account factors necessary to assure that the Landlord receives a fair and reasonable return on their investment.
4. Operating expenses includes the following expenses:
- a) Real property taxes;
 - b) Unsecured property taxes;
 - c) Utility costs that are not reimbursed by tenants; plus
 - d) Management expenses, including but are not limited to, necessary and reasonable advertising, accounting, insurance, and allowable necessary and routine legal expenses;
 - e) Repair and maintenance expenses;
 - f) Owner performed labor, which shall be counted at reasonable rates;
 - g) License and registration fees required by law that are not reimbursed by the Tenant;
 - h) Capital improvements, provided they are not compensated by insurance proceeds, subject to the following conditions: 1) that said expenses be amortized, and 2) capital improvements constructed in the interior areas of the Rental Unit can be included only to the extent required by state or local laws.
5. The following are excluded from operating expenses:
- a) Avoidable and unnecessary increases in expenses;
 - b) Penalties, fees, or interest assessed or awarded for violation of this or any other law with respect to the Rental Unit;
 - c) Depreciation of the property;
 - d) Any expense for which the Landlord has been reimbursed by any security deposit, insurance settlement, judgment for damages, settlement, or any other method;
 - e) Mortgage interest or principal, or similar financial instruments used to purchase or finance rental property, unless incurred for purposes of financing capital improvements; and
 - f) Income taxes.

SECTION 8. Affirmative Defense to Eviction; Civil Remedies

A Landlord's failure to comply with any provision of this Ordinance shall constitute an affirmative defense in any unlawful detainer action based upon nonpayment of rent. A Landlord that fails to comply with this Ordinance may further be subject to civil proceedings for displacement of Tenants or Tenant Households initiated by Tenants, Tenant Households or the County for actual and exemplary damages.

SECTION 9. Severability

If any provision or clause of this ordinance or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by a final judgment of any court or competent jurisdiction, such invalidity shall not affect other provisions or clauses or

application, and to this end, the provisions and clauses of this ordinance are declared to be severable.

SECTION 10. California Environmental Quality Act

The Board of Supervisors finds that the adoption and implementation of this Ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061(b)(3) in that the Board of Supervisors finds there is no possibility that the implementation of this Article may have significant effects on the environment.

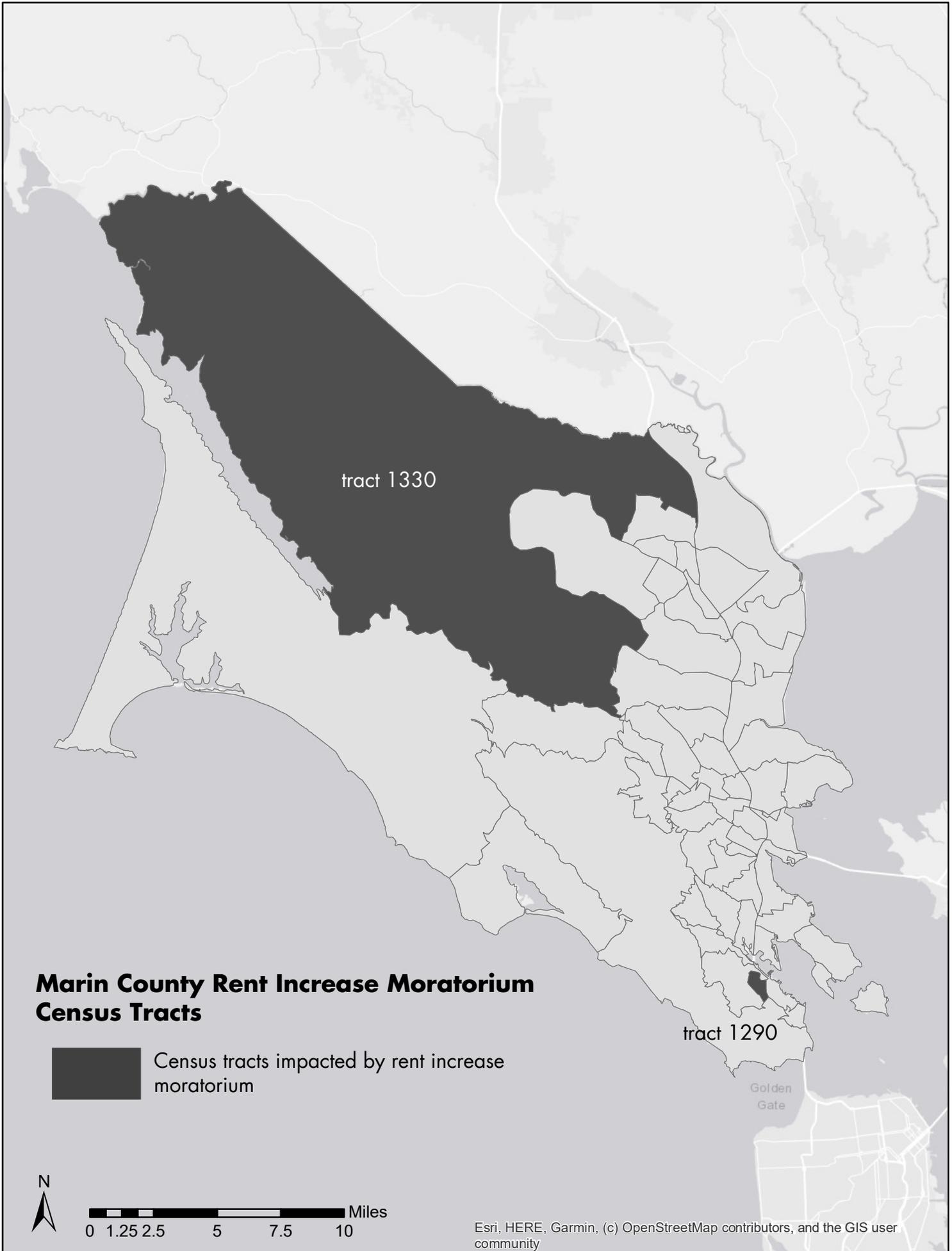
PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this 9th day of February 2021, by the following vote.

AYES: SUPERVISORS
NOES:
ABSENT:

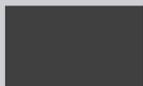
PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

DEPUTY CLERK



Marin County Rent Increase Moratorium Census Tracts

 Census tracts impacted by rent increase moratorium



0 1.25 2.5 5 7.5 10 Miles

Census Tract 1330



Tract 1330 boundary



Census designated places / cities / towns



0 0.75 1.5 3 4.5 6 Miles

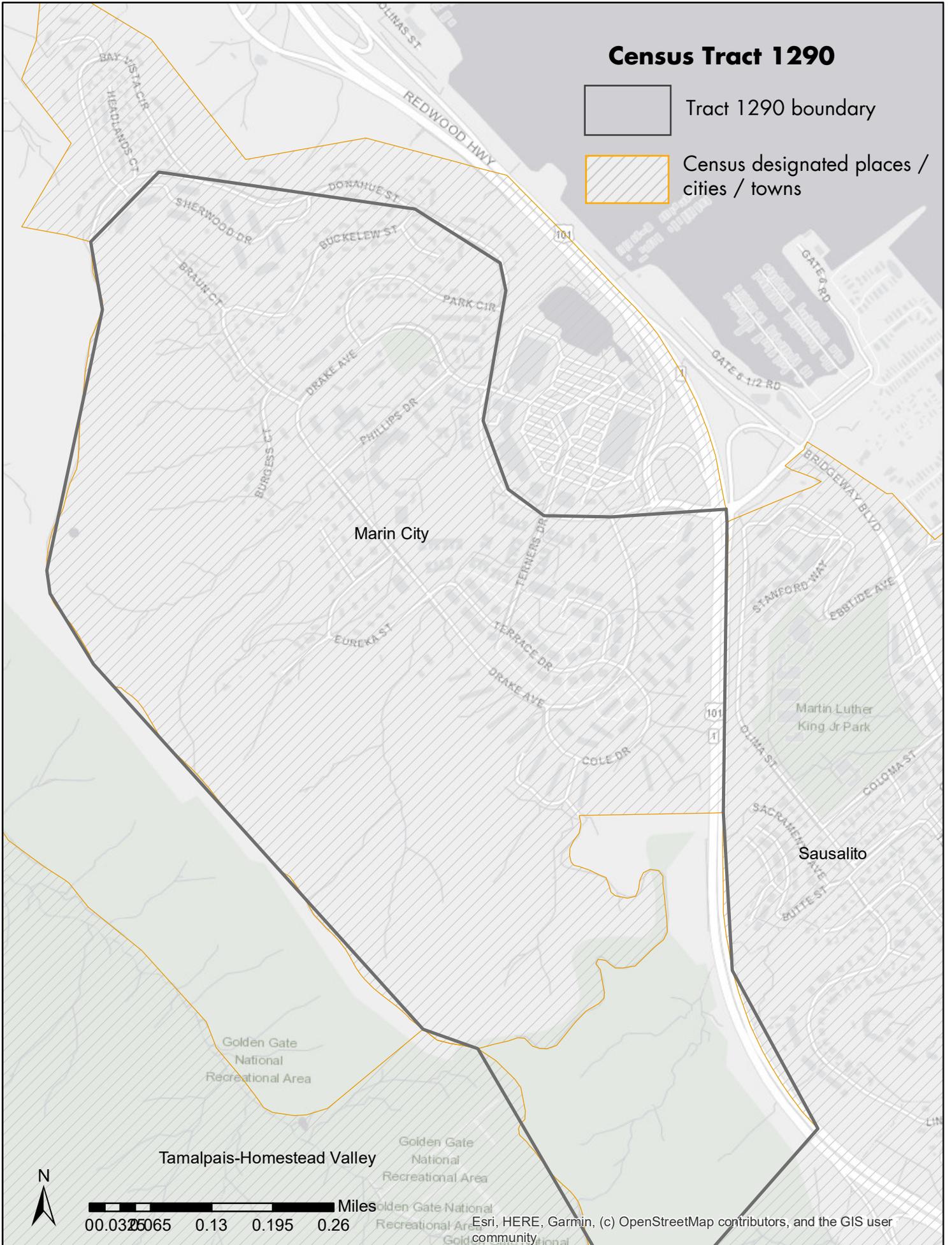
Census Tract 1290



Tract 1290 boundary



Census designated places / cities / towns



Marin City

Sausalito

Tamalpais-Homestead Valley

