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review *of* oregon's housing legislation *in* 2019

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Housing policy is one of the most important state and local issues in Portland, affecting both the quality of life and economic opportunities. Its importance comes from the rapid population growth over the past decade and the challenge in accommodating that growth. According to a recent CoStar report, Portland's population grew by about 24,000 with about 30,000 jobs added in the city (Anderer, 2019). Housing supply has had trouble keeping up with the increase demand, causing rents to rise rapidly. Yet while housing prices and rents have risen, Portland remains relatively affordable compared to the large metropolitan areas in the west. CoStar notes that, "of the 12 west coast metros with at least one million residents, only Fresno has cheaper average rent than Portland" (Anderer, 2019). This relative cheap rent combined with a high quality of life for a west coast city will keep the flow of people moving to Oregon.

In response to these changes, the Oregon State Legislature and Portland City Council have taken steps to pass regulation that they feel will help the current and future housing issues Oregon faces. In this article, we will review the major pieces of legislation that will have an effect on tenants and landlords in Portland and Oregon. Over the next year we will follow up monthly with more specific in-depth analysis of these changes, comparing the intended impacts and unintended impacts on the market

THE CITY OF PORTLAND'S LEGISLATIVE LEAD

Prior to the 2019 Oregon legislative session, the housing market in Portland experienced a number of new regulatory initiatives in 2017-2018, including inclusionary zoning, Portland's city rental registration program and the City's mandatory renter relocation assistance program. These regulations have challenged the assumptions held by real estate investors, developers, landlords and property managers, causing great uncertainty about future regulation and higher costs of capital for producing new housing.

The City renter relocation assistance program created what many observers saw as a "back-door" rent control program by requiring landlords to offer mandatory renter relocation assistance if rent increases exceeded 10%. And to pay for the administrative costs of the quasi-rent control, landlords were forced to register their units with the city, at a rate of \$60 per unit per year.

And in 2019, the city passed new tenant screening rules to encourage landlords to overlook past criminal convictions (among other issues). These regulations have challenged many developers, landlords and property managers. At a recent breakfast hosted by the Commercial Association of Brokers, appraiser Patrick Barry reported that the tenant screening issue alone has led to a 50-100 basis point increase in property management fees and an increase in mom-and-pop landlords using third-party property management to reduce their legal exposure.

THE LEGISLATIVE SESSION IN 2019

The Oregon Department of Housing and Community Services opened the 2019 legislative session by announcing "Six Priority Strategies" for the next five years. These priorities of the Governor included addressing equity and racial justice, homelessness, affordable rental housing, homeownership, permanent supportive housing, and rural communities (OHCS, 2019). Unlike previous sessions, many of the resulting bills were written without significant input from landlords and skewed the regulatory environment in favor of tenants. Combined with the recent inclusionary zoning and mandatory renter relocation laws, the new regulations have left many property owners nervous about their liability and confused on what they can and cannot do as owners and property managers.

Some of the legislation had broad support. Senate Bill (SB) 484 passed unanimously in May and prohibits multiple application fees for a tenant that applies to multiple dwelling units owned or managed by one landlord within a 60-day period. This bill should save potential tenants some money and have no negative effects for a landlord as one would have already checked the prospective tenant's information (OLIS SB484, 2019) SB 534 passed in June which allows for narrow lot homes to be developed as single family dwellings, and should allow for more housing than the City of Portland's pending Residential Infill project would require. Finally, HB 2003 creates a new performance measure for housing and requires

localities to complete an analysis, “to identify steps to remove financial and regulatory impediments to developing needed housing” (Portland Planning and Sustainability, 2019). Under this bill, jurisdictions within Metro will be required to identify existing housing stock and project housing needs for next 20 years.

A more controversial legislative effort was HB 2001, which is part of a multi-state effort to limit the ability of single-family zoning to restrict housing supply. HB 2001 acknowledges a housing crisis and requires cities larger than 10,000 people to allow so-called “middle housing” in single-dwelling zones. Middle housing includes duplexes, triplexes, quadplexes and cottage clusters, which purport to have lower costs and rents than traditional single-family homes. Additionally, the bill also contains directives to change building code rules on converting single dwellings to triplexes and quadplexes. Cities have until June of 2022 to comply with HB 2001. The key wording here is that HB 2001 “allows” for more density in single family zoning areas, which means that change in existing neighborhoods will happen slowly as individual property owners consider adding an accessory dwelling unit (OLIS HB2001, 2019). California and Minnesota are among the other states considering this change in legislation.

STATEWIDE RENT CONTROL

The most contentious housing legislation in the session was Senate Bill 608, which implemented statewide rent control, building off the city’s quasi-rent control efforts. In choosing to codify actions started by the City of Portland, Oregon has established a reputation as the “first state in the nation” passing a statewide rent control ordinance. Of course, this claim to being the “first state in the nation” ignores a long legislative history in New York and California, which have much longer experiences with rent control.

First, the most important feature of this bill was the declared “housing emergency” which allowed the bill to take immediate effect after its passage which happened on February 28, 2019. This provision prevented the legislation from being referred to Oregon voters, as well as preventing pre-emptive rent increases by landlords.

Second, SB 608 limits annual apartment rent increases to no more than 7% plus the Consumer Price Index (CPI), which effectively capped rent increases at 10.3% for 2019 and 9.9% for 2020. The Oregon Department of Administrative Services will publish the maximum rent increase by September 30 for subsequent years (DAS, 2019). In reviewing market-wide increases in the last decade, this legislative limit would not have much impact on most apartments. However, it is expected to have impacts on apartments where rents have been held substantially below market value by unsophisticated landlords, as well as limiting the ability of property owners to substantially improve their properties. National data suggests that about half of all real estate investment comes in the form of property upgrades and rehabilitation, for which a developer would be expecting rent increases in the 30% range. As a result, it’s expected that this part of the “trade-up” market will evaporated. Moreover, any rent increase over 10% in the city of Portland will expose the landlord to pay Portland relocation assistance if the renter chooses to leave following the proposed rent increase.

A third cause of concern for landlords with SB 608 comes with the termination of provisions. SB 608 prohibits landlords from terminating a month-to-month tenancy without cause after 12 months of occupancy. If a no-cause termination happens after 12 months, a 90-day notice must be issued along with 1 month of rent compensation. Within the first 12 months of the tenancy, landlords may be granted a no-cause eviction with a required 30-day notice. All fixed term leases will roll over to month-to-

month at time of lease expiration unless renewed or the tenant decides to leave (OLIS SB608, 2019). The feature of the bill will complicate the process of landlords evicting tenants who create nuisances for other tenants within their buildings. Obtaining testimony for a for-cause eviction puts the complaining tenant in some jeopardy. The legislation provides some exemptions for landlords having to pay the relocation fee, such as when they own fewer than four units. In addition, landlords will be allowed to evict tenants who violate their lease three times without relocation assistance, provided they have records of the violations and follow proper procedure in eviction.

Finally, the legislation exempts buildings 15 years or younger from rent control. This provision is quite different than similar legislation in New York and California where buildings of a certain vintage (for example, built before the year 2000) are exempt from rent control. Instead, all buildings will eventually be covered by rent control as they age, creating a “rolling-entry” into the regulatory system. While intended to remove the impact of rent control on new development, this legislation will cause investors and lenders to pay more scrutiny to future rent increases that are projected by the landlord, effectively raising the cost of capital for the multi-family housing industry.

The legislation enforces these new rules with strict penalties for landlords that fail to comply with these new laws, including being liable for up to 3 times the monthly rent as well as actual damages, relocation assistance, and attorney fees (Sykes, 2019). As described previously, this has led many small landlords to seek more expensive professional property management.

Finally, there is concern about how this law could affect VA and FHA loans. With these loans the borrowers typically must occupy the property within 60 days, yet the law gives tenants 90 days’ notice to move out. Closing usually taking 30 days, this is going to create a very tight timeline for new buyers and may make it harder for sellers to sell a fully leased property to a purchaser who wants to occupy a unit (Shaw, 2019).

FAIR HOUSING LEGISLATION IN PORTLAND

In addition to the major legislation changes on the state level, Portland passed the Fair Housing in Renting Ordinance (FAIR). Portland City Commissioner Chloe Eudaly introduced the FAIR Ordinance to create a more equitable application process for housing (Eudaly 2019). This ordinance effectively creates a “first come, first serve” system that requires landlords to accept tenants in the same order they receive applications, while restricting a landlord’s abilities to check credit histories, criminal records, and identities of all potential tenants who want to live in their property. The FAIR ordinance does not go into effect until March 1, 2020, which will allow the Housing Bureau time to complete the policy (Templeton, 2019).

AN ASSESSMENT

As we have seen, the past three years have been a whirlwind of legislation changes in Oregon and Portland. Collectively, the legislation was supported by the good intention of trying to help tenants stay in their apartments and not get priced out. Unfortunately, while these regulations protect the status of current tenants, they will make the life more difficult for new tenants, whether they are moving to Portland, wanting to leave their parents’ home, or facing divorce or

job relocation. Because these regulations increase risk and costs for landlords and developers, they will deter housing development and decrease the supply of housing, driving rents and home prices even higher.

The Legislature's HB 2001 attempts to increase some of the supply issues by reforming the historic pattern of single-family zoning, potentially creating new housing units in large lots, garages, and the backyards of existing homes. However, these efforts are most likely to succeed in Portland, where housing costs are highest and new initiatives going by the names Better Housing by Design and the Residential Infill Project, will create additional regulatory burdens on re-development. Only time will tell the long-term effects of 2019's major changes. Hopefully, the reporting requirements on local government that are part of HB 2003 will allow these changes to be analyzed in a timely manner and help legislators to make positive amendments for all.

REFERENCES

- Anderer, Emily. "New Regulations Alter Dynamics of the Market". October 24, 2019 <https://product.costar.com/home/news/1465175728?market=31>
- Eudaly, Chloe. "Commissioner Eudaly's Closing Statement of the FAIR Ordinance." 2019 <https://www.portlandoregon.gov/eudaly/article/735012>
- DAS. Department of Administrative Services. "Rent Stabilization Economic Analysis". 2019 <https://www.oregon.gov/das/OEA/Pages/Rent-stabilization.aspx>
- OLIS. Oregon Legislative Information System. HB 2001. <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2001>
- OLIS. Oregon Legislative Information System. SB484 <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/SB484>
- OLIS. Oregon Legislative Information System. SB608 <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/SB608>
- OHCS. Oregon Housing and Community Services. "2019 Priority Strategies" <https://www.oregon.gov/ohcs/DO/shp/2019-Six-Priority-Strategies.pdf>
- OSB. Oregon State Bar. "New Rules for Landlords" https://www.osbar.org/_docs/public/pamphlets/LegalInfoforLandlords2019.pdf
- Portland Planning and Sustainability. "2019 Legislative Session Update". 2019 <https://www.portlandoregon.gov/bps/article/737971>
- Shaw, Randy. "2019 Oregon Legislative Session". Oregon Association of Realtors <https://oregonrealtors.org/wp-content/uploads/2019/09/OAR-2019-Legislative-Report.pdf>
- Sykes, Leah & Gesmundo, Marcel. "Legislative Update for Oregon Landlords – Passing of Senate Bill 608". 3/1/2019. <https://www.multifamilynw.org/news/legislative-update-for-oregon-landlords--passing-of-senate-bill-608>
- Templeton, Amelia. "Portland Requires Landlords to Use First-Come-First-Served System to Choose Tenants." OPB. 2019 <https://www.opb.org/news/article/portland-tenant-screening-regulations-pass/>