



COUNTY OF SAN MATEO

INTERDEPARTMENTAL CORRESPONDENCE

To: All County Departments
From: John C. Beiers, County Counsel
John D. Nibbelin, Chief Deputy County Counsel
Subject: Continuum of Residential Tenant Protection Measures
Date: September 23, 2015

I. Introduction and Executive Summary

This memorandum provides legal and historical background for rent stabilization and other tenant protections (including just cause eviction and relocation assistance measures); surveys tenant protection measures that exist throughout the State; describes the legal powers of, and constraints on, local government agencies with respect to the adoption of rent stabilization and other tenant protection measures.

Local jurisdictions throughout the area are confronting a housing affordability crisis and many of these cities and counties are considering a range of tools to address these circumstances. For example, at its meeting on August 5, 2015, the City of Richmond voted to adopt an ordinance that institutes rent stabilization and provides for “just cause evictions, for rental units in that city.”¹ The ordinance also provides for an elected “rent board” to discharge various functions under the ordinance. The City contemplates adding several staff members to administer rent stabilization.

This action by the City of Richmond implements some of the tenant protection tools available to local jurisdictions and this memorandum discusses these and others across the continuum of options available to the County.

In preparing this memorandum, we have surveyed the history of local government tenant protections in California, reviewed statutory and case law and constitutional provisions bearing on such protections and analyzed existing local government tenant protections, with a particular focus on Bay Area jurisdictions.

In addition, we met with local stakeholders, including Community Legal Services in East Palo

¹ The Richmond rent stabilization ordinance was the first new rent stabilization ordinance adopted in several decades. The ordinance was scheduled to go into effect on September 4, 2015, but the California Apartment Owners Association has submitted a sufficient number of signatures to require a referendum on the ordinance before it goes into effect. The Contra Costa County Elections Office is presently validating the signatures.

Alto and the California Apartment Owners Association.

Finally, we have included the following **attachments** to this memorandum to supplement our work:

- Policy Arguments: a set of documents that briefly summarize the key characteristics of more common tenant protection measures and the policy arguments that are most commonly advanced for and against the measures
- Rent Stabilization Table: a table that summarizes the key characteristics of existing rent stabilization ordinances from a selection of representative jurisdictions

II. Existing Statewide Laws Relating to Residential Tenancies

a. Notice of Rent Increases

California law sets forth in the Civil Code the standard that landlords must comply with before raising a residential tenant's rent. If the tenant's lease is for a term of more than thirty days, the rent cannot be raised during the term, unless the lease specifically allows for an increase. In cases where rent increases are allowed, California law requires that tenants receive at least 30 days' advance notice before a rent increase goes into effect.

Specifically, if a proposed rent increase is ten percent or less of the rent charged at any time during the preceding 12 months, the landlord must provide the tenant with at least 30 days advance written notice of the rent increase.² If the proposed rent increase is more than ten percent of the rent charged at any time during the receding twelve months, the landlord must provide the tenant with at least sixty days' advance written notice of the increase.³

In our research, we have found no jurisdictions that have attempted to impose, on a local basis, notice periods for rent increases longer than those required under the California Civil Code and, in our view, any such local efforts would be preempted by state law.⁴

² Cal. Civil Code § 827(b)(2).

³ Cal. Civil Code § 827(b)(3).

⁴ Subsection (c) of Civil Code section 827 states that "if a *state or federal* statute, *state or federal* regulation, recorded regulatory agreement or contract provides for a longer period of notice regarding a rent increase than that provided" by section 827, that longer period shall control Cal. Civil Code § 827(c) (emphasis added). This text strongly infers that only state and federal statutes or regulations may impose longer notice provisions than those set forth in section 827.

b. Notice of Lease Termination

Along similar lines, California law imposes certain notice obligations upon landlords who seek to end tenancies. If a lease is for a set term (e.g., one year), the tenancy ends on the last day of the lease term, unless the tenant does not vacate and the landlord allows the tenant to remain, in which case the tenancy is converted to a month-to-month periodic tenancy.

To terminate a periodic (e.g., month to month) tenancy, the landlord must give either thirty or sixty days' prior written notice. If all tenants in the rental unit have resided in the unit for at least one year, the landlord must give at least sixty days' prior written notice of termination.⁵

If any tenant in the rental unit has resided there for less than one year or the landlord has contracted to sell the unit another person who intends to occupy it for at least a year after the tenancy ends, the landlord need provide only thirty days' prior written notice.⁶ As discussed below, some local jurisdictions, such as the City of San Jose, have adopted ordinances that provide for longer notice periods to terminate a tenancy than those set forth in state law.

Many local jurisdictions have determined that these state law provisions do not afford an adequate degree of protection to residential tenants and they have therefore adopted ordinances that provide additional protections, which we will discuss in this memorandum.

III. The Continuum of Tenant Protection Measures

Local government agencies have available and have implemented tenant protection measures that run along a continuum, in terms of the amount of government regulation of the landlord-tenant relationship and the agency resources dedicated to implementation of the regulation. At one end are measures that mandate a minimum lease term with stable rents during the term, required notice periods in addition to or beyond those required under State law and mandatory (but non-binding) mediation of certain landlord-tenant disputes, including with respect to rent increases.

Further along the continuum are measures that limit the basis upon which a tenant may be evicted from a tenancy (so-called "just cause eviction ordinances") and that may require a landlord to provide relocation assistance in some cases to displaced tenants.

Finally, some jurisdictions have moved further along the continuum and adopted rent stabilization ordinances that limit, to some extent, the ability of a landlord to increase rents on covered units. The key characteristics of these ordinances vary among jurisdictions and many of them incorporate other tenant protection measures, such as just cause evictions and relocation

⁵ Cal.Civil Code § 1946.1(b).

⁶ Cal Civil Code §§ 1946, 1946.1(c), 1946.(d).

assistance. All of these ordinances are subject to limitations imposed by State law, including in the Costa-Hawkins Act.

IV. Minimum Lease Term

The City of Palo Alto has adopted a rental housing stabilization ordinance that provides, among other things, that a landlord must offer the prospective tenant of any rental unit (defined to include all multiple-family dwellings) a written lease for a minimum term of *at least one year*.⁷ The offered lease must set the rent for the unit at a rate certain for the entire one year term of the lease and the rent cannot be changed during that lease term, except as provided in the written lease. If the tenant rejects the offered one year lease, the parties are free to negotiate a lease term of less than one year.

Requiring a landlord to offer a minimum one year term for a lease affords the tenant protection against rent increases during that term. However, while a landlord is required to offer a tenant a new one-year tenancy at the end of the succeeding one year lease term (if the landlord chooses to renew the lease with that tenant), the landlord is free to demand whatever rental rate the market will bear at the time of lease renewal.

V. Enhanced Notice Provisions

Other jurisdictions, while not requiring that landlords offer leases with specific minimum terms, do have ordinances requiring *notice prior to termination* of a tenancy in excess of the notice otherwise required by State law. San Jose, for example, requires 90 days' prior notice before termination of a tenancy if the tenant has resided in the unit for one year or more.⁸ If the city's housing director finds a "severe rental housing shortage," 120 days' notice is required. A shorter notice period (60 days; the amount of notice otherwise provided by State law) is allowed if the landlord agrees to arbitration on the termination date.

As noted above, we believe that State law would preempt any local regulations that would purport to impose *notice requirements for rent increases* beyond the notice periods otherwise required under State law (i.e., thirty days notice for rent increases of ten percent or less and sixty days for rent increases of greater than ten percent).

VI. Landlord-Tenant Mediation of Rent Increases

We have also identified jurisdictions that have adopted ordinances that implement landlord-tenant mediation programs. These ordinances establish programs that offer or, in some cases, require, a mediation process before landlords are able to impose certain rent increases and,

⁷ Palo Alto Ordinance Code, § 9.68.030.

⁸ San Jose Ordinance Code § 17.23.610.

depending on the jurisdiction, such programs may also require mediation of other aspects of the landlord-tenant relationship.

Most ordinances imposing mandatory mediation of rent increases limit the types of rental properties that are subject to the mediation requirement (e.g., units in buildings with multiple dwelling units).⁹ Likewise, these ordinances typically specify the types of disputes that are subject to mandatory mediation (e.g., proposed rent increases of a set percentage above “base rent,” rent increases of more than a certain dollar amount per month, or multiple rent increases in any twelve-month period).

Under many such ordinances, landlords are required to participate in a non-binding mediation process if a tenant requests mediation of a dispute within the scope of the ordinance and if a landlord fails to do so, the proposed rent increase is invalid.

VII. **Just Cause Eviction Ordinances**

Moving along the continuum of possible tenant protection measures, some jurisdictions have adopted ordinances that impose relatively extensive restrictions on the circumstances under which a landlord can evict a tenant.

As noted below, jurisdictions with rent stabilization ordinances typically couple them with so-called “just cause eviction” ordinances. However, most such jurisdictions extend the just cause eviction protection of their ordinances to the tenants of rental units that are not themselves subject to rent stabilization, and the California courts have recognized that the Costa-Hawkins Act does not itself preempt just cause eviction ordinances. In fact, some jurisdictions have adopted just case eviction ordinances without instituting rent stabilization.¹⁰

Under these just cause eviction ordinances, landlords may evict a tenant only for reasons that are specifically enumerated in the ordinance. Examples of permissible grounds for evicting a tenant typically include the following:

- Failure to pay rent or habitually paying rent late;
- Violation of a material term of rental agreement, where there has been notice and an opportunity to correct the violation;
- Committing or allowing the existence of a nuisance;
- Damaging the unit or common areas;
- Unreasonably interfering with the comfort, safety or enjoyment of other tenants;
- Committing or allowing an illegal activity or use;

⁹ Palo Alto Municipal Code, § 9.72.010.

¹⁰ See, e.g., City of Glendale Municipal Code, Chapter 9.30; City of Maywood Municipal Code, Title 8, Ch. 17.

- Owner or family member occupancy;
- Resident manager occupancy;
- Substantial renovation;
- Denying landlord lawful entry; or
- Unauthorized subtenant in possession at the end of the lease term.

In contrast, San Jose employs a narrower approach and only prohibits evictions where the landlord's dominant motive is retaliation against a tenant's exercise of his or her rights under the city's rent stabilization ordinance, or to evade the purposes of the ordinance.

In jurisdictions with a just cause eviction ordinance, landlords are often required to satisfy special notice requirements. For example, a landlord might be required to identify the grounds for the eviction, including the facts that support that determination, and to describe the renter's rights and resources. Some jurisdictions require that a landlord give a former tenant notice when they are returning a property to the rental market where the eviction was based on owner occupancy.

Tenant advocates maintain that just cause eviction ordinances afford tenants some degree of protection against arbitrary landlord actions, particularly in a tight rental market. Landlords often assert that such ordinances make it more difficult for them to act quickly to deal with problem tenants.

VIII. Relocation Assistance

Local jurisdictions often require landlords to provide relocation assistance payments to all tenants when the eviction is not the fault of the tenant ("no-fault evictions"). Other jurisdictions limit such mandated assistance based on the type of eviction or the status of the affected tenant; it is particularly common to require relocation assistance for evictions occurring when landlords require tenants to depart in order to occupy units themselves (so-called "owner-occupancy" evictions) or Ellis Act evictions (i.e., an eviction to remove a unit from the rental market).

In addition to a lump sum payment, many cities require the landlord to pay for relocation assistance services. As with eviction controls, many local agencies extend the relocation assistance requirements to tenants in units that are not subject to rent stabilization.

For example, in Mountain View, landlords are required to pay relocation assistance when evicting tenants under certain circumstances. The Mountain View ordinance applies only where a landlord vacates four or more rental units within a one-year period in order to (1) withdraw from the rental market (an Ellis Act eviction), (2) demolish the rental property, (3) perform substantial renovations, (4) convert to condominiums, or (5) change to a non-residential land use. Further, only tenants with a household income at or less than eighty percent of the area median

household income are eligible for relocation assistance.¹¹ Other jurisdictions require relocation assistance payments without reference to the income level of the affected tenants.¹²

Under the Mountain View ordinance, in covered eviction cases, the landlord is required to refund the tenant's security deposit (with limited exceptions), provide the affected tenants with a 60-day subscription to a rental agency, and pay the equivalent of three months' rent, based on the median monthly rent for a similar-sized unit in Mountain View. Certain special-circumstances households, including seniors, persons with disabilities, and families with a dependent child, are entitled to an additional \$3,000 payment. The ordinance also requires 90 days' notice of termination.

Other ordinances, such as the City of Glendale's, require payment of "two times the amount of the fair market rent as established by the U.S. Department of Housing and Urban Development for a rental unit of similar size of that being vacated in Los Angeles County . . . plus one thousand dollars." Glendale Municipal Code § 9.30.035.

IX. What is Rent Stabilization?

A further step along the continuum of tenant protection measures is rent stabilization and the following sections describe rent stabilization and statutory/constitutional limits on rent stabilization ordinances and analyze existing rent stabilization ordinances.

The cost of market-rate housing units fluctuates with changes in the housing market. For example, a recent report from the Housing Authority of the County of San Mateo states that the average cost of rent in the County has increased more than 45% over the last four years. The general purpose of rent stabilization is to protect tenants by limiting the amount that rents may increase as market rents increase. These ordinances provide tenants certainty that their rents will not increase above a certain amount each year, while also providing landlords with a fair return on their investments.¹³

a. Types of Rent Stabilization Ordinances

Commentators typically speak of three general types of rent stabilization ordinances, two of which remain legal in California.¹⁴

¹¹ In 2014, 80 percent of the median income for Santa Clara County was \$71,300 for a four-person household.

¹² See, e.g., City of Glendale Municipal Code, § 9.30.035; City of Maywood Municipal Code § 8.17.035.

¹³ *Pennell v. City of San Jose* (1988) 485 U.S. 1, 13.

¹⁴ Friedman *et al.*, Cal. Practice Guide: Landlord–Tenant (The Rutter Group 2014) ¶ 2:707, p. 2D–4.

i. Vacancy Control

The most restrictive type, known as “vacancy control,” sets the maximum rental rate for a unit and maintains that rate when the unit is vacated and another tenant takes occupancy.¹⁵ Under “vacancy control” ordinances – which, as discussed below, *California law no longer allows* – the rent that can be charged for a unit remains subject to control at all times, including upon the occurrence of a vacancy and the establishment of a new tenancy.

ii. Vacancy Decontrol-Recontrol

A less restrictive form of rent regulation, known as “vacancy decontrol-recontrol,” allows a landlord to establish the initial rental rate for a vacated unit (typically at the then-prevailing market rate) but, after that rental rate is fixed, limits rent increases as long as the same tenant occupies the unit.¹⁶

For example, under such an ordinance, a landlord could set a monthly rent at the hypothetical prevailing market rate of \$1,000 when a new tenant moves in and that amount would become the “base rent” during the term of that tenancy. During that tenancy, the limitations on rent increases would be applied against that \$1,000 base rent. Thus, if the ordinance allowed for rent increases of up to 5% per year, the landlord could increase the rent to no more than \$1,050 after the first year of the lease. However, if this tenant moves out and the landlord thereafter rents to a new tenant who is willing to pay rent of \$1,500 per month, that \$1,500 amount becomes the new “base rent” and the 5% limitation would be applied to this new base rent.

iii. Permanent Decontrol

The least restrictive type of rent control, known as “permanent decontrol,” limits rent increases only on units occupied at the time the ordinance is adopted and when such units are vacated, they become unregulated and landlords are free to determine the initial rental rate and any future rent increases.¹⁷

Stated differently, under “permanent decontrol,” rent stabilization would apply only to tenancies existing at the time that such an ordinance is adopted and, as these tenancies end when the tenants move out, the units would cease to be covered by the ordinance.

iv. Scope

Rent stabilization measures may be exhaustive in scope. In addition to capping permissible rent

¹⁵ *Id.*, ¶ 2:708, p. 2D-4.

¹⁶ *Id.*, ¶ 2:710, p. 2D-5.

¹⁷ *Id.*, ¶ 2:711, p. 2D-5.

increases, they may regulate landlord conduct that has the effect of imposing a rent increase (e.g., decrease in housing services without a corresponding decrease in rental rates).¹⁸ They may also impose “eviction controls,” such as those described above, which protect tenants from arbitrary evictions while ensuring that landlords can lawfully evict tenants for good cause.¹⁹ Also, as noted, rent stabilization ordinances may be, and often are, coupled with relocation assistance provisions, which require landlords who evict tenants for certain reasons to pay tenants some of their displacement costs in advance.²⁰

X. What Legal Standards Apply to Rent Stabilization Ordinances in California?

a. Costa-Hawkins Rental Housing Act

Prior to the enactment of the Costa-Hawkins Rental Housing Act in 1995²¹, there was no statutory provision limiting local rent stabilization ordinances in California.²² Costa-Hawkins was the California Legislature’s first major effort to limit local controls over rents chargeable to residential tenants.²³ Proponents of the legislation viewed it as “a moderate approach to overturn extreme vacancy control ordinances . . . which deter construction of new rental housing and discourage new private investments”²⁴ Opponents, on the other hand, argued that the legislation was “an inappropriate intrusion into the right of local communities to enact housing policy to meet local needs” and that the law “would cause housing prices to spiral, with the result that affordable housing would be available to fewer households.”²⁵

Costa-Hawkins imposed the following limitations on local rent stabilization ordinances:

1. Housing constructed on or after February 1, 1995 is exempt from such local ordinances;²⁶
2. Single-family homes and condominiums (units where title is held separately) are exempt from such ordinances;²⁷ and
3. Such ordinances cannot regulate the initial rate at which a dwelling unit is offered once the previous tenants have vacated the unit.²⁸ In other words, “vacancy control” ordinances have been abolished and, with limited exceptions, landlords may impose “whatever rent they choose at the commencement of a tenancy.” *Action Apartment Ass’n*

¹⁸ *Id.*, ¶ 5:1, p. 5–1.

¹⁹ *Id.*

²⁰ For further discussion regarding relocation assistance mandates, see section IV.D of this memo.

²¹ See Cal. Civ. Code § 1954.50 *et seq.*

²² Legis. Analyst, analysis of Assem. Bill No. 1164 (1995–1996 Reg. Sess.) p. 1.

²³ Legis. Analyst, analysis of Assem. Bill No. 1164 (1995–1996 Reg. Sess.) p. 1.

²⁴ *Id.* at p. 6.

²⁵ *Id.* at p. 6.

²⁶ Cal. Civ. Code § 1954.52(a)(1).

²⁷ *Id.* at § 1954.52(a)(3)

²⁸ *Id.* at § 1954.53(a).

Inc. v. City of Santa Monica (2007) 41 Cal. 4th 1232, 1237.

Costa-Hawkins allowed local jurisdictions to continue to impose rent stabilization on units that are not otherwise exempt, provided that the rents may be reset to market levels by landlords upon a new tenancy (i.e. “vacancy recontrol-decontrol”).

b. Constitutional Issues

Both the United States and California Supreme Courts have held that rent stabilization is a proper exercise of a local government’s police power if it is calculated to eliminate excessive rents and it provides landlords with just and reasonable returns on their property.²⁹ Thus, in order to withstand constitutional scrutiny, a rent stabilization ordinance must provide a mechanism for ensuring landlords a “just and reasonable” return on their property.³⁰ A “just and reasonable” return is one that is “sufficiently high to encourage and reward efficient management, discourage the flight of capital, maintain adequate services, and enable [landlords] to maintain and support their credit status.”³¹ At the same time, the amount of return should not defeat the purpose of rent stabilization, which is to prevent excessive rents.³²

A rent stabilization scheme would be vulnerable to constitutional challenge if, for instance, it indefinitely freezes landlord profits, imposes an absolute (inflexible) cap on rent increases, or prohibits a particular class of landlords from obtaining rent increases.³³ On the other hand, even a narrowly-drawn ordinance will be valid so long as it grants the responsible body or authority discretion to provide a fair return by approving rent increases in extraordinary cases.³⁴

In addition to ensuring that landlords are guaranteed a “just and reasonable” return on their investments, any rent stabilization measure must avoid classification as a “regulatory taking” under federal and state constitutional law principles. Depending on how a rent stabilization ordinance is drafted and/or applied, it may violate the Fifth and Fourteenth Amendments of the U.S. Constitution, which prohibit the taking of private property for public use without “just compensation.”³⁵ The “just compensation” provision is “designed to bar [g]overnment from forcing some people alone to bear public burdens which, in all fairness and justice, should be

²⁹ See *Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129; *Pennell v. City of San Jose*, *supra*, 485 U.S. at 12; *Santa Monica Beach, Ltd. v. Super. Ct* (1999) 19 Cal.4th 952, 962.

³⁰ *Birkenfeld v. City of Berkeley*, *supra*, 17 Cal.3d at 165; *Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1021.

³¹ *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board* (1999) 70 Cal.App.4th 281, 288-289; *TG Oceanside, L.P. v. City of Oceanside* (2007) 156 Cal.App.4th 1355, 1372; *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 220.

³² *Ibid.*

³³ *Donohue v. Santa Paul West Mobile Home Park* (1996) 47 Cal.App.4th 1168, 1179.

³⁴ *Ibid.*

³⁵ See U.S.C.A. Const. Amend. 5, 14.

borne by the public as a whole.”³⁶

A regulatory taking of private property occurs when a government regulation limits the uses of the property to such an extent that the regulation effectively deprives the owners of its economically reasonable use or value even though the regulation does not divest them of title to it.³⁷ If the owners can show the value of their property has been diminished as a result of the regulation and that the diminution in value is so severe that the regulation has “essentially appropriated their property for public use[,]” then a regulatory taking has taken place and the local government which enacted the regulation must provide the owners “just compensation.”³⁸

XI. Overview of Local Rent Stabilization Ordinances in California

As of July 2015, we have identified 14 cities in California – many of which are in the Bay Area – that have instituted some form of rent stabilization.³⁹ News reports also indicate that a number of jurisdictions are currently considering adopting rent stabilization (Santa Rosa) or increasing the stringency of existing measures (San Jose). No county, other than the City and County of San Francisco, has, to date, adopted a rent stabilization ordinance.⁴⁰

As noted, rent stabilization ordinances are price control mechanisms subject to State and Federal constitutional limitations. Therefore, rent stabilization laws tend to be complex and to vary by jurisdiction. Generally, however, rent stabilization measures address the following points: the type of housing subject to rent stabilization; the limits on and procedure for setting or raising rents; and eviction controls. The chart included as an exhibit to this memorandum compares the key features of rent stabilization ordinances adopted by various jurisdictions and a summary of these ordinances is provided below.

³⁶ *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles* (1987) 482 U.S. 304, 318-319 (internal quotations marks and citations omitted).

³⁷ See *Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523; *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 10.

³⁸ See *Garneau v. City of Seattle* (9th Cir. 1998) 147 F.3d 802, 807-808. The economic impact equation must also account for any valuable “quid pro quo” the property owners may have received as a result of the enactment. *Id.* Also, a temporary regulatory taking, consisting of the temporary deprivation of all economically viable use of the property, may require compensation for the period of time the regulation denied the owner all use of the land. See *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, *supra*, 482 U.S. 304, 318; *Ali v. City of Los Angeles* (1999) 77 Cal.App.4th 246, 254-255.

³⁹ California jurisdictions with rent stabilization ordinances include Richmond (which recently adopted a rent stabilization ordinance that may be subject to the referendum process), Berkeley, Oakland, San Francisco, San Jose, East Palo Alto, Hayward, Los Gatos, Beverly Hills, Los Angeles, Palm Springs, Santa Monica, Thousand Oaks, and West Hollywood.

⁴⁰ Note that a number of counties (including San Mateo County) and many more cities have adopted rent control ordinances that apply only to mobilehome parks; although this type of rent control is subject to the same constitutional standards, mobilehome rent control is governed by a separate statutory scheme (California’s Mobilehome Residency Law) and a review of mobilehome rent control is not included in this memorandum.

A. What Type of Housing May be Subject to Rent Stabilization?

As discussed above, State law preempts local ordinances that purport to apply rent stabilization to single-family housing units and to housing built after 1995, or that purport to limit the initial rent established at the beginning of a new tenancy. Likewise, residential units owned or managed by the government, and units with government subsidized rents are exempt under all ordinances. Federal law expressly preempts local rent stabilization on federally-assisted rental buildings.

Beyond the limits imposed by State and federal law, however, local governments often create additional exemptions and limits on the applicability of rent stabilization ordinances. Many jurisdictions that imposed rent stabilization prior to the 1995 adoption of the Costa-Hawkins Act typically exempted from their own ordinances units constructed and initially occupied after the date the local ordinance was adopted.

For example, San Francisco imposes rent stabilization only on units built before 1979, when the San Francisco ordinance was adopted. While it is less relevant to cities or counties considering rent stabilization post-Costa Hawkins, cities tended to impose rent stabilization only on existing housing stock in order to avoid discouraging production of new housing. Similarly, some cities (such as Oakland and San Francisco) allow substantially renovated units to become exempt from rent stabilization if they meet certain criteria. Presumably this type of provision is intended to encourage substantial renovations when necessary.

In addition, most jurisdictions exempt temporary or non-traditional residential uses, such as hotels, hospitals and other medical care facilities, school dormitories, and, in some locations, retirement homes, from rent stabilization. Under Costa Hawkins, rent stabilization may not be applied to single-family residences, but many cities also exempt small-unit residential buildings such as duplexes or triplexes.

We did not identify jurisdictions in California that limit the applicability of rent stabilization based on tenant income, although cities in other states have adopted such an approach. In New York City, for example, tenants must have a combined income under \$200,000 to qualify for rent stabilization. While not focused on tenant income, Los Angeles exempts “luxury” apartments from rent stabilization, based upon the rent level in effect at the time the ordinance was adopted.⁴¹

⁴¹ For example, a two-bedroom unit that rented for \$588 per month or more in 1978 would not be subject to rent stabilization in Los Angeles.

B. How are Rent Rates and Rent Increases Determined Under Rent Stabilization Ordinances?

As described previously, State law allows for a form of rent stabilization called “vacancy decontrol,” which prevents local governments from regulating the setting of the *initial rent* at the beginning of a tenancy. The initial rent is set by the landlord, typically at a market level. After that point, though, local rent stabilization ordinances typically limit a landlord’s ability to raise the rents in covered units.⁴² Every rent stabilization jurisdiction, however, has some allowance for automatic periodic rent increases, and also for additional rent increases when required to ensure the landlord receives the constitutionally-required fair rate of return.

1. Automatic Rent Increases

Each rent stabilization ordinance permits certain “automatic” rent increases that do not require prior agency approval. These increases typically fall into one of three categories: (1) annual or periodic increases; (2) increases to “pass through” landlord operating costs or registration fees; and (3) increases to market rent upon a unit vacancy.

Examples of allowable annual or periodic rent increases for the various rent stabilization jurisdictions is provided in the chart attached to this memorandum. Some rent stabilization jurisdictions allow an annual increase that is tied to and limited by a corresponding increase in the regional Consumer Price Index (“CPI”). In addition, such jurisdictions often also cap annual rent increases by a certain percentage, regardless of the change in CPI. In San Francisco, for example, the automatic annual rent increase is 60 percent of the CPI increase in the year, but the maximum allowable increase is 7 percent regardless of the increase in CPI.

Other rent stabilization jurisdictions allow greater annual rent increases that are not necessarily tied to changes in economic indicators. San Jose has such an ordinance, and allows annual increases of eight percent per year (or twenty-one percent if the last rent increase was more than twenty-four months prior).

Many ordinances also provide mechanisms for landlords to pass increased operating costs on to their tenants (“pass-through” costs). Acceptable costs often include utilities, property taxes, or rent stabilization ordinance registration fees. Most jurisdictions limit the amount of the pass-through either to a portion of the increased cost or to a percentage of the overall rent.

The last type of “automatic” rent increase is upon termination of a tenancy. As described previously, State law allows a landlord to set an initial rent (typically to market levels) at the start of a new tenancy.

⁴² California law would also allow for “permanent decontrol,” which would result in units covered by the law at the time of its adoption becoming non-rent stabilized when the existing tenants depart.

2. Rent Adjustments Requiring Agency Approval

The constitutional implications of rent stabilization require that any ordinance include a procedure to allow a landlord to petition for an additional rent when necessary to ensure a fair return on the landlord's investment. These fair return requests must be considered on a case-by-case basis, but ordinances typically identify a non-exclusive list of factors that will be considered in determining whether an additional rent increase is justified. Common factors include atypical operating costs and maintenance expenses, physical condition or repair and improvements, level of housing services provided, taxes, and financing or debt service costs.

"Fair return" increase approval procedures vary by jurisdiction. However, the general pattern is to require a written application to a rent board or other decision maker, subject to an initial staff determination and then an administrative appeal. The board's decision must be based on evidence presented, with an opportunity for the affected parties to be heard.

In addition to case-by-case "fair return" increases, many cities allow landlords to separately apply for rent adjustments to recover capital improvement and renovation costs. These ordinances distinguish "capital improvements" from ordinary maintenance and repairs, which do not justify special rent adjustments. The details vary by jurisdiction, but an approved rent increase based on capital improvements is often spread among the tenants who benefit from the improvements, and the increase is amortized over the useful life of the improvements.

Apart from setting maximum rent increases, most ordinances also provide a mechanism for rent reductions to reflect a decrease in housing services that would otherwise effectively allow landlords to increase rent by reducing services. A number of cities vest their rent boards with power to approve tenant requests for rent reductions, usually for reduced housing services or defective conditions, such as code violations or uninhabitable conditions. The procedure usually requires a tenant to petition the rent board and provide documentation of the reduced services and their claimed value. Personal financial hardship is typically not an acceptable reason for a tenant to request a rent reduction by a rent board.⁴³

C. Eviction Controls

Because landlords are allowed to set the initial rent at the beginning of a tenancy, rent stabilization in the absence of eviction controls can create an incentive for landlords to terminate existing tenancies in order to raise rents upon establishing a new tenancy. As a result, in addition to limiting rent increases, most rent stabilization jurisdictions include relatively extensive "just cause" eviction restrictions such as those we describe above. Other evictions controls are

⁴³ However, San Jose allows a tenant to raise personal financial hardship as a defense when a landlord requests an additional rent increase above the automatic increase provided by ordinance.

described below.

1. Ellis Act (Removing Property From Rental Use) Evictions

The Ellis Act prohibits local governments from requiring residential property owners to offer or continue to offer a property for rent. (Gov. Code § 7060 *et seq.*) Subject to very limited exceptions, landlords have an absolute right to go out of the rental business and to evict tenants on that basis. As discussed above, local governments do have some ability to require payment of relocation assistance for Ellis Act evictions and to potentially regulate initial rents if a landlord later tries to re-enter the rental market. The mechanisms of these relocation assistance ordinances are described further below.

2. Evictions to Allow Owner to Occupy the Unit

Eviction controls typically allow rental property owners to evict tenants so that the owner or the owner's immediate relative can occupy the unit. To reduce the possibility of fraudulent owner occupancy evictions, State law requires that the owner-occupant or owner's relative occupy the unit for at least six consecutive months after eviction of the prior tenant. (Civ. Code § 1947.10.) Some cities have adopted more stringent requirements, such as a requirement to move in within three months and remain for at least 36 months. Other cities prohibit corporate or partnership landlords from using this reason for eviction, and some cities prohibit these type of evictions altogether for certain sensitive populations (e.g., the terminally ill, disabled seniors, etc.).

3. Substantial Renovation Evictions

Eviction of tenants to allow performance of substantial renovation work is often allowed, with limitations. For example, some cities require the landlord to demonstrate that clearing the property of renters is actually necessary for the type of work proposed, and others require that the displaced tenants have the right to return when the renovation is complete. In Oakland, where tenants are provided the right to return after the renovation is completed, the landlord is required to offer the same base rent with an increase amortizing the cost of approved capital improvement expenditure over time.

4. Condominium Conversion Evictions

The conversion of apartment units to condominiums is subject to statewide regulation through the Subdivision Map Act. Local governments also often adopt conversion regulations to further protect their rental housing stock, and San Mateo County has such an ordinance in place. Sections 7108 and 7109 of the County's Subdivision Regulations prohibit conversion of multifamily rental housing to condominiums, except under circumstances where the County's overall housing vacancy, as determined by the California Department of Finance, exceeds 4.15

percent.

D. Relocation Assistance

Also, as mentioned, rent stabilization jurisdictions often require landlords to make relocation assistance payments to tenants when the reason for the eviction is not the fault of the tenant (“no-fault evictions”). As with eviction controls, many local agencies extend the relocation assistance requirements to tenants in units that are not subject to rent stabilization.

E. Administration of Rent Stabilization Ordinances

1. Administration by Rent Board or Other Means of Administration

Most rent stabilization ordinances are operated and implemented by a rent board or similar body, which discharges a variety of tasks, including publishing the annual general rent adjustments allowed under the ordinance, adjudicating requests for rent adjustments beyond the annual general adjustment, and conducting studies and publishing reports.

However, there is nothing in the law that requires a jurisdiction to establish such a board in adopting a rent stabilization ordinance. Rather, a jurisdiction could instead task officials or employees of the jurisdiction to discharge duties under the ordinance.

2. Certification of Rents vs. Complaint-Based System

Some jurisdictions operate on a complaint basis (San Francisco, Oakland, San Jose), which relies on tenants to raise concerns regarding rent increases that are alleged to violate the ordinance. Oakland’s complaint-based model, for example, relies on tenants to challenge a rent increase that they believe to be in violation of the ordinance. A hearing officer then evaluates information from the tenant and landlord and makes an initial decision, which can be appealed to a rent board. In all cases, decisions of the local agency can ultimately be appealed to the courts.

Other jurisdictions with a more robust administrative approach require landlords to register and certify initial rent amounts (e.g., East Palo Alto and Santa Monica) and to thereafter certify rent increases on covered units.

In East Palo Alto, for example, landlords must register all rental units each year. The city charges an annual registration fee (\$234 in fiscal year 2014-2015), half of which the landlord is allowed to pass on to the tenant. On an ongoing basis, landlords are required to submit documentation to the rent stabilization board for each vacancy and new tenancy, including copies of any new leases. The rent stabilization board sets the annual general rent adjustment and promulgates regulations to implement the city’s rent stabilization ordinance. The rent stabilization board also

issues a certificate of “maximum allowable rent” for each regulated unit upon initial rental of the unit and for each new tenant. The rent stabilization board then reviews any requests for rent adjustments against the certified maximum allowable rent. In addition to the proactive registration and certification component, East Palo Alto also provides for landlord and tenant petitions to challenge the rent stabilization board’s determinations and to enforce the ordinance where landlords are not in compliance.

JCB:jdn

Detailed Comparison of Five Cities with Rent Stabilization

	<u>Berkeley</u>	<u>Los Angeles</u>	<u>Oakland</u>	<u>San Francisco</u>	<u>San Jose</u>	<u>Santa Monica</u>	<u>West Hollywood</u>
Exempt Units	Hotels <14 days; Single family residences; Duplexes if L occupies one; New construction (only as to rent increases)	Hotels <30 days; Luxury units; Single family dwellings; Substantially renovated units; New construction; Nonprofit housing; Voluntarily-vacated units; Mobile-homes, recreational vehicles & parks	Hotels; New construction; Substantially renovated units; Owner-occupied buildings with up to 3 units; Nonprofit cooperatives	Hotels <32 days; Substantially renovated units; New construction; Nonprofit cooperatives & units owned by nonprofit public benefit corporations	Hotels <30 days; Voluntarily-vacated units; Prior T evicted for nonpayment of rent or breach of lease; New construction	Hotels <14 days Retirement homes Owner-occupied 1, 2 or 3-unit building Single family residences New construction "Incentive" unit	Hotels <30 days; New construction; Units first occupied after 7/1/79; Rooms rented to boarders where L occupies unit as principal residence; Dwelling units legally converted from nondwelling units
Evictions for Substantial Renovation	Must require more than 60 days to repair; T refuses to vacate during repair	None for substantial renovation; Limited evictions permitted under Primary Renovation Program	Obtain building permit for repairs necessary to comply with law or correct violation; L to apply for extension beyond 3 months; T offered right to return at same rent; Special notice requirements	Former T may rent at controlled rent; No minimum cost for nonmajor work; Permits necessary prior to serving notice; No ulterior motive	None	Removal permit from city	Permitted where building must be permanently eradicated or demolished b/c uninhabitable or if building may not be inhabited while correcting violation notice by government agency
Special Eviction Notice Rules	Grounds and specific facts; 120 days' notice to T & city for removal from market	Grounds and specific facts; 60 days' notice to Ts in unit one year; Declaration with city for relative or owner-occupancy, major rehabilitation or permanent removal from rental use	Grounds, statement that advice re termination available from Board & other req'd info; Copy of notice filed with Board within 10 days of service on T	Grounds; Inform T in writing that advice concerning notice may be obtained from Board; File copies of notice with Board w/in 10 days after service	90 days' notice to Ts in unit one year; 120 days' notice where "severe housing shortage" (no "shortage" as of early 2014); Offer to arbitrate; Notice to city within 5 days	Grounds and specific facts; 60 days' notice to Ts in unit one year; Owner/relative evictions to include current T & rent, info on proposed T; notice to board within 3 days of service on T	Grounds and specific facts; 60 days' notice to Ts in unit 1 year; Relative/owner-evictions require 90-day notice specifying proposed T, with copy to city; Written statement of alleged violations for breach of covenant or refusal to renew
Relocation Assistance	Owner/relative occupancy: \$4,500 if in unit 1 year or more; no eviction if elderly, disabled and in unit 5 years or more; Removal from market: \$8,700; \$13,700 if tenancy began prior to 1/1/99; additional \$2,500 for Ts with minors. elderlv.	For elderly, disabled & Ts with minors, \$16,350 if <3 years, \$19,300 if >3 years or <80% AMI, \$15,000 if "Mom & Pop" property; For others, \$7,700 if <3 years, \$10,200 if >3 years or <80% AMI, \$7,450 if "Mom & Pop" property; L must pay tenant relocation assistance	None	\$5,261 to eligible Ts (incl. subtenants, minors), max. of \$15,783 per unit; additional \$3,508 for elderly, disabled & Ts with minors; Fees different for Ellis Act evictions	None	\$8,300 to \$17,350 depending on number of bedrooms; \$9,500 to \$19,950 depending on number of bedrooms for seniors, disabled & parents with minor child, OR city approval of displacement plan OR move T to comparable unit	\$5,100 to \$12,800 depending on number of bedrooms; \$13,500 for seniors, disabled, Ts with dependent children, moderate income; \$17,00 for low-income; L must reimburse city for relocation aid

POLICY ARGUMENTS REGARDING JUST CAUSE EVICTION

Main Policy Features: Tenants may only be evicted for certain enumerated reasons (i.e. “just causes”). Just cause ordinances specify the permissible bases for eviction, including those due to the tenant’s “fault” (e.g. nonpayment of rent, criminal activity, etc.) and those due to “no fault” of the tenant (e.g. landlord wishes to occupy the unit).

Statewide Legal Baseline: Absent local regulation, state law provides that month-to-month tenants may be evicted for any or no reason (other than retaliation or discrimination) if served with 30 days’ written notice (or 60 days’ written notice if the tenant has resided in the unit for at least one year). Landlords may also initiate eviction proceedings with 3-days’ notice when a tenant fails to pay rent, creates a nuisance or otherwise violates the lease agreement.

Examples: Several California cities have adopted just cause eviction ordinances. See, e.g., City of San Diego Municipal Code, § 98.07; City of East Palo Alto Municipal Code §14.04.160; City of Oakland Municipal Code, § 8.22.300, *et seq.*; City of Berkeley Municipal Code, § 13.76.130.

Arguments in Support of and in Opposition to Policy: ¹

PRO	CON
<ul style="list-style-type: none">• Limits the ability of landlords to evict existing tenants, especially in low-vacancy and expensive housing markets where landlords may have incentive to evict existing tenants in order to obtain higher rents.• Protects tenants who have short-term (month-to-month) leases.• Slows down rapid increases in rent.• Stabilizes communities by slowing down evictions and decreasing turnover rates.	<ul style="list-style-type: none">• Generally restricts rights of property owners by limiting what they may do with their property, requiring additional legal process before taking action against a renter.• May impact neighborhoods by making it harder for landlords to evict problematic tenants, including those suspected of involvement in criminal activity.• Impacts surrounding neighborhood by making it difficult for landlord to remove “bad tenants.”

¹ The arguments listed here are among those that are commonly advanced for and against the tenant protection measures in question. This office has not analyzed, and does not offer an opinion regarding, their validity.

POLICY ARGUMENTS REGARDING RELOCATION BENEFITS

Main Policy Features: Tenants who face “no-fault” evictions are eligible for compensation from the landlord for moving costs and other costs of securing new housing.

Statewide Legal Baseline: There is no state law mandate for landlords to assist displaced tenants by compensating for relocation costs.

Examples: City of Mountain View has adopted a relocation assistance ordinance. See City of Mountain View Municipal Code, § 36.38.

Arguments in Support of and in Opposition to Policy:

PRO	CON
<ul style="list-style-type: none"> • Helps ensure that displaced households find affordable and comparable replacement housing by providing compensation for relocation costs, such as first and last months’ rent and security deposit for new rental unit, enrollment for housing search services, moving costs and storage. • Helps mitigate trauma and disruption to tenants and their families caused by unforeseen need for relocation (e.g. children leaving school mid-year) by addressing some financial impacts. • Requires landlords to internalize relocation costs as part of their “costs of doing business.” 	<ul style="list-style-type: none"> • Amount of mandated compensation may be excessive relative to some tenants’ needs; landlords may not be able to afford. • Relocation assistance payments may be spent on anything as ordinances do not require that compensation provided to displaced tenants be spent on costs of moving and securing new housing. • May create a perceived windfall to well-off tenants if relocation assistance not subject to stringent income-specific criteria. • If required to absorb relocation costs as part of their “costs of doing business”, landlords could build the cost of relocation benefits into rent structures.

POLICY ARGUMENTS REGARDING RENT STABILIZATION

Main Policy Features: Rent stabilization ordinances limit the amount that rents are allowed to increase each year as market values increase (usually based either on a fixed percentage or tied to inflation).

Statewide Legal Baseline: Currently, under state law, there are no limits on the amount or frequency of rent increases. Landlords may set rent to market rate with every new tenancy (“vacancy decontrol”). Rent control may not be applied to units constructed after 1995, single family homes or condos.

Examples: Thirteen cities in California have adopted rent stabilization ordinances. See, e.g., Santa Monica City Charter, Article XVIII; City of Los Gatos Municipal Code § 14.80; City of East Palo Alto Municipal Code, § 14.04.010, *et seq.*

Arguments in Support of and in Opposition to Policy:

PRO	CON
<ul style="list-style-type: none"> • Prevents landlords from imposing rent increases that cause displacement and accordingly, helps preserve income diverse, stable neighborhoods. • Substantial or frequent rent increases may adversely impact schools, youth groups and community organizations by displacing those who access these services. Long-term tenants who contribute to a community’s stability have a legitimate interest in maintaining their tenancies. • Provides a basic form of consumer protection – once tenants move into a vacant unit at market rate rents that they can afford and establish lives in these homes, they won’t have to renegotiate. • Helps correct power imbalance between landlords and tenants. Because of the high cost of moving, tenants may be pressured by landlords to accept rent increases. Tenants may also be unaware of the real conditions of units until they move in. If the tenant complains about the 	<ul style="list-style-type: none"> • Fundamentally unfair – why burden landlords for a broader societal problem? • Interferes with free market – landlord should be able to rent unit at amount that market bears. • May incentivize landlords to raise rents before any rent control ordinance takes effect in an attempt to evade impact of the regulation. • As a general matter, restricts rights of property owners as it limits what they may do with their property. • With a long line of potential tenants eager to move in at the ceiling price, discourages landlords from maintaining and repairing units until the end of a tenancy. Also, because rent increases are limited, the landlord’s ability to recoup costs of improvement or maintenance is also curtailed. • Reduces “urban vitality” by discouraging mobility; decreases vacancy

<p>conditions, the landlord may threaten to increase the rent.</p> <ul style="list-style-type: none">• Allows tenants to share in the benefit of Proposition 13, which generally caps annual increases in the assessed value of real estate at 2%. In the campaign to enact Proposition 13, advocates claimed that landlords would pass property tax savings along to tenants; rent control helps to ensure that this occurs.• Housing is a positive human right that equals or exceeds the property rights of landlords. Without rent control, even tenants paying full rent can be forced unexpectedly from their homes through no fault of their own.• Prevents landlords from making speculative profits in strong markets, but also enables landlords to obtain fair returns on their rental properties while ensuring that tenants have the certainty that their rents will not increase more than a certain amount each year.• Can be structured in a way so as to minimize bureaucracy and administrative costs (i.e. complaint driven, instead of overseen by Rent Stabilization Board – “lean and mean” approach).	<p>rates/turnover in rental units because tenants want to keep their low-rents and are unwilling to leave.</p> <ul style="list-style-type: none">• Is not tailored to protect intended beneficiaries – i.e. poor or other vulnerable renters; rather, may incentivize landlord to create stringent standards for applications from prospective tenants (i.e. requiring resumes, credit reports and references) which poor or other vulnerable renters may have trouble meeting.• Incentivizes landlords to discriminate against prospective tenants likely to stay for a long time, like retiree or couples with children.• Triggers consequences such as bribes and a “shadow market” (e.g. prospective tenant offers landlord \$5000 just to hold an \$1800-a-month one-bedroom apartment in an industrial neighborhood that he had yet to advertise; landlord offers existing tenant \$5000 to vacate rent controlled unit so landlord can reset rent for vacant unit at amount that market will bear).• Encourages some owners to take their units off the market and sell properties, rather than rent.• Depending on how they are crafted, rent control ordinances may be extremely burdensome and expensive to administer.
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RENT STABILIZATION DECISION MATRIX

UNITS COVERED	ADDITIONAL EXEMPTIONS	<ul style="list-style-type: none"> • Duplexes, small apartment buildings? • Substantially renovated units? • Temporary, non-traditional residential uses (dorms, hotels, hospitals, etc.)
CONTROLS ON AMOUNT OF RENT CHARGED	ANNUAL ADJUSTMENT	<ul style="list-style-type: none"> • Economic indicator, such as regional CPI <ul style="list-style-type: none"> ○ With or without maximum percentage increase • Specify maximum percentage increase
	OTHER ADJUSTMENTS	<ul style="list-style-type: none"> • Automatic <ul style="list-style-type: none"> ○ Utilities, property taxes, registration fees • Application for Fair Return/Adjudication <ul style="list-style-type: none"> ○ Capital improvements ○ Renovations ○ Reduction in housing services
ADMINISTRATIVE STRUCTURE	COMPLAINT-BASED OR REGISTRATION AND CERTIFICATION	
	RENT BOARD OR OTHER STRUCTURE	
TERM	INDEFINITE	
	TEMPORARY	<ul style="list-style-type: none"> • Time-based (specified number of years) • Production-based (specified number of affordable housing units) • Market-based (specified vacancy rate)
ACCOMPANYING TENANT PROTECTIONS	UNITS COVERED	<ul style="list-style-type: none"> • All housing units • Only rent-stabilized units
	JUST CAUSE EVICTION	<ul style="list-style-type: none"> • Identify acceptable grounds for eviction and any special limitations • Notice requirements
	RELOCATION ASSISTANCE	<ul style="list-style-type: none"> • When is it required? • Who qualifies? <ul style="list-style-type: none"> ○ Income limits to qualify for assistance? • Amount of assistance? <ul style="list-style-type: none"> ○ Additional assistance for sensitive groups?

RENT STABILIZATION DECISION MATRIX