

Date of Hearing: April 25, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 36 (Bloom) – As Amended April 22, 2019

**SUBJECT:** Residential tenancies: rent control

**SUMMARY:** Makes changes to the Costa Hawkins Act (the Act). Specifically, **this bill:**

- 1) Deletes the authority, notwithstanding any other provision of law, of an owner of residential real property to establish the initial and all subsequent rental rates for a dwelling or unit that was issued a certificate of occupancy after February 1, 1995.
- 2) Deletes the authority, notwithstanding any other provision of law, of an owner of residential real property to establish the initial and all subsequent rental rates for a dwelling or unit that was already exempt from a the residential rent control ordinances of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units.
- 3) Authorizes, notwithstanding any other provision of law, an owner of residential real property to establish the initial and all subsequent rental rates for a dwelling or a unit about which either of the following is true:
  - a) It has a certificate of occupancy issued within 20 years of the date upon which the owner seeks to establish the initial or subsequent rental rate; and
  - b) It is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision, where the tenancy began on or after January 1, 1996, and the owner is a natural person who owns 10 or fewer residential units within the same jurisdiction as the dwelling unit.

**EXISTING LAW:** Establishes the Act, key provisions of which include the following:

- 1) Authorizes, notwithstanding any other provision of law, an owner of residential real property to establish the initial and all subsequent rental rates for a dwelling or a unit about which any of the following is true:
  - a) It has a certificate of occupancy issued after February 1, 1995; or
  - b) It has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units; or
  - c) It is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision, where the tenancy began on or after January 1, 1996.
- 2) Provides that the authorization in 1), above, does not apply to any of the following:
  - a) A dwelling or unit where the preceding tenancy has been terminated by the owner with a 30-day or 60-day notice to terminate the tenancy, or has been terminated upon a change

in the terms of the tenancy, as specified, except a change permitted by law in the amount of rent or fees;

- b) A condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value, as specified;
  - c) Where the owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance, as specified;
  - d) When there is a renewal of the initial hiring by the same tenant, lessee, authorized subtenant, or authorized sublessee for the entire period of his or her occupancy at the rental rate established for the initial hiring.
  - e) Where the dwelling or unit meets all of the following conditions:
    - i. The dwelling or unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations, as defined, excluding any violation caused by a disaster;
    - ii. The citation was issued at least 60 days prior to the date of the vacancy; and
    - iii. The cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time. However, the 60-day time period may be extended by the appropriate governmental agency that issued the citation.
  - f) In a jurisdiction that controls by ordinance or charter provision the rental rate for a dwelling or unit, an owner who terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant may not set an initial rent for three years following the date of the termination or nonrenewal of the contract or agreement. For any new tenancy established during the three-year period, the rental rate for a new tenancy established in that vacated dwelling or unit shall be at the same rate as the rent under the terminated or nonrenewed contract or recorded agreement with a governmental agency that provided for a rent limitation to a qualified tenant, plus any increases authorized after the termination or cancellation of the contract or recorded agreement.
    - i. The above provision does not apply to any new tenancy of 12 months or more duration established after January 1, 2000, pursuant to the owner's contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, unless the prior vacancy in that dwelling or unit was pursuant to a nonrenewed or canceled contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant as set forth in that subparagraph.
- 3) Established a phase-in program for units in which the initial or subsequent rental rates were controlled by an ordinance or charter provisions in effect on January 1, 1995.
- 4) Includes the following provisions relating to sublessees and assignees:

- a) Provides that nothing in the Act or any other provision of law shall be construed to preclude express establishment in a lease or rental agreement of the rental rates to be applicable in the event the rental unit subject thereto is sublet. Nothing in the Act shall be construed to impair the obligations of contracts entered into prior to January 1, 1996.
  - b) Provides that, if the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996.
  - c) Provides that an owner cannot establish a new rent when there is a partial change in occupancy by one or more of the occupants of the premises, and one of the occupants remains in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee, who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit. Provides that the Act does not enlarge or diminish an owner's right to withhold consent to a sublease or assignment.
  - d) Provides that acceptance of rent by the owner does not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an owner's rights to establish the initial rental rate, unless the owner has received written notice from the tenant that is party to the agreement and thereafter accepted rent.
- 5) Provides that where an owner terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for rent limitations to a qualified tenant, the tenant or tenants who were the beneficiaries of the contract or recorded agreement shall be given at least 90 days' written notice of the effective date of the termination and shall not be obligated to pay more than the tenant's portion of the rent, as calculated under the contract or recorded agreement to be terminated, for 90 days following receipt of the notice of termination of nonrenewal of the contract.
- 6) Provides that nothing in the Act shall be construed to affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction.
- 7) Includes the following definitions:
- a) "Comparable units" means rental units that have approximately the same living space, have the same number of bedrooms, are located in the same or similar neighborhoods, and feature the same, similar, or equal amenities and housing services;
  - b) "Owner" includes any person, acting as principal or through an agent, having the right to offer residential real property for rent, and includes a predecessor in interest to the owner, except that this term does not include the owner or operator of a mobilehome park, or the owner of a mobilehome or their agent.
  - c) "Prevailing market rent" means the rental rate that would be authorized pursuant to 42 U.S.C.A. 1437 (f), as calculated by the United States Department of Housing and Urban Development pursuant to Part 888 of Title 24 of the Code of Federal Regulations;
  - d) "Public entity" has the same meaning as set forth in Section 811.2 of the Government Code;

- e) “Residential real property” includes any dwelling or unit that is intended for human habitation; and
- f) “Tenancy” includes the lawful occupation of property and includes a lease or sublease.

**FISCAL EFFECT:** None.

**COMMENTS:**

*Purpose of this bill:* The Act limits the ability of local jurisdictions to apply rent control to units built after 1995 or when local rent ordinances were put into place (e.g., 1979 for San Francisco or 1978 for Los Angeles), whichever is earlier. Local governments also cannot apply rent control to single-family homes, no matter when they were built.

AB 36 would allow local governments to apply rent control to units that have been in use for 20 years or more. As such, local governments could choose to apply rent control to units built up to 2000, and thereafter the date could “roll” to include properties as they reach the 20 year mark. The bill would also allow local governments to apply rent control to single-family homes where the owner of the property owns ten or more single family homes.

AB 36 does not require local governments to enact new or amend existing rent control laws. Local governments may already adopt rent control protections. Rather, it would give local governments more flexibility to shape rent control policies. There is no requirement that a local government take any action as a result of this bill.

*California's housing affordability crisis:* Affordable housing has become one of the top issues in California, which is home to some of the most expensive places to live in the country. According to a January 2017 Public Policy Institute of California (PPIC) report, California has six of the nation’s eleven most expensive large metropolitan rental markets: San Francisco, San Jose, Orange County, Oakland, San Diego, and Los Angeles. Estimated median rent for a two-bedroom apartment ranges from \$1,671 in Los Angeles to \$3,266 in San Francisco. In the past several years, rents have increased 44 percent in San Francisco and 37 percent in the Oakland–Fremont metro areas.

According to a 2017 report by the Department of Housing and Community Development (HCD), “[u]nlike home sales prices, rents did not experience a significant downward trend during the ‘Great Recession.’ Instead, demand for rental housing has stayed strong and rents have trended upward, even when adjusting for inflation. Despite the economic recovery that has occurred since the recession, incomes, especially among renters, have not kept pace with housing cost increases.” This same report notes that 54 percent of renter households are considered “burdened,” spending 30 percent or more of their annual income on rent. Thirty percent of renters pay more than half of their income towards rent.

Of all California renters, 61 percent are lower income, defined as making below 80 percent area median income (AMI). This population is hit especially hard by the affordability crisis, as 81 percent are spending over 30 percent of their income on rent, and just over half are spending more than half of their income on rent. According to a September 2017 PPIC survey, a third of Californians say the cost of their housing makes them seriously consider moving out of the state,

and an additional 10 percent consider moving elsewhere within California. More than half of renters (56 percent) consider leaving their region of California.

*Background:* The "first generation" of rent control laws in the United States were established during and after both World Wars. These laws were often based on the "rent freeze" model of rent control, whereby rents were capped at a certain amount. The "second generation" of rent control laws, first enacted in California in the 1970s and 80s, differ from the first generation model in that they are more complex, generally allow for regular rental increases, and may govern other aspects of the landlord-tenant relationship.

Fifteen cities in California currently have rent control policies. These policies vary from city to city – for example, some may limit the percentage that rent may be increased annually, while others may limit rent increases based on an index for inflation. In 2016, two cities (Richmond and Mountain View) passed rent control laws via local ballot measures, and the remaining thirteen cities had passed rent control laws in the 1970s and 1980s. In both of these instances, a number of complex factors converged to create rapid rent increases for tenants and, as a result, a number of cities passed rent control laws.

Prior to the Act, state law made no provision for – but did not prohibit – the adoption of local rent control laws. Case law provided that rent controls are a valid exercise of a city's police power so long as they are reasonably calculated to eliminate excessive rents and at the same time provide landlords with a "just and reasonable return on their property" (*Birkenfeld v. Berkeley* (1976) 17 Cal.3d 129). Cities with rent control laws were afforded a high degree of flexibility to shape their policies. For example, a few cities opted to include a particularly controversial provision known as "vacancy control," meaning landlords were limited in how much they could charge for rent after a unit was vacated by the previous tenant.

*Costa-Hawkins Rental Housing Act:* In response to the wave of rent control laws passed the 1970s and 80s, there were numerous attempts over the years, in the courts, the legislature, and at the statewide ballot, to preempt local rent control. These attempts were unsuccessful until 1995, when the California Legislature passed and the Governor signed AB 1164 (Hawkins), also known as the Costa-Hawkins Rental Housing Act. According to the Assembly Committee on Housing and Community Development's Committee analysis of AB 1164, proponents of the bill viewed it as "a moderate approach to overturn extreme vacancy control ordinances which unduly and unfairly interfere into the free market." Opponents of AB 1164 argued that it was an "inappropriate intrusion into the right of local communities to enact housing policy to meet local needs," and that it would cause housing prices to spiral.

While local governments maintain the ability to implement rent control laws, they are limited by the parameters of the Act. Key provisions of the Act include the following:

- Provides that rental property owners may establish a new rental rate where the former tenant has voluntarily vacated or is lawfully evicted for cause. This is known as vacancy decontrol.
- Housing constructed after February 1, 1995 must be exempt from rent control.
- Housing that was already exempt from a local rent control law in place on or before February 1, 1995, pursuant to an exemption for new construction, must remain exempt. This prohibited cities with existing rent control policies at the time of the Act's passage

from expanding their policies, usually meaning units built after the late 1970s cannot be covered by rent control.

- Exempts from rent control single family homes and other units, such as condominiums, that are separate from the title to any other dwelling units, where the tenancy began on or after January 1, 1996.

At the time the Act was signed into law, 14 cities in California imposed rent control on residential units. The impact of the Act on these cities' rent control laws depended on the type of rent control at issue. For example, five of these cities – Berkeley, Cotati, East Palo Alto, Santa Monica, and West Hollywood – imposed vacancy control, which was no longer permissible under the Act, as it preempted vacancy control laws. Three of these cities – East Palo Alto, Cotati, and Los Gatos – did not exempt, or only partially exempted new construction from rent control. This was also impermissible under the Act, and cities had to amend their laws accordingly. Cities with existing new-construction exemptions could not expand them, even to encompass a broader category of pre-1995 units.

*Recent measures:* Due to the current affordability crisis, there has been a re-emergence of local rent control measures at the ballot, both successful and unsuccessful. In 2016, the cities of Richmond and Mountain View adopted rent control through a majority vote at the ballot – the first cities to do so in approximately thirty years. Berkeley, East Palo Alto, and Oakland voters strengthened existing rent control protections. From 2016-2017, local rent control initiatives failed in Alameda, Burlingame, San Mateo, and Santa Rosa, although Alameda voters approved a renter protection ordinance.

*Arguments in support:* According to the sponsors of this bill, “AB 36 would restore the ability of local communities to address rent burden and our housing crisis by making reasonable reforms to the Costa Hawkins Rental Housing Act. Currently, Costa Hawkins arbitrarily limits the ability of communities to apply their rent control policies to buildings built before 1995, with some communities prohibited from applying their policies to buildings built as far back as 1978. While the purpose of this limitation was to exempt newly-constructed buildings from rent stabilization to ensure it did not impede housing construction, it has become outdated and requires updating to achieve this original purpose. AB 36 would remedy this by instead providing that buildings may be covered by rent stabilization policies if they are older than a certain age. This will allow communities to limit rent increases in older buildings as they age, while at the same time avoiding impacts on new housing production.

The bill will also return the authority of local governments to apply local rent control policies to single-family homes and condos, while exempting small property owners. With the increasing number of renters occupying single-family homes in California, it’s critical that local decision-makers have the option to protect these renters. AB 36 will not prevent landlords from receiving a fair return on their investments; even where local communities have enacted rent control policies, the California Supreme Court has ruled that rent controls must provide owners with a “just and reasonable return on their property.” With this protection in place for landlords, local governments and voters should be allowed to assess local conditions, and fashion rules appropriate to their location, without arbitrary state-imposed limitations.”

*Arguments in opposition:* According to the California Apartment Association, “AB 36 is counterproductive to California’s ongoing housing crisis and would have severe and harmful consequences to our economy. AB 36 would effectively impose rent control on new

construction. This would lead to a substantial reduction in the development of new rental housing. Investors would face a climate of uncertainty knowing that after only ten years the new housing development could be put under extreme forms of local rent control, which is not enough time for these development projects to pencil out. Additionally, in a report issued by the State's Legislative Analyst, "rent control will do nothing to increase our supply of affordable housing and, in fact, likely would discourage new construction." Study after study has demonstrated that price controls end up crippling the commodity that is controlled, hurting tenants new to the market place and most in need of housing. Even with the narrow exemption provided, AB 36 would still expand rent control to all other single-family homes and condominiums. The majority of rental units in California are located within small properties owned by "mom and pop" landlords who own more than two units. AB 36 targets these family owned-and-operated small businesses that provide rental homes in California."

*Related legislation:*

AB 1506 (Bloom) (2017): Would have repealed the Costa Hawkins Act. *This bill died in the Assembly Committee on Housing and Community Development by a vote of 3-2.*

AB 2088 (Dutra, 2004): Would have allowed a rent increase for new occupants of a rent-controlled unit, as specified. Would have exempted specified jurisdictions that already have in place procedures for increasing the rent to new occupants. *This bill died on the Senate Inactive File.*

AB 1256 (Koretz, 2003): Would have allow an owner of residential real property to establish the initial and all subsequent rental rates for a dwelling or unit that has a certificate of occupancy that is 25 years old or less, and allow a local jurisdiction to control the rental rates of a dwelling or unit older than 25 years. *This bill died in the Assembly Committee on Housing and Community Development.*

SB 985 (Kuehl), Chapter 729, Statutes of 2001: Narrowed the condominium exemption to rent control laws.

AB 866 (Kuehl, 2000): Would have provided that nothing in the Act shall be construed to prohibit or prevent a local agency from determining administratively the lawful rent in accordance with the act. *This bill died in the Senate Judiciary Committee.*

SB 1098 (Burton), Chapter 590, Statutes of 1999: Provided that a rental unit is not decontrolled if it was vacated by the former tenant 1) when the landlord no longer accepts Section 8 housing payments and the tenancy is terminated because the tenant could not pay the rent without the Section 8 assistance or 2) when the rental unit has been cited in an inspection report as containing serious code violations which have remained unabated for at least 60 days preceding the vacancy.

AB 1164 (Hawkins), Chapter 1331, Statutes of 1995: Established the Costa-Hawkins Rental Housing Act.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

ACCE Action (Co-Sponsor)  
PICO California (Co-Sponsor)  
Public Advocates (Co-Sponsor)  
Western Center on Law and Poverty (Co-Sponsor)  
ACLU of California  
AFSCME Local 3299  
Alliance for Community Transit - Los Angeles  
Asian Americans Advancing Justice - California  
Asian Americans and Pacific Islanders for Civic Empowerment Education Fund  
Asian Pacific Environmental Network  
Bay Area Legal Aid  
Bend the Arc: Jewish Action Southern California  
California Calls Action Fund  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Labor Federation  
California Reinvestment Coalition  
California Renters Legal Advocacy and Education Fund  
California Rural Legal Assistance Foundation  
California Teamsters Public Affairs Council  
California YIMBY  
Central Coast Alliance United for a Sustainable Economy  
Central Valley Empowerment Alliance  
Coalition for Humane Immigrant Rights  
Community Legal Services in East Palo Alto  
Congregations Organized for Prophetic Engagement  
Courage Campaign  
Drug Policy Alliance  
East Bay for Every One  
East Bay Housing Organizations  
Empowering Pacific Islander Communities  
Engineers and Scientists of CA, IFPTE Local 20, AFL-CIO  
Eric Garcetti, Mayor of Los Angeles  
Esperanza Community Housing Corp  
Faith in Action Bay Area  
Faith in the Valley  
Gamaliel of California  
Hillcrest Indivisible  
House Sacramento  
Housing California  
Housing for All Burlingame  
Hunger Action Los Angeles  
Indivisible SF  
Indivisible: San Diego Central  
Inlandboatmen's Union of the Pacific



Just Cities/Dellums Institute  
KIWA  
Korean Resource Center  
La Forward  
La Voice  
Latino Coalition for a Healthy California  
Latinos United for a New America  
Law Foundation of Silicon Valley  
Leadership Counsel for Justice and Accountability  
Legal Services for Prisoners with Children  
Los Angeles Alliance for a New Economy  
Monument Impact  
National Association of Social Workers, California Chapter  
National Union of Healthcare Workers  
Non-Profit Housing Association of Northern California  
Oakland Tenants Union  
Orange County Civic Engagement Table  
People Organized For Westside Renewal  
Planning and Conservation League  
PolicyLink  
Power California  
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO  
Progressive Asian Network for Action  
Public Counsel  
Public Law Center  
Sacramento Filipinx LGBTQIA  
San Francisco Tenants Union  
SEIU California  
Southern California Association of Non Profit Housing  
Strategic Actions for a Just Economy  
TechEquity Collaborative  
Tenants Together  
Tenderloin Neighborhood Development Corporation  
Thai Community Development Center  
The Kennedy Commission  
The Public Interest Law Project  
UAW Local 2865  
UC Davis Bulosan Center for Filipino Studies  
Unite Here, Local 19  
United Food and Commercial Workers, Western States Council  
United Teachers Los Angeles  
Unite-Here, AFL-CIO  
Urban Habitat  
Utility Workers of America  
Venice Community Housing Corporation  
Viet Vote SD  
Working Partnerships USA  
YIMBY Action

*Support If Amended*

Abundant Housing LA  
Aids Healthcare Foundation

**Opposition**

AMVETS  
California Apartment Association  
California Association of Realtors  
California Building Industry Association  
California Business Properties Association  
California Business Round Table  
California Chamber of Commerce  
California Council for Affordable Housing  
California Rental Housing Association  
Cerritos Regional Chamber of Commerce  
Chico Chamber of Commerce  
Elk Grove Chamber of Commerce  
Garden Grove Chamber of Commerce  
Greater Coachella Valley Chamber of Commerce  
Greater Riverside Chamber of Commerce  
North Orange County Chamber Of Commerce  
Orange County Business Council  
Oxnard Chamber of Commerce  
Rancho Cordova Chamber of Commerce  
Redondo Beach Chamber of Commerce & Visitors Bureau  
San Diego County Apartment Association  
San Diego Regional Chamber of Commerce  
San Gabriel Valley Economic Partnership  
Santa Maria Valley Chamber of Commerce  
South Bay Association of Chambers Of Commerce  
Southwest California Legislative Council  
Tulare Chamber of Commerce  
Vacaville Chamber of Commerce  
Valley Industry and Commerce Association

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