

Date of Hearing: January 11, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1506 (Bloom) – As Introduced February 17, 2017

**SUBJECT:** Residential rent control: Costa-Hawkins Rental Housing Act

**SUMMARY:** Would repeal the Costa-Hawkins Rental Housing Act (Act).

**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 his or her 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:**

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 couple years, rents have increased 44% in San Francisco and 37% 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% of renter households are considered "burdened," spending 30% or more of their annual income on rent. Thirty percent of renters pay more than 50% of their income towards rent.

Of all California renters, 61% percent are lower income, defined as making below 80% area median income (AMI). This population is hit especially hard by the affordability crisis, as 81% are spending over 30% of their income on rent, and just over half are spending more than 50% of their income on rent. According to a September 2017 PPIC survey, 33% percent of Californians say the cost of their housing makes them seriously consider moving out of the state, and an additional 10% consider moving elsewhere within California. More than half of renters (56%) consider leaving their region of California.

California also has a disproportionate amount of the nation's homeless population. From 2015 to 2017, homelessness rose by approximately 15% statewide. According to the US Department of Housing and Urban Development, only 34% of California's homeless are in shelters or other residential programs, which is the lowest rate in the nation. Homelessness affects most counties in the state, even rural areas. These individuals and families also need access to safe and affordable housing.

Need for this bill: This bill would repeal the Act. It does not require local governments to enact new or amend existing rent control laws. Rather, it would give local governments, if they so choose, more flexibility to shape rent control policies. Under the Act, when a rent-controlled unit is vacated, the owner can raise the rent to the market rate for the next tenant. The author points to the effects of the Act on cities with existing rent control policies. According to the author, since the passage of the Act, many rent controlled units have now been rented at market rate. While they are still rent controlled (albeit at the higher rent level), the affordability of these units has been lost. Unfortunately, local governments do not have the ability to control these significant rent increases and protect some of our most vulnerable populations. Rents have soared as a result. The author cites the following figures from cities with existing rent control policies:

- In 2015, for a new tenant to afford anything larger than a one-bedroom rental unit in Santa Monica required a household annual income of \$100,000. More than 83% of units rented at market rate in Santa Monica that year were affordable only to households considered high-income, earning at least 110% of the AMI of \$63,000.
- In East Palo Alto, rents for some newly-rented two-bedroom apartments jumped more than \$1000 in 3 years (from 2012-15).
- In West Hollywood, an income of \$96,000 is needed to afford a two-bedroom apartment, according to the city's latest report.

- In Berkeley, the median two-bedroom rent for a new tenant reached \$2,800 in the third quarter of 2016. To be affordable, an income of over \$110,000 per year is needed.

While higher-income tenants have been able to absorb increasing rent prices, lower and median-income tenants have been pushed out to neighboring cities and areas causing a rippling effect throughout the state and furthering the crisis. While more housing construction is certainly needed, it will not keep up with the demand. According to the author, "in the end, Costa Hawkins has removed any rent security the most vulnerable tenants had and cities' ability to maintain some form of affordability."

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 Mountainview) passed rent control laws via local ballot measures, and the remaining thirteen cities passed rent control laws in the 1970s and 1980s. Both of these times, 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 it is 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 is 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 can't 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. There is also momentum at the state level- in October, 2017, a statewide ballot initiative was filed that would, if it advances to the November 2018 ballot and is approved by voters, repeal the Act.

Arguments in support: Supporters contend that the repeal of the Act will return decision-making on rent control to the local level, as local governments and voters should be allowed to assess local conditions and fashion rules appropriate to their location. They point to the recent local ballot initiatives, some of which passed and others failed, as an example of how each local government is unique and should be allowed to decide what, if any, rent control protections are needed. Housing costs in this state are skyrocketing, and local governments need the authority to protect tenants.

Supporters Western Center on Law and Poverty and California Rural Legal Assistance Foundation note that "proponents of Costa-Hawkins have argued that it was necessary to ensure property owners achieve a fair rate of return on their investments. But even before the enactment of Costa-Hawkins, a series of United States and California Supreme Court decisions made clear that rent controls must provide owners with a 'just and reasonable return on their property,' to

quote the California Supreme Court in the landmark *Birkenfeld* case. Other decisions use the phrase “fair return” to characterize what is required to pass constitutional muster, while still others set forth procedural standards that must be met to ensure fair returns for owners. Prior to Costa-Hawkins, local implementation of these standards ensured property owners achieved a fair return, and if they didn’t, those rules provided a remedy to ensure that they would.”

Arguments in opposition: Opponents contend that this bill would spread "extreme" (i.e., vacancy control) rent control throughout the state and, as a result, deter new construction of rental units, diminish the quality of housing, and cause landlords to withdraw their units from the rental market. Opponents argue that people who were not intended to be the beneficiaries of rent control, such as middle- and upper-class professionals, benefit the most; they stay for extended periods of time in the units, forcing low-income renters into higher-priced, distant housing, further away from their jobs and schools.

Opponents point to several studies regarding the effects of rent control, including a 2016 analysis by the Legislative Analyst's Office, which provides that expanding rent control protections would not increase the supply of housing and likely would discourage new construction. A 2017 Stanford University study, which analyzed rent control in San Francisco, found that the benefits rent control offers to impacted tenants are counterbalanced by landlords reducing supply in response to rent control policies.

Staff comment: It is important to note that AB 1506 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. Without the Act's limitations, local governments would be authorized to, for instance, adopt rent control protections that apply to single family homes, include vacancy control, and/or apply to structures built after 1995. However, there is no requirement that a local government take any action as a result of this bill. As evidenced by the recent wave of ballot measures, as well as the diversity of rent control policies both prior to and after the Act's implementation, not all cities will opt to enact or amend rent control policies.

Related legislation:

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

ACT-LA

Affordable Housing Alliance

Affordable Housing Network of Santa Clara County

AFSCME, Local 3299

AIDS Health Care Foundation

Alameda County Democratic Party

Alameda Renters Coalition

American Federation of Teachers, Local 2121

Associated Students of the University of California

Berkeley Rent Stabilization Program

Berkeley Tenants Union

Black Community Clergy & Labor Alliance

California Alliance for Retired Americans

California Coalition for Rural Housing

California Faculty Association, San Francisco State University

California Nurses Association

California Partnership

California Reinvestment Coalition

California Rural Legal Assistance Foundation

California Young Democrats Progressive Caucus

Causa Justa: Just Cause

CAUSE

Chinese Progressive Association

City and County of San Francisco Board of Supervisors

City of East Palo Alto

City of Santa Monica

City of West Hollywood

Coalition for Economic Survival



Community Housing Partnership  
Community Legal Services in East Palo Alto  
Community Tenants Association  
Contra Costa AFL-CIO Labor Council  
Council of Community Housing Organizations, San Francisco  
Democratic Socialists of America – Los Angeles  
East Area Progressive Democrats  
East Bay Alliance for a Sustainable Economy  
East Bay Community Law Center  
East Bay Democratic Socialists of America  
East Bay Forward  
East Bay Housing Organizations  
El Comité de Vecinos del Lado Oeste, EPA  
Ensuring Opportunity Campaign  
Esperanza Community Housing Corporation  
Faith in Action Bay Area  
Faith in the Valley  
Fannie Lou Hamer Institute  
Filipino Advocates for Justice  
Gray Panthers of San Francisco  
Housing Long Beach  
Housing Rights Committee of San Francisco  
Inner City Law Center  
International Federation of Professional and Technical Engineers, Local 21  
Jobs with Justice San Francisco  
KIWA  
La Colectiva de Mujeres  
LA Voice  
Labor & Community Studies Department, City College of San Francisco  
Law Foundation of Silicon Valley  
Leadership Council for Justice and Accountability  
Long Beach Residents Empowered  
Los Angeles Center for Community Law and Action  
Los Angeles Community Action Network  
Los Angeles Tenant Union  
Monument Impact, Concord  
National Union of Healthcare Workers  
North Bay Organizing Project  
Organize Sacramento  
Our Revolution  
Pacoima Beautiful  
PACT: People Acting in Community Together, Santa Clara County  
Pasadena Tenants Union  
Peace and Freedom Party of California  
PICO California  
POWER  
Public Advocates  
Public Interest Law Project  
Sacramento Housing Alliance

SACReD  
Sacred Heart Community Service  
SAJE  
San Bernardino County Young Democrats  
San Diego Tenants United  
San Francisco Anti-Displacement Coalition  
San Francisco Tenants Union  
Santa Monica Rent Control Board  
Santa Monicans for Renters' Rights  
SEIU California  
SEIU Local 221  
SEIU, Local 1021  
Senior and Disability Action  
Sierra Club California  
South of Market Community Action Network  
SURJ, Bay Area Chapter  
Tenants Together  
UC Santa Cruz Union Assembly  
Union de Vecinos  
United Educators of San Francisco  
United Teachers Los Angeles  
University of California Student Association  
Urban Habitat  
Western Center on Law and Poverty  
40 Individuals

### **Opposition**

Action Apartment Association, Inc.  
Apartment Association, California Southern Cities  
Apartment Association of Greater Los Angeles  
Apartment Association of Orange County  
Better Housing for Long Beach  
BizFed  
California Apartment Association  
California Association of Realtors  
California Building Industry Association  
California Business Properties Association  
California Chamber of Commerce  
California Downtown Association  
California Federation of Independent Businesses  
California Mortgage Bankers Association  
CH Palmer and Associates  
Civil Justice Association of California  
East Bay Rental Housing Association  
Federation of CA Builders Exchanges  
Howard Jarvis Taxpayers Association  
Legacy Partners  
Michael Millman & Associates

National Rental Home Council  
North Valley Property Owners Association  
Orange County Business Council  
San Diego County Apartment Association  
Santa Barbara Rental Property Association  
The SPOSF Institute  
United Chambers of Commerce - San Fernando Valley  
Western Manufactured Housing Communities Association  
265 Individuals

**Analysis Prepared by:** Rebecca Rabovsky / H. & C.D. / (916) 319-2085