



The rent control revolution

Throughout much of the Bay Area, the tenants' rights movement strengthens as landlords go on the defensive

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California's Legislative Analyst's Office effectively stated the obvious when it recently announced, "California has a serious housing shortage."¹ It is well documented that California housing costs have outpaced inflation for decades. Particularly in the Bay Area, a confluence of factors has made it increasingly difficult, if not impossible, for even well-paid professionals to find housing that is both adequate and affordable. For far too many on the lower end of the economic spectrum, finding or maintaining *habitable and affordable* housing in California has become an insurmountable struggle.

According to the California Department of Housing and Community

Development ("DHCD"), fewer than 80,000 new homes were built each year for the past decade, well below the projected annual demand of 180,000 additional residences.² Tension from the lack of supply is especially acute in and around San Francisco, resulting in growing housing inequality. According to the DHCD, over 1.5 million households in California pay in excess of 50 percent of their income toward rent. Absent the expansion of additional Rent Control Ordinances throughout the state, and the allocation of resources for enforcement mechanisms, little optimism can be projected to abate the widening housing crisis.³

The Costa-Hawkins Act 1996

Reflecting years of persistent activism by housing advocates throughout Northern

California, the November 2016 elections resulted in the implementation of nascent Rent Control legislation in Mountain View and Richmond, and the strengthening of many existing ordinances, as discussed further below. At the same time, Rent Control measures were defeated in Burlingame, San Mateo, Pacifica, and Concord. Additionally, recently introduced legislation by Bloom (D-Santa Monica), Bonta (D-Oakland) and Chiu (D-San Francisco), (AB 1506) would repeal the controversial 1996 Costa-Hawkins Act, which set restrictive limitations to all Rent Control ordinances. In particular, Costa-Hawkins precludes limitations on rental rates at the establishment of a new tenancy and prohibits the establishment of any Rent Control ordinances over all residences built after 1995. Repeal of this



regressive legislation would substantially benefit the further expansion of Rent Control protections.

A survey of rent ordinances

This article surveys recent and long-standing Northern California Rent Ordinances implemented in an effort to abate the growing inequities between rental rates and income. An important adjunct to these efforts is the concurrent need to implement low- to no-cost eviction defense services that ensure the means for tenants to utilize their newly minted protections from wrongful evictions. For example, San Francisco's government provides substantial economic support for eviction defense through the Eviction Defense Collaborative, a non-profit mandated to provide assistance for tenants in nearly every eviction in San Francisco County.

Without affordable and pro bono eviction defense representation, rent control beneficiaries have no effective means to implement the legal protections afforded under their Rent Ordinances. Further, exemplar damages such as statutory trebling and attorneys' fees make it economically viable for contingency fee attorneys to take cases on behalf of tenants – but only in those few cities with Rent Ordinances that include such exemplar damages. As reflected below, not all Rent Ordinances are equal, though the trend appears to be moving in the right direction.

City-by-city rent ordinances

Voters and legislators enacted new and modified existing Rent Control ordinances to bolster the rights of renters in an area rife with abusive, opportunistic, and simply negligent landlords. Not all efforts are equally effective, but taken together, they demonstrate a concerted movement to mitigate the growing class disparity in the Bay Area, and Northern California in general, due in large part to excessive housing costs. Here, we address some of the most significant recent provisions in Northern California ordinances,

with a particular focus on: (a) restrictions on rent increases (i.e., rent control); (b) restrictions for evictions (i.e., eviction control); and (c) damages for rent ordinance violations.

• **Alameda:** In March 2016, the Alameda City Council enacted the City of Alameda Rent Review, Rent Stabilization and Limitations on Evictions Ordinance No. 3148 (“ARO”). The ARO does not automatically regulate the extent to which landlords can increase rent in covered units. However, any increases above 5 percent are subject to review by a non-binding advisory committee. The ARO also allows evictions for any reason as long as landlords pay a nominal relocation fee to the tenants. However, a landlord cannot evict more than 25 percent of the tenants in the building without cause in any given year and cannot charge the new tenant more than 5 percent of the previous tenant's rent without a similar advisory review.

“For cause” evictions are excluded from these requirements, i.e., non-payment of rent, nuisance. For practical purposes, “For Cause,” “Good Cause,” or “Just Cause” evictions generally include failure to pay rent; breaching the lease agreement; causing a nuisance at the premises; and/or refusing a landlord's lawful access to the unit. Any attempt to recover possession of a unit in violation of the ARO subjects the landlord to liability for actual and punitive damages for wrongful eviction.

The prevailing party in an affirmative wrongful eviction action brought pursuant to the ARO is entitled to costs and attorneys' fees, not in an underlying eviction action. In November 2016, tenants' rights organizations such as Tenants Together and Alameda Renters Coalition fought to increase tenant protections by introducing Measure M1, which would have capped rent increases at 65 percent of inflation, much like surrounding rent-controlled cities. The Alameda City Council decided to put the already enacted Rent Review, Rent Stabilization and Limitations on Evictions Ordinance on

the ballot (Measure L1) to duel with Measure M1. Measure L1 prevailed, implementing the more moderate of the two levels of tenant protections.⁴

• **Berkeley:** Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance (“Berkeley Rent Ordinance”) was enacted in 1980. It prohibits landlords from increasing rent more than a certain percentage each year (generally less than 5 percent) and from evicting tenants without “Good Cause.”⁵ However, effective December 19, 2016, ‘owner-move-in’ (“OMI”) evictions⁶ of families with children during the academic year are prohibited and relocation payments are increased for certain classes of no fault evictions (e.g., OMI evictions). This includes households with low-income tenants, minor children, elderly or disabled tenants, or tenants who moved in before January 1, 1999.

The Berkeley Rent Ordinance allows for treble damages and attorneys' fees in very limited circumstances, which has not been impacted by these recent changes. If a landlord evicts a tenant to demolish, repair or take possession in bad faith the tenant shall be entitled to regain possession and to actual damages. If the landlord's conduct was willful, the tenant shall be entitled to treble damages. Berkeley's rent ordinance provides for attorneys' fees only if a landlord evicts a tenant under the guise that he or his immediate relative is going to move in as ulterior motive.

• **East Palo Alto:** In 2010, the city of East Palo Alto enacted the Rent Stabilization and Just Cause for Eviction Ordinance (“EPA Ordinance”), which restricts similarly formulated rent and eviction controls as Berkeley (*supra*), Oakland (*infra*), and San Francisco. Section 17 of the EPA Ordinance also prohibits retaliatory and harassing acts by landlords.

In November 2016, East Palo Alto voters resoundingly approved Measure J, which created greater tenant protections under the 2010 EPA Ordinance, including: (1) yearly rent increases limited to 80 percent of the percentage increase in



Consumer Price Index and set by Rent Board; (2) strengthened tenant notice provisions; and (3) authorizing the City Council to revise the ordinance if deemed in conflict with federal or state law.

Treble damages are available in a civil action if a landlord is found to willfully demand or retain excessive rent or where a landlord violates OMI restrictions. Attorneys' fees and costs are available to a *prevailing tenant* in a civil claim for damages or other remedies based on violations of §§ 16 (just cause required for eviction); 17 (landlord retaliation and harassment prohibited); 18A (landlord failure to properly register units); 18B (landlord demands or retains excessive rent); and/or 18C (landlord violates owner move in restrictions).

- **Emeryville:** On December 6, 2016, the City of Emeryville adopted the Residential Landlord and Tenants Relations Ordinance ("Emeryville Ordinance"), which became effective on April 1, 2017. The Emeryville Ordinance does not place any restrictions on rent increases, but does require Just Cause for evictions. Attorneys' fees are only available to a prevailing tenant in an underlying eviction action if the landlord is unable to demonstrate compliance with the preconditions to serve a Notice of Termination. Treble damages are not available.

- **Mountain View:** On November 8, 2016, Mountain View voters passed Measure V, the Community Stabilization and Fair Rent Act ("FRA"). The FRA prohibits rent increases above the prior year's Consumer Price Index (not to exceed 5 percent) and requires Just Cause for evictions. Attorneys' fees are available only for a *prevailing tenant* in civil action alleging a landlord's violation of the ordinance (i.e., a tenant cannot be assessed a fee for pursuing their rights). Additionally, treble damages are available if it is established that the landlord acted willfully, oppressively, fraudulently or maliciously.

In a brazen attempt to thwart the will of the voters, the California

Apartment Association ("CAA"), filed a restraining order against the measure on December 21, 2016. However, on April 5, 2017, Santa Clara County Superior Court Judge William J. Elfving denied the preliminary injunction and lifted the restraining order thereby allowing for implementation of the measure.

- **Oakland:** Oakland enacted the Tenant Protection Ordinance ("TPO") in November of 2014, which essentially mirrors the robust protections found in San Francisco's 2008 tenant harassment ordinance. It prohibits landlords from a plethora of harassing behaviors, including failing to perform repairs or maintenance in bad faith. Treble damages and attorneys' fees are available if it is found that a landlord wrongfully endeavored to recover possession of an eviction-controlled unit in violation of the TPO and also available for a *prevailing Plaintiff* if a landlord violates the Tenant Protection Ordinance.

In November 2016, Oakland voters passed Measure JJ (Renters Upgrade Act), which was a major victory for tenants. Effective February 1, 2017: (1) Landlords must petition the Rent Board before instituting any rent increase that exceeds the annual allowable increase (previously, the *tenant* was burdened with instituting a rent board petition within 60 days *after* receiving an unlawful rent increase); (2) Just Cause eviction protection was extended to units built prior to December 31, 1995, (the "Costa-Hawkins" limit); (3) Tasked the city with instituting additional tenant-based benefits such as requiring the City to mail out an annual notice of the Rent Adjustment Program and legal maximum rent increase, creating an online searchable database, and guaranteeing access to translation services for hearings and appeals.

- **Richmond:** The city of Richmond now boasts having Contra Costa County's sole rent ordinance. On November 8, 2016, Richmond voters passed Measure L, The Richmond Fair Rent, Just Cause for Eviction, and Homeowner Protection

Ordinance ("RFR"), which became effective December 30, 2016. Pursuant to RFR, a landlord is prohibited from increasing a tenant's rent by a greater percentage than the Consumer Price Index or from evicting a tenant without Just Cause. Attorneys' fees are available for a prevailing *tenant* who institutes a civil action for violation of the RFR. A prevailing tenant is also entitled to *three times the amount* by which such payment exceeded the maximum allowable rent if the tenant proves that the landlord acted willfully, oppressively, fraudulently or maliciously.

- **Santa Rosa:** In August 2016, Santa Rosa's City Council passed rent protections, including a 3 percent cap on rent increases and concurrent eviction protections. However, a CAA backed petition drive resulted in the calling of a referendum on codifying the protections through a June 6, 2017, special election.

- **San Jose:** In 1979, the city of San Jose enacted a rent stabilization ordinance known as the Apartment Rent Ordinance ("ARO"). (Chapter 17.23 of the San Jose Municipal Code.) The San Jose ARO covers properties with three or more units that were built prior to September 7, 1979, and prohibits landlords from raising rents above 5 percent, but did not require Just Cause for evictions. Consequently, landlords were able to evict a tenant without having to provide any specific reason then charge a dramatically higher rent to the new tenant.

On April 18, 2017, a divided San Jose City Council approved a Just Cause for eviction measure. Attorneys' fees and costs are available for a prevailing party in a civil action for wrongful eviction brought pursuant to the ARO. If a landlord demanded and/or accepted excessive rent, the prevailing tenant is entitled to the payment that was excessive, plus damages, not to exceed five hundred dollars or *three times the amount* by which such payment exceeded the maximum allowable rent, whichever is greater, plus attorneys' fees.



Looking forward: Considerations and improvements for tenants' rights

As attorneys representing tenants, we have unfortunately seen innumerable examples of landlords flagrantly ignoring their obligation to provide habitable housing, frequently as a means to regain possession of rent controlled units. The end result is often that their tenants are forced to abandon their homes and communities, permitting the landlord to set new rent at inflated rates that are unsustainable for long-term tenancies.

By adopting rent control ordinances, each of the above cities demonstrates a civic commitment to protect tenants by providing them the right to recover the difference between the market rate and the rent at the time of the tenants' constructive eviction for as long as they would have lived in the unit. See *Castillo v. Friedman*, 197 Cal.App.3d Supp. 6, 20-21 (1987) (under California law a plaintiff's loss-of-use damages are "measured by the difference between market value and the rent-controlled rate of the subject Premises" for the period plaintiff would have continued living there). Particularly in the case of long-term tenancies, these future damages can be substantial – and provide both a disincentive for landlords to neglect to maintain the units of their long-term tenants and a mechanism to make whole those renters who have been constructively evicted from their rent-controlled homes so they have means to remain or return to their communities.

From the perspective of tenants' rights advocates, absent mechanisms and resources for enforcement, compliance with the existing laws governing habitability standards will continue to be systematically abused by opportunistic and negligent landlords, particularly in the Bay Area. San Francisco, which has arguably the most robust renters' rights in

the nation, has several entities enforcing the existing laws.

For example, the Eviction Defense Collaborative ("EDC") is the principal organization in San Francisco helping low-income tenants respond to eviction lawsuits. They provided emergency legal services and rental assistance to over 6,000 tenants from San Francisco in 2016. Additionally, every renter in San Francisco going through eviction proceedings is provided a limited-scope volunteer attorney to represent them at their mandatory settlement conference. This program is operated by the Bar Association of San Francisco and could serve as a model for other communities seeking to ensure that each and every individual being evicted from their rent-controlled home is represented.

In contrast to San Francisco, most of the communities listed above have thus far failed to build the necessary enforcement infrastructure to ensure compliance with new and existing code. Although advocates of renters' rights should applaud the recent developments, we must continue to encourage further improvements (such as the further extension of treble damages currently available in East Palo Alto, Oakland, and San Francisco), and the allocation of sufficient resources to allow the rent ordinances that do exist to actually serve their intended purposes. Moreover, too many communities in California still lack any type of rent control whatsoever – and efforts to add such laws in Burlingame, Concord, Pacifica, and San Mateo were recently defeated. Accordingly, while the trend appears in favor of extending rights to renters in California, there is still much work to be done.



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Endnotes

¹ See <http://www.lao.ca.gov/Reports/2016/3345/Low-Income-Housing-020816.pdf>

² See <http://www.hcd.ca.gov/policy-research/housing-challenges.shtml>

³ Rent Control used here covers both rent and eviction controls that are enacted jointly, i.e. owners can neither increase rent beyond a set amount nor institute an eviction without just cause.

⁴ See: <http://www.eastbaytimes.com/2016/11/09/alameda-voters-roundly-reject-rent-control-measure/>

⁵ Rents cannot be increased more than 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region.

⁶ Generally, a property owner may evict a tenant from a unit if the owner actually intends to reside in that unit for a period of time (usually three years). In most cases, the owner must pay a relocation fee to the displaced tenant.