



# City of Palo Alto

## COLLEAGUES MEMO

**DATE:** September 10, 2018

**TO:** City Council Members

**FROM:** Council Member Wolbach, Council Member Holman, Council Member Kou, Council Member DuBois

**SUBJECT:** COLLEAGUES MEMO FROM COUNCIL MEMBERS DUBOIS, HOLMAN, KOU AND WOLBACH REGARDING STRENGTHENING RENTER PROTECTION FOR PALO ALTO RESIDENTS (PREVIOUS COLLEAGUES MEMO HEARD ON OCTOBER 16, 2017)

---

**Issue:**

The cost of rental housing in Palo Alto and the region has soared in recent years as the pace of job growth has far exceeded the rate of housing growth. Housing that has been built is predominantly high-end or, to a lesser extent, subsidized, low-income housing. The needs of moderate-income workers and families too often have been ignored.

These trends undermine our social and economic health and cannot be sustained. While Palo Alto is working to increase our supply of housing, especially very low, low and moderate levels, many renters face precarious housing stability.

**Goals:**

- Support retention of a healthy, diverse community, an action that also supports our local economy;
- Moderate the rate of rent increases;
- Provide protections from and/or mitigations for unjust evictions by means that are fair to both renters and landlords;
- Continue to promote construction of new multi-unit rental developments.

**Background and Discussion:**

Approximately 44% of Palo Alto residents are renters who are predominantly long-term members of our community, contributing to our social balance and economy.

In recognition of the vital importance that renters have on our civic vitality and economic health, past Palo Alto city councils have adopted long-standing renter protection ordinances. Those ordinances offer renters greater protection than under California State law and include provisions that:

- Require a sixty-day notice of large rent increases at multi-family rental units;

- Prevent discrimination against families by prohibiting landlords from requiring that fewer than two people per bedroom occupy a unit;
- Provide Tenant – Landlord mediation services;
- Require one-year leases to be offered.

Although the growth in our tech economy has been a boon to many, that growth has been accompanied by negative disruptions, including a steep increase in demand that has severely degraded our housing affordability and resulted in many long-term renters being forced out or having to spend inordinate amounts of their incomes on housing. Since 2011, the average monthly rent in Palo Alto has soared 50% while the county median income has risen less at 1/10 that rate. These trends are clearly not sustainable.

Our affordable housing supply is far below demand while the cost of building new affordable units dwarfs our available resources. Furthermore, many vital members of our community have moderate incomes and are not eligible for our limited affordable housing; teachers, policemen, service and retail workers, nurses and health care providers are continuing to be priced out of their homes and are being forced to leave our community.

To encourage new housing construction, cities that enact renter protections are required to do so within the framework of State law, such as the Ellis Act and Costa Hawkins.

Neighboring communities have recognized that the issue has reached a near crisis level and are considering similar measures. Current and future economic forces have made additional renter protections necessary for the well-being of our community, its valuable diversity, and a viable economy. In addition, the Council's Healthy City, Healthy Community priority identifies diversity as a key component.

Doing our part to address the housing crisis requires production, preservation, and protection. This memo focuses on the latter. Renter protections are only one part of protecting and expanding our existing housing supply. This initiative is not intended to substitute for other measures that may be addressed separately from this memo including short-term rental abuses, loss of existing housing units, and investment homes left vacant for long periods of time. This initiative is also offered in the context of Palo Alto's renewed focus on housing through our Comprehensive Plan, Housing Work Plan, and 2018 Council Priority on Housing.

**Recommendation:**

We recommend the following:

That, for the short-term, staff should immediately bring back to Council specific proposals to adjust our current renter protection ordinance regarding, potentially as an emergency ordinance:

- Reasonable eviction mitigations such as relocation provisions for tenants facing displacement.

AND

That, for the long-term, Council refer this memo to the Policy and Services Committee for review. The review should include at least the following:

- Review of our existing renter protection ordinance and comparable ordinances in Bay Area.
- Evaluate reasonable relocation assistance to be provided for tenants of properties with 5 or more units displaced due to change of use, sizable rental increases or eviction without just cause, while protecting the fair rights of property owners.
- Strengthened enforcement measures to ensure compliance with and penalties for violations of Palo Alto's existing requirement to offer an annual lease to tenants.
- Consider other updates to our existing renter protections and mediation program as needed to continue a healthy and diverse community.

In addition, the Council may elect to refer the item to the Human Relations Commission as part of the review process.

**Staff Impact:**

A moderate level of staff resources will be needed to support deliberations in Policy & Services. Staff resources needed to implement enhanced or new requirements will depend on the what Council determines. Tenant protections that are enforceable by tenants in civil court require little to no ongoing City staff work. Tenant protections that are enforceable through administrative processes run by the City will require new staff and budget allocations.

Staff has added two background reports from other jurisdictions regarding potential types of renter protection programs. These materials provide an overview of state and federal laws relating to municipal renter protection regulations; describe renter protection measures adopted by a number of California cities; list key areas for policy determination; and describe staffing levels and budgets required for various types of programs and services.



## 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.”<sup>1</sup> 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

---

<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

---

<sup>2</sup> Cal. Civil Code § 827(b)(2).

<sup>3</sup> Cal. Civil Code § 827(b)(3).

<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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

---

<sup>5</sup> Cal.Civil Code § 1946.1(b).

<sup>6</sup> 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*.<sup>7</sup> 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.<sup>8</sup> 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,

---

<sup>7</sup> Palo Alto Ordinance Code, § 9.68.030.

<sup>8</sup> 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).<sup>9</sup> 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.<sup>10</sup>

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;

---

<sup>9</sup> Palo Alto Municipal Code, § 9.72.010.

<sup>10</sup> 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.<sup>11</sup> Other jurisdictions require relocation assistance payments without reference to the income level of the affected tenants.<sup>12</sup>

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.<sup>13</sup>

### **a. Types of Rent Stabilization Ordinances**

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

---

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

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

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

<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

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

---

<sup>15</sup> *Id.*, ¶ 2:708, p. 2D-4.

<sup>16</sup> *Id.*, ¶ 2:710, p. 2D-5.

<sup>17</sup> *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).<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

## 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 1995<sup>21</sup>, there was no statutory provision limiting local rent stabilization ordinances in California.<sup>22</sup> Costa-Hawkins was the California Legislature’s first major effort to limit local controls over rents chargeable to residential tenants.<sup>23</sup> 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 . . . .”<sup>24</sup> 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.”<sup>25</sup>

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;<sup>26</sup>
2. Single-family homes and condominiums (units where title is held separately) are exempt from such ordinances;<sup>27</sup> and
3. Such ordinances cannot regulate the initial rate at which a dwelling unit is offered once the previous tenants have vacated the unit.<sup>28</sup> 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*

---

<sup>18</sup> *Id.*, ¶ 5:1, p. 5–1.

<sup>19</sup> *Id.*

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

<sup>21</sup> See Cal. Civ. Code § 1954.50 *et seq.*

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

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

<sup>24</sup> *Id.* at p. 6.

<sup>25</sup> *Id.* at p. 6.

<sup>26</sup> Cal. Civ. Code § 1954.52(a)(1).

<sup>27</sup> *Id.* at § 1954.52(a)(3)

<sup>28</sup> *Id.* at § 1954.53(a).

*Inc. v. City of Santa Monica* (2007) 41 Cal. 4<sup>th</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.”<sup>31</sup> At the same time, the amount of return should not defeat the purpose of rent stabilization, which is to prevent excessive rents.<sup>32</sup>

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.<sup>33</sup> 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.<sup>34</sup>

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.”<sup>35</sup> 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

---

<sup>29</sup> 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.

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

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

<sup>32</sup> *Ibid.*

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

<sup>34</sup> *Ibid.*

<sup>35</sup> See U.S.C.A. Const. Amend. 5, 14.

borne by the public as a whole.”<sup>36</sup>

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.<sup>37</sup> 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.”<sup>38</sup>

## **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.<sup>39</sup> 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.<sup>40</sup>

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.

---

<sup>36</sup> *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).

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

<sup>38</sup> 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.

<sup>39</sup> 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.

<sup>40</sup> 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.<sup>41</sup>

---

<sup>41</sup> 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.<sup>42</sup> 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.

---

<sup>42</sup> 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.<sup>43</sup>

### **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

---

<sup>43</sup> 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>
<b>Exempt Units</b>	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
<b>Evictions for Substantial Renovation</b>	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
<b>Special Eviction Notice Rules</b>	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
<b>Relocation Assistance</b>	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: <sup>1</sup>

PRO	CON
<ul style="list-style-type: none"><li>• 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.</li><li>• Protects tenants who have short-term (month-to-month) leases.</li><li>• Slows down rapid increases in rent.</li><li>• Stabilizes communities by slowing down evictions and decreasing turnover rates.</li></ul>	<ul style="list-style-type: none"><li>• 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.</li><li>• May impact neighborhoods by making it harder for landlords to evict problematic tenants, including those suspected of involvement in criminal activity.</li><li>• Impacts surrounding neighborhood by making it difficult for landlord to remove “bad tenants.”</li></ul>

---

<sup>1</sup> 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"><li>• 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.</li><li>• 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.</li><li>• Requires landlords to internalize relocation costs as part of their “costs of doing business.”</li></ul>	<ul style="list-style-type: none"><li>• Amount of mandated compensation may be excessive relative to some tenants’ needs; landlords may not be able to afford.</li><li>• 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.</li><li>• May create a perceived windfall to well-off tenants if relocation assistance not subject to stringent income-specific criteria.</li><li>• 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.</li></ul>



**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"> <li>• Prevents landlords from imposing rent increases that cause displacement and accordingly, helps preserve income diverse, stable neighborhoods.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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</li> </ul>	<ul style="list-style-type: none"> <li>• Fundamentally unfair – why burden landlords for a broader societal problem?</li> <li>• Interferes with free market – landlord should be able to rent unit at amount that market bears.</li> <li>• May incentivize landlords to raise rents before any rent control ordinance takes effect in an attempt to evade impact of the regulation.</li> <li>• As a general matter, restricts rights of property owners as it limits what they may do with their property.</li> <li>• 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.</li> <li>• Reduces “urban vitality” by discouraging mobility; decreases vacancy</li> </ul>

<p>conditions, the landlord may threaten to increase the rent.</p> <ul style="list-style-type: none"><li>• 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.</li><li>• 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.</li><li>• 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.</li><li>• 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).</li></ul>	<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"><li>• 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.</li><li>• Incentivizes landlords to discriminate against prospective tenants likely to stay for a long time, like retiree or couples with children.</li><li>• 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).</li><li>• Encourages some owners to take their units off the market and sell properties, rather than rent.</li><li>• Depending on how they are crafted, rent control ordinances may be extremely burdensome and expensive to administer.</li></ul>
---	---

**RENT STABILIZATION DECISION MATRIX**

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

## RENT STABILIZATION DECISION MATRIX

**City of Fremont**  
**Rent Control and Just-Cause Eviction: Review of Programs**

**June 2017**







June 9, 2017

Mr. Dan Schoenholz  
Deputy Community Development Director  
City of Fremont  
3300 Capitol Avenue  
Fremont, CA 94538

Dear Mr. Schoenholz:

Management Partners is pleased to transmit this report, which provides the results of our review of rent control/stabilization and just-cause eviction programs in California. This report provides information based on other cities' experience with such programs including analysis and context regarding a range of policy and program options.

We look forward to further discussion on this topic with the City as it seeks to develop a strategy associated with landlord/tenant issues to assist in the development of solutions appropriate to community needs in Fremont.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew S. Belknap".

Andrew S. Belknap  
Regional Vice President





## Table of Contents

---

<b>Introduction .....</b>	<b>1</b>
<b>Background .....</b>	<b>3</b>
November 2016 Election.....	3
Fremont Rental Housing Profile .....	6
Residential Rent Increase Dispute Resolution Ordinance.....	12
RRIDRO Challenges.....	13
<b>Overview of Rent Control/Just-Cause Eviction Ordinances .....</b>	<b>15</b>
Model A: (Berkeley/Santa Monica Style Rent Control).....	17
Model B: (Alameda/West Hollywood Style Rent Regulation or Stabilization).....	18
Just-Cause Eviction .....	18
Public Outreach and Education .....	20
<b>Rent Control/Rent Stabilization and Just-Cause Eviction Program Elements .....</b>	<b>21</b>
Governance .....	21
Expenditures and Cost Recovery .....	22
Staffing.....	24
Technology Support.....	25
General Observations Regarding Program Impacts .....	25
<i>Affordable Housing and Rent Control</i> .....	26
<i>Vacancy Rates/Displacement</i> .....	27
<i>Housing Supply and the Housing Market</i> .....	28
<b>Rent Intervention Alternatives – Three Options .....</b>	<b>29</b>
Option 1: Modified Residential Rent Increase Dispute Resolution Ordinance Process.....	29
<i>Option 1 Opportunities</i> .....	31
<i>Option 1 Challenges</i> .....	32
<i>Option 1 Cost Estimate</i> .....	32
Option 2: Alameda/West Hollywood Style Rent Regulation or Stabilization.....	33
<i>Option 2 Opportunities</i> .....	34
<i>Option 2 Challenges</i> .....	35
<i>Option 2 Cost Estimate</i> .....	35
Option 3: Berkeley/Santa Monica Style Rent Control .....	35
<i>Option 3 Opportunities</i> .....	36
<i>Option 3 Challenges</i> .....	36
<i>Option 3 Cost Estimate</i> .....	37

<b>Conclusion.....</b>	<b>38</b>
<b>Attachment A: Rent Control and Just-Cause Eviction Program Options.....</b>	<b>39</b>
<b>Attachment B: Just-Cause Eviction Survey .....</b>	<b>44</b>

## Tables

---

<b>Table 1. Overview of November 2016 Rent Control Measures.....</b>	<b>4</b>
<b>Table 2. Overview of Recent Bay Area City Council Rent Control Activities.....</b>	<b>5</b>
<b>Table 3. Overview of Fremont Housing Stock for 2006 through 2010 and 2011 through 2015.....</b>	<b>6</b>
<b>Table 4. Overview of Fremont Vacancy Rates and Median Monthly Rent from 2011 to 2015.....</b>	<b>8</b>
<b>Table 5. Fremont Gross Rent as a Percent of Household Income from 2011 to 2015.....</b>	<b>8</b>
<b>Table 6. Summary of Peer Rental Housing for 2011 through 2015 (Five-Year Estimates).....</b>	<b>9</b>
<b>Table 7. Summary of Peer Renter Financial Information for 2011 through 2015.....</b>	<b>11</b>
<b>Table 8. Average Rents for One and Two Bedroom Units in Fremont.....</b>	<b>11</b>
<b>Table 9. Rent Increase Case Reports from July 1, 2016 through December 31, 2016.....</b>	<b>13</b>
<b>Table 10. Rent Control and Just-Cause Eviction Program Cost and Fee Comparisons.....</b>	<b>24</b>

## Figures

---

<b>Figure 1. Fremont Percent of Occupied Housing Units Occupied by Owners versus Renters for 2011 through 2015.....</b>	<b>7</b>
<b>Figure 2. Peer Comparison of the Percent of Total Occupied Housing Units Occupied by Renters for 2011 through 2015.....</b>	<b>10</b>

## Introduction

In 2016, the Fremont City Council considered preliminary research and information prepared by City staff regarding rent control and just-cause eviction programs in California and requested additional information about such programs to help inform their discussion of the issue. The City requested Management Partners' assistance in providing more in-depth information regarding rent control and just-cause eviction policies, options as well as program costs.

City staff met with tenant and landlord organizations in 2016 to gather input from stakeholders concerning potential program changes. As stated in a report to the City Council on September 27, 2016, staff was unable to identify much common ground. The tenant group believes a much stronger and binding rent control and just cause eviction ordinance is necessary while the landlord group believes some improvements to the Residential Rental Increase Dispute Resolution Ordinance would be sufficient.

At the September 27, 2016 meeting, Council directed staff to research rent control (also known as rent stabilization or rent regulation) and just-cause (or just) evictions and develop options for consideration. The City Council approved a motion directing staff to:

- Investigate the operational impacts of rent control and just-cause ordinances,
- Create optional models for an ordinance that meets City-specific needs, and
- Present possible revisions to the existing Residential Rent Increase Dispute Resolution Ordinance (RRIDRO).

The City of Fremont subsequently engaged Management Partners to assist in the analysis of rent control and just-cause eviction ordinances. Management Partners has undertaken this type of work for the cities of San Jose, Santa Rosa, Burlingame and Richmond in the past two years.

This report includes four major sections:

1. Background, which briefly sets the context for this report;
2. Overview of rent control/just-cause eviction ordinances, which provides a general overview of rent control and just-cause eviction ordinances;
3. Rent control and just-cause eviction program elements, which includes information on the costs and staffing requirements to operate rent control programs; and
4. Rent intervention alternatives (three options), which describes three possible options the City of Fremont may pursue as it determines next steps.

## Background

Tenant displacement and issues related to the condition and availability of rental housing continue to be a focus of residents and local government officials in the Bay Area and various cities in Southern California. Rising rents in metropolitan regions have sparked discussions regarding local government roles and responsibilities in rental housing markets as well as actions by residents.

### ***November 2016 Election***

The November 2016 election had nine ballot measures related to apartment rent control in seven California cities and one mobile home rent stabilization measure. All of the apartment rent control measures were proposed in Bay Area cities.

Table 1 below provides an overview of the nine rent control and tenant eviction ballot measures considered in the 2016 election. Most of the measures were placed on the ballot through a public petition; almost all of them included both rent stabilization and tenant eviction protections. Rent stabilization measures passed in five cities and failed in two cities. Roughly half of the measures were new, while half were modifications of existing rental programs. The cities of Alameda and Mountain View each had two different rent control and mediation ballot measures proposed. In both cities, the public initiated a rent stabilization and tenant eviction protection measure while the city councils placed a tenant-landlord mediation measure on the ballot as an alternative. The results were split, with Alameda voters favoring the mediation program and Mountain View establishing a rent control program.

*Table 1. Overview of November 2016 Rent Control Measures*

City	Measure	Components	Initiated By	New Measure or Modification	Pass? Y/N
<b>Alameda</b>	Measure M1	Limits rent increases, provides eviction control, and requires certain relocation benefits	Public	Modification	No
<b>Alameda</b>	Measure L1	Requires mediation for large rent increases, establishes eviction control, requires certain relocation benefits	City Council	Modification	Yes
<b>Burlingame</b>	Measure R	Repeals earlier ordinance prohibiting regulation of rents by the city and establishes rent control program	Public	New	No
<b>East Palo Alto</b>	Measure J	Streamlines administrative processes behind existing rent control ordinance	City Council	Modification	Yes
<b>Mountain View</b>	Measure V	Charter amendment establishing a rent and eviction control program	Public	New	Yes
<b>Mountain View</b>	Measure W	Alternative program requiring landlord-tenant mediation in lieu of rent control	City Council	New	No
<b>Oakland</b>	Measure JJ	Extends existing rent control program to cover all buildings occupied prior to 1996. Original ordinance covered units occupied prior to 1980.	Public	Modification	Yes
<b>Richmond</b>	Measure L	Establishes traditional rent and eviction control program under a rent board assigned by the City Council	Public	New	Yes
<b>San Mateo</b>	Measure Q	Rent and eviction control	Public	New	No

Source: Ballotpedia.org, City websites, and local newspapers and voter resources.

Note: Table does not include mobile home rent measures.

Table 2 summarizes City Council actions on rental housing issues over the past year in the Bay Area.

*Table 2. Overview of Recent Bay Area City Council Rent Control Activities*

City	Components	Date
<b>Pacifica</b>	Established an interim ordinance for rent and eviction control. A permanent measure is planned for the ballot in November 2017.	April 2017 (Second reading of ordinance in May)
<b>San Jose</b>	Created interim ordinance modifying existing rent control ordinance to reduce maximum increase allowed. Staff was instructed to return with long-term options for rent control, eviction protection, and anti-retaliation ordinances.	April 2016
<b>San Jose</b>	Approved an ordinance that defines eviction controls for rent stabilized units only. (Other possible changes to existing rent control programs are under development.)	April 2017
<b>Santa Rosa</b>	Established a rent and eviction control program but placed it on hold pending a special election on a measure submitted by City Council in response to a referendum petition created by opponents. The special election was held on June 6, 2017 and voters rejected the measure. The election results ended the rent control program.	August 2016 and June 2017
<b>Union City</b>	Established eviction controls. Council instructed staff to return with a proposal providing non-binding mediation on large rent increases.	April 2017

## **Fremont Rental Housing Profile**

The Fremont City Council received the Report to Council on Rent Control, Just-Cause Eviction and Other Options for Promoting Affordable Rental Housing on September 27, 2016. In the report, staff provided a high-level overview of the advantages and disadvantages of implementing rent control and just-cause for eviction programs. Quoting from a report prepared by the Legislative Analyst’s Office, Staff noted that between 2010 and 2016 the, “...imbalance between demand and supply has resulted in high costs for both rental and for-sale housing in the Bay Area and the rest of the State.”

After declines in rents in 2008 and 2009 the average rental cost of a two-bedroom, one-bathroom apartment in Fremont increased 64% (or almost 13% per year) between 2010 and 2015. More recently, between June 2015 and June 2016, rent increases moderated to an annual rate of 3.9%.<sup>1</sup>

Table 3 provides an overview of housing stock in Fremont. These five-year estimates are from the American Community Survey, which is a collection of population, housing, and workforce data provided by the U.S. Census Bureau. Estimates are based on 60 months of data during the periods of 2006 to 2010 and 2011 to 2015. The estimates show that the number of housing units has increased slightly between 2010 and 2015 across all categories except housing with three or more units.

*Table 3. Overview of Fremont Housing Stock for 2006 through 2010 and 2011 through 2015*

Data	American Community Survey 5-Year Estimates	
	2010 <sup>1</sup>	2015 <sup>2</sup>
<b>Total Housing Units</b>	74,218	75,420
<b>Total Occupied Units</b>	68,969	72,684
<b>Owner Occupied Units</b>	44,684	45,144
<b>Renter Occupied Units</b>	24,285	27,540
<b>Housing with 3 or more units</b>	19,643	19,151

Source: American Community Survey 5-year estimates.

<sup>1</sup>The 2010 estimate includes data collected from 2006 through 2010.

<sup>2</sup>The 2015 estimate includes data collected from 2011 through 2015.

Note: The American Community Survey estimates for housing units and housing tenure (owner or renter occupied) have a margin of error less than 4%. The data on housing with 3 or more units has a larger margin of error of 8% for both estimates.

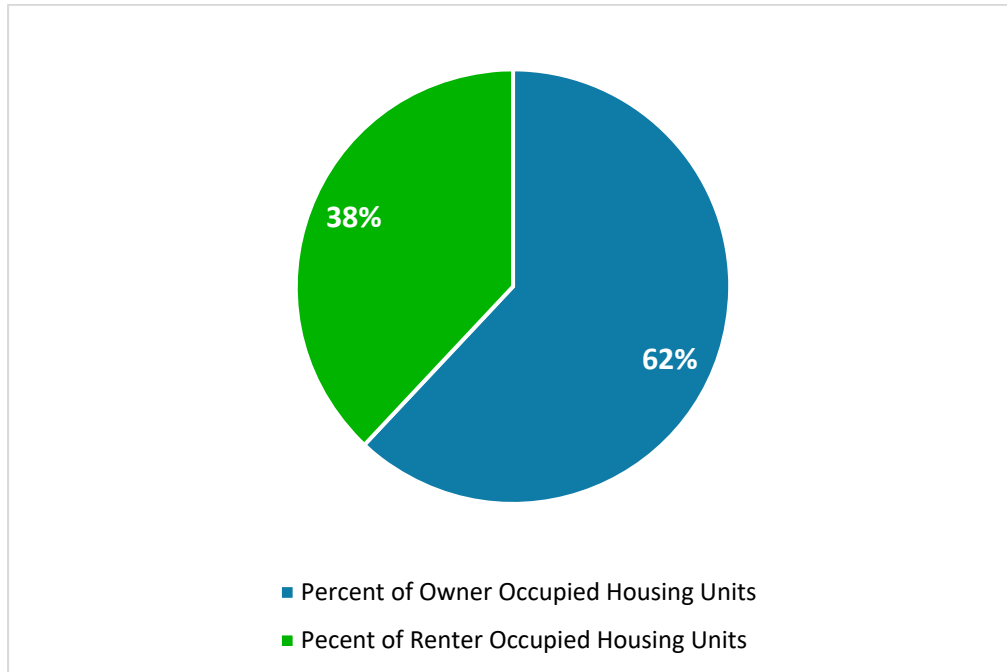
---

<sup>1</sup> City of Fremont, City Council Meeting, *Report to Council on Rent Control, Just-Cause Eviction and Other Options for Promoting Affordable Rental Housing*, dated September 27, 2016.



Figure 1 shows the percentage of occupied housing units occupied by owners and renters according to the American Community Survey's 2015 five-year estimates. Renters occupy approximately 38% of total occupied housing in Fremont.

Figure 1. Fremont Percent of Occupied Housing Units Occupied by Owners versus Renters for 2011 through 2015



Source: American Community Survey 5-year estimates.

Table 4 shows homeowner and rental vacancy rates as well as median monthly gross rents for Fremont from 2011 to 2015. These statistics come from the American Community Survey one-year estimates, which are based on 12 months of data collected during each year shown in the table. For owner occupied housing units the vacancy rate has been below 2% over the five-year period. The rental vacancy rate has fluctuated over the last few years, hitting a low of 2.2 percent in 2012 and then steadily rising to 4.9 percent for 2015 with an average of 3.9. The median rent has increased at a constant rate over the last five years.

Table 4. Overview of Fremont Vacancy Rates and Median Monthly Rent from 2011 to 2015

Data	American Community Survey 1-Year Estimates				
	2011	2012	2013	2014	2015
Homeowner vacancy rate (%)	1.2	1.6	0.8	0.3	1.0
Rental vacancy rate (%)	4.1	2.2	3.4	4.7	4.9
Median monthly gross rent	\$1,528	\$1,613	\$1,669	\$1,832	\$1,923

Source: American Community Survey 1-year estimates.

Table 5 below shows the gross monthly rent as a percentage of household income in Fremont over a five-year period. The United States Census Bureau considers households that pay over 30% of their monthly income to rent as cost burdened. Over this five-year period, an average of 41% of households paid 30% or more of their income for rent. The percent of households paying 30% or more of their income peaked in 2013 at 46% and has since remained around 40% or less.

Table 5. Fremont Gross Rent as a Percent of Household Income from 2011 to 2015

Percent of Household Income	American Community Survey 1-Year Estimates					5-Year Average
	2011	2012	2013	2014	2015	
Less than 15%	10.0%	12.6%	16.0%	10.5%	13.9%	12.6%
15 to 19.9%	19.8%	15.7%	13.3%	20.1%	11.6%	16.1%
20 to 24.9%	16.1%	20.6%	15.9%	21.0%	16.8%	18.1%
25 to 29.9%	10.6%	11.7%	8.7%	10.4%	18.3%	11.9%
30% or more	43.6%	39.4%	46.0%	38.0%	39.3%	41.3%

Source: American Community Survey 1-year estimates.

Table 6 provides a summary of rental housing information for the cities reviewed in this study of rent control and related programs. This American Community Survey data uses five-year estimates, which is the most comprehensive information available for all peer jurisdictions. The population information shows there is diversity in the size of cities that have adopted rent stabilization programs. Similarly, there is a wide range of housing units and tenure among this group of cities. The cities of Los Angeles and San Jose were excluded from the average calculation in this table because they are outliers to the dataset. Fremont's population is near the average for these cities. Fremont is also near the average for total housing units and total occupied housing units. However, Fremont has only half the number of renter-occupied units and housing structures

with three or more units as the average for those communities with rent control/stabilization and related programs.

*Table 6. Summary of Peer Rental Housing for 2011 through 2015 (Five-Year Estimates)*

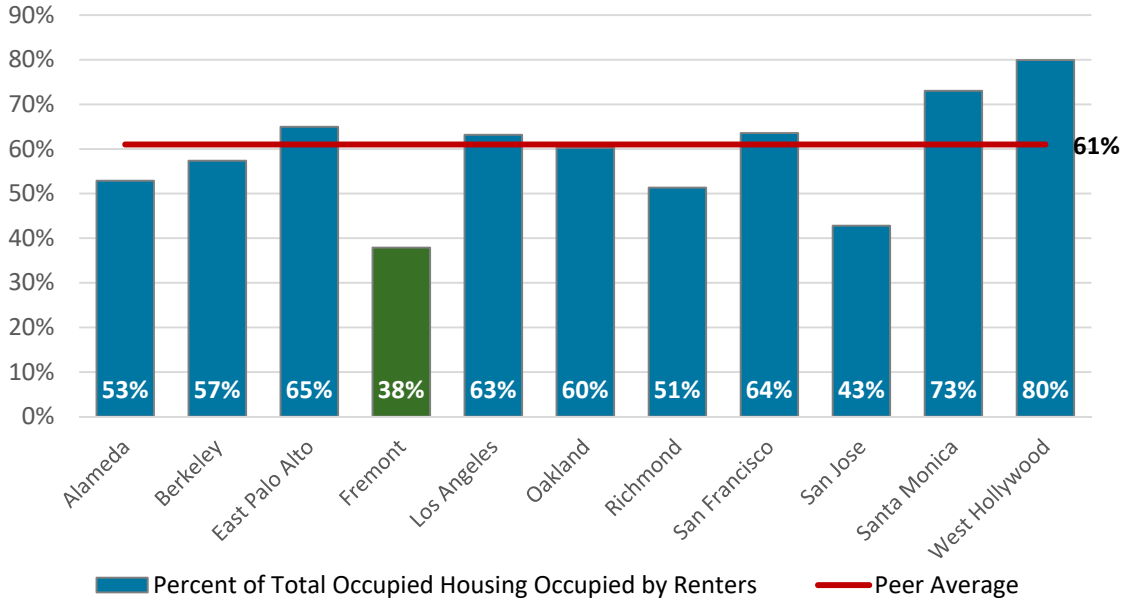
Cities	Population	Total Housing Units	Total Occupied Housing Units	Renter Occupied Housing Units	Housing structures with three or more units
Alameda	76,733	32,244	30,708	16,240	12,677
Berkeley	117,384	49,671	45,917	26,334	21,971
East Palo Alto	29,198	7,455	7,065	4,589	3,003
Los Angeles	3,900,794	1,436,543	1,342,761	848,079	744,523
Oakland	408,073	171,087	158,424	95,402	77,216
Richmond	107,597	39,922	36,973	18,981	12,037
San Francisco	840,763	383,676	353,287	224,589	223,316
San Jose	1,000,860	325,256	314,297	134,488	97,408
Santa Monica	92,169	50,934	46,688	34,095	38,179
West Hollywood	35,332	23,997	22,077	17,643	20,473
Fremont	225,221	75,420	72,684	27,540	19,151
<b>Average</b>	<b>213,406</b>	<b>94,873</b>	<b>87,642</b>	<b>54,734</b>	<b>51,109</b>

Source: American Community Survey 5-year estimates.

Note: The American Community Survey estimates for housing units and housing tenure (owner or renter occupied) have a margin of error less than 5% for all the peers.

Figure 2 shows the percent of total occupied housing units occupied by renters. The average percent of housing units occupied by renters is 61% for the cities with rent control or related programs. Fremont has the smallest proportion of occupied housing occupied by renters. At only 38%, Fremont is more than one third below the peer average.

Figure 2. Peer Comparison of the Percent of Total Occupied Housing Units Occupied by Renters for 2011 through 2015



Source: American Community Survey 5-year estimates.

Table 7 below provides a summary of peer renter financial information, including median household income, median monthly gross rent, and the percent of total renters with rent costing over 30% of their household income. It shows Fremont has the highest median renter household income. The median gross rents in Fremont are also greater than the average for the peers, which correlates with the income information. Fremont also has the smallest proportion of renters spending more than 30% of household income on rent and is 10% below the peer average.

The figures reported below in Table 7 are estimates developed by the U.S. Department of Labor and reported in the American Community Survey. Care should be used in interpreting the rental rate information because of the multi-year nature of the estimate, which may not completely track market conditions. This data is available for all peer jurisdictions, however.

Table 7. Summary of Peer Renter Financial Information for 2011 through 2015

Cities	Median Renter Household Income	Median Monthly Gross Rent	Percent of Renters with Rent Costing over 30% of Income
Alameda	\$55,311	\$1,407	47%
Berkeley	\$40,074	\$1,362	56%
East Palo Alto	\$43,527	\$1,433	66%
Los Angeles	\$36,489	\$1,209	61%
Oakland	\$38,222	\$1,144	55%
Richmond	\$40,355	\$1,205	57%
San Francisco	\$62,532	\$1,558	44%
San Jose	\$55,152	\$1,585	54%
Santa Monica	\$63,476	\$1,593	49%
West Hollywood	\$50,722	\$1,399	53%
Fremont	\$81,695	\$1,743	42%
<b>Average</b>	<b>\$49,277</b>	<b>\$1,390</b>	<b>54%</b>

Source: American Community Survey 5-year estimates.

Another source of more recent rental information is the Rent Jungle website, which bases estimates on rent sampling data. Table 8 is a summary of Rent Jungle’s sampling data for one- and two-bedroom rentals in Fremont gathered in March of each year from 2011 through 2017. Over this six-year period, rents for one-bedroom units increased 79% and two-bedroom units increased by 64%. The increases peaked in the summer of 2015, with some moderation since.

Table 8. Average Rents for One and Two Bedroom Units in Fremont

Year	One Bedroom	Change From Prior Year	Two Bedroom	Change From Prior Year
2011	\$1,190		\$1,520	
2012	\$1,532	29%	\$1,792	18%
2013	\$1,638	7%	\$1,911	7%
2014	\$1,760	10%	\$2,177	14%
2015	\$1,981	13%	\$2,408	11%
2016	\$2,137	8%	\$2,561	6%
2017	\$2,134	0%	\$2,498	-2%

Source: <https://www.rentjungle.com/average-rent-in-fremont-rent-trends/>.

The City has also experienced a decline in the number of Section 8 Federal Housing Program vouchers accepted by landlords from 1,363 in 2012 to 1,134 in 2015. This has impacted more than 200 of the lowest income residents.

### ***Residential Rent Increase Dispute Resolution Ordinance***

Fremont adopted a Residential Rental Increase Dispute Resolution Ordinance (RRIDRO) in 1997. The intent of the ordinance was to establish requirements for properly notifying tenants of rent increases and their rights regarding rent increases, and to provide formal processes for the resolution of complaints over rent increases. The RRIDRO allows one rent increase per year for all units and sets forth a three-step process for complaint resolution. All parties have the opportunity to resolve disputes over rent increases in the three-step process described below.

1. *Conciliation.* The tenant or landlord may work with an outside third party to assist with resolving any disagreement about a rent increase. The conciliator will work with the parties separately to resolve the disagreement. If successful, a written agreement is binding.
2. *Mediation.* If conciliation does not result in agreement, the parties move into formal mediation. The trained mediators generally work with the parties together. Any written agreement is binding.
3. *Fact Finding.* If conciliation and mediation are not successful, the remaining step in the process is fact finding by a panel appointed by the City. The panel includes a tenant representative, a landlord representative and an outside third party. The panel's role is to issue a fact-finding report regarding the reasonableness of the rent increases and the impact of the rental rate on the affected households. The conclusions or recommendations of the panel are not binding.

Conciliation, mediation, and fact-finding services are provided by Fremont Fair Housing, the local division of "Project Sentinel," a U.S. Department of Housing and Urban Development approved housing counseling agency. Project Sentinel provides housing related services under contract for many cities in the Bay Area.

Table 9 provides a summary of the rent increase cases processed by Fremont Fair Housing from July 1 through December 31, 2016. In addition to these cases opened, Fremont Fair Housing received 130 rent

increase related phone calls. The majority of the phone calls (113) were made by tenants.

Table 9. Rent Increase Case Reports from July 1, 2016 through December 31, 2016

Activity	Cases Opened	Tenant Filed	Landlord Filed
Cases Sent to Dispute Resolution (Cases Opened)	31	31	0
Cases Resolved with Reduced Rent Increases	20	20	0

According to Fremont Fair Housing’s Year End Report:

*Representatives from the Rental Housing Association (RHA) continued to volunteer to assist with the conciliation of RRIDRO cases by using “peer counseling.” Fifteen cases, with increases ranging from 9.97% to 79.82%, were referred to RHA, and all cases were successfully resolved. In 13 cases, the landlords agreed to substantial rent increase reductions, and in the other two cases tenancies were preserved.*

*Of the 31 cases opened, the increases ranged from a low of 2.23% to a high of 79.82%. In general, tenants reported that increases have been larger and more frequent (every year) than previously. In general, tenants also reported that the premium charged to rent on a month-to-month basis, rather than a fixed term lease, is higher than in previous years. In one case, the tenants were offered a 12-month lease with an increase of \$160 (6.0%), but if they wished to continue renting on a month-to-month basis, the increase was \$2,827 (79.8%). The RHA successfully conciliated the case, resulting in a 1.6% rent increase as opposed to the proposed increase of 79.8%.*

### **RRIDRO Challenges**

As market rents began to climb in 2013, Fremont Fair Housing found it challenging to mediate rents. The Rental Housing Association serving southern Alameda County (RHA) sent an agent to assist in the process and reported to City staff that Fremont Fair Housing often was not able to navigate the frequently complex corporate relationships behind ownership of apartment complexes to identify the party having authority. In several cases, apparently, Fremont Fair Housing was not negotiating with people who had authority to reduce proposed rent increases,

resulting in the decision makers refusing mediated terms. In several cases the RHA agent was able to help negotiate moderate increases.

Based on best practices adopted by other jurisdictions with rent mediation processes similar to RRIDRO, and on improved results achieved by RRIDRO with active landlord involvement, there are a number of potential changes to the program the City may wish to consider. These are discussed in Options section below.



## Overview of Rent Control/Just-Cause Eviction Ordinances

Of the 482 incorporated cities in California, the vast majority do not regulate rents. Still, whether by legislation or local petition, rent control and just-cause eviction ordinances have become part of the municipal regulatory environment in a number of cities in California.

Until 2016 approximately a dozen cities in the State of California had rent control regulations. As was noted earlier, the 2016 elections resulted in a few more cities in the Bay Area establishing rent control regulations. Some California cities have some type of regulation regarding rents which stops short of control or stabilization. These are usually mediation type programs similar to Fremont's.

Clearly there is more policy and community interest in this issue in the Bay Area than there has been in many years. Cities as well as stakeholders (sometimes through voter initiative) are trying to address rent control issues with a range of programs. The programs are typically designed to meet the needs of the local community, the economic and market environment as well as stakeholder interests. Programs vary in scope and degree of regulation, and are generally designed to address the following areas:

- Rent control or stabilization,
- Just-cause for eviction requirements,
- Tenant protections against retaliation, and
- Relocation assistance for non-fault tenant evictions in particular circumstances.

Each program has unique elements, and there is a complex inter-relationship between government regulation and the market that almost always leads to unanticipated consequences. The analysis presented below reflects our best professional judgment, given these constraints and uncertainties.

As part of our work, we contacted the communities of Santa Monica, Berkeley, Los Angeles, San Jose, and East Palo Alto for information about their rent control and just-cause for eviction programs. In addition, we reviewed ordinances and operating practices currently in place in the cities of Hayward and West Hollywood. While these programs have some common features, it is important to understand that each jurisdiction's scope and implementation processes are unique to their experience of the issues and stakeholder interests. San Jose is currently operating under an interim ordinance while staff develop broad policy recommendations and a program to support a comprehensive program. (San Jose has had a rent control/stabilization program in place since the 1970s, but because rent increases of up to 8% were allowed per year, it rarely had an impact on rents.)

Also noteworthy are programs adopted by the cities of Alameda and Santa Rosa in 2016, and the City of Richmond in 2017. However, the proposed ordinance in Santa Rosa was rejected by voters in a special election, in June 2017, so the program planned by the City will not be implemented. Therefore, these programs do not have data that can be used to inform discussions on this issue. Nevertheless, where appropriate we have used relevant information from these communities.

Local ordinances to address rapidly escalating rents have existed in California since the late 1970s. Cities such as Santa Monica and Berkeley pioneered strong ordinances that strictly regulated rent increases. More typical are ordinances that provide for non-binding mediation of landlord/tenant disputes similar to Fremont's program. In response to the rent inflation experienced in the Bay Area since the end of the Great Recession, several cities are looking at their current programs or are considering developing a program to regulate rents and establish just-cause eviction procedures.

The state has set some limits on the power of a local jurisdiction to address rent increases. In 1995, the California legislature passed the Costa-Hawkins Rental Housing Act (AB 1164) (Costa-Hawkins). Costa-Hawkins allows, among other things, property owners to set rental rates when there is a change in unit vacancy (known as "vacancy decontrol"). In addition, Costa-Hawkins prohibits interfering in a property owner's ability to set rents for any unit that received a certificate of occupancy after February 1, 1995, and any single-family home and condominium.

Fremont staff estimated in their September 2016 staff report that there are 16,782 rental housing units in multifamily developments in Fremont, with 2,840 built after February 1995 and an additional 1,491 that are income restricted affordable units. (These numbers do not include renter occupied units that would not be subject to regulation, or alternative regulation, such as mobile homes, condominiums and single-family homes.) Therefore, staff indicate that approximately 12,451 units may be covered by a rent control ordinance.<sup>2</sup>

Today, these programs, also referred to as rent stabilization programs, generally take one of three forms. An overview of the elements of the three forms is provided in Attachment A.

### ***Model A: (Berkeley/Santa Monica Style Rent Control)***

Traditional or “Model A” rent control ordinances strictly regulate rent increases by providing the annual maximum rents for each unit rather than merely providing the maximum percentage allowed. Cities such as Berkeley and Santa Monica pioneered these types of ordinances, but ordinances that establish the allowed individual rent increases remain rare. Recently, the City of Richmond adopted a Model A rent control ordinance following a voter initiative.

Model A rent control programs typically involve the city registering all eligible rental units. Limits on annual rent increases are generally defined in relation to either the Consumer Price Index (CPI) or a flat rate. Should a landlord believe increased operating costs justify a greater increase than permitted by regulation, they must petition for an individual rent adjustment. Similarly, tenants may petition to decrease rents if the services provided by the landlord are reduced. Individual petitions are typically heard by a hearing officer, with the ability of either party to appeal to some public body, usually a rent board, or ultimately the court. Rent boards may be independently elected (as in Berkeley), or appointed by the City Council (as in West Hollywood). Although they have been challenged in the courts, rent control ordinances in Berkeley, Santa Monica, East Palo Alto, West Hollywood and, very recently, Richmond have withstood legal challenge.

---

<sup>2</sup> City of Fremont, City Council Meeting, *Report to Council on Rent Control, Just-Cause Eviction and Other Options for Promoting Affordable Rental Housing*, dated September 27, 2016.

Due to the extensive regulatory apparatus associated with Model A rent control programs, these are the most complex and expensive for cities to implement and operate. Also, litigation typically ensues following the enactment of such programs.

### ***Model B: (Alameda/West Hollywood Style Rent Regulation or Stabilization)***

These programs are intended to address swings in the market that can lead to higher rent increases. They are triggered when a proposed rent increase exceeds some specified threshold (usually 5% to 10 %) and a tenant files a petition. Model B rent control programs typically try first to resolve issues through mediation, which can be a mandatory first step. If mediation fails, the next step is a hearing or arbitration that results in a binding decision.

Most rent control programs provide for mediation as either a first step in the dispute resolution process, or as a required step. Some cities provide mediation services to address any type of landlord/tenant dispute before it escalates into formal hearings or court actions. These landlord/tenant dispute resolution programs are similar to Fremont's RRIDRO. Participation in the program is sometimes mandatory, and failure to participate in good faith can be grounds for disallowing a rent increase.

A mandated mediation program is intended to provide a tenant access to a grievance process that meets program guidelines for mediation and addresses the issue of tenants being uninformed about how to process rent or service-related grievances.

Mediation can be provided to resolve many landlord/tenant disputes on a "cost-to-the-parties" basis. However, many cities choose to fund the service or charge only a nominal fee. Mediation services are typically provided through a third-party contractor or non-profit organization, as Fremont currently is utilizing.

### ***Just-Cause Eviction***

State law allows a landlord to terminate a tenancy without cause at the end of a lease or other tenancy term by giving the tenant a 30- or 60-day notice. A just-cause for eviction ordinance retains the state's noticing timelines, but also requires a landlord to provide written cause for the termination and evidence supporting the termination action. Typically, "just-cause" ordinances provide a limited range of allowable causes for

eviction. One of the primary impacts of these programs is that they shift the burden of proof for a tenant eviction from the tenant to the landlord, because failure to prove one of the allowable causes for eviction is an affirmative defense a tenant may use to contest the eviction.

Just-cause for eviction rules are often part of a strong rent regulation ordinance to protect tenants from a landlord's ability to evict them without cause under civil procedures to gain potentially significant rent increases by creating a vacancy that allows greater market rents to be charged pursuant to the Costa-Hawkins Act. However, just-cause ordinances can also become problematic for a landlord seeking to evict a tenant for reasons other than to increase the rent. Because legitimately evicted tenants may use the appeals processes to delay the eviction, many landlords believe that just-cause ordinances make it difficult to evict bad tenants.

The effectiveness of just-cause ordinances is difficult to track statewide because most of the cases are taken directly to the courts for resolution and the results are not published in a comprehensive way.

However, to assess the effectiveness of such ordinances, Community Legal Services of East Palo Alto (CLSEPA) tracked their caseload over an eight-month test period in 2014. CLSEPA provides defense for tenants facing eviction in East Palo Alto and many other areas of San Mateo County. Currently, East Palo Alto is the only city in San Mateo County with a just-cause for eviction ordinance (it has also had a rent control ordinance since 2010). Over the test period CLSEPA obtained "pay and stay" settlements (where the tenant agrees to a rent increase and is not evicted) for 70% of cases in East Palo Alto. However, in all other San Mateo County cities pay and stay settlements were achieved in only 14% of cases. CLSEPA did not have the capacity to track cases beyond the test period.

An important caveat to this example is that eviction in a rent control environment is different than in a non-regulated environment. As stated above when rents are controlled landlords may have an incentive to evict to obtain the economic benefit of vacancy decontrol. Therefore, comparing eviction settlements in a controlled environment like East Palo Alto may not yield a meaningful comparison in a mainly unregulated environment such as other areas in San Mateo County.

While typically paired with rent control or stabilization, a just-cause ordinance can be a stand-alone ordinance designed to protect tenants from unilateral landlord eviction decisions. They can apply to most tenants as well as to specific tenants, such as to tenants of rent stabilized units only. For example, the just-cause sections of ordinances for both Richmond and Berkeley apply to the rent-controlled units as well as to almost all other rental units. Just-cause ordinances also can be used to provide additional protections for certain classes of tenants, such as the disabled, elderly, infirm and families with children in school.

Just-cause for eviction programs typically are designed so the city is not an active participant in the process. Instead, the eviction processes play out through the courts. Rent board staff in several of the California cities with rent control contacted by Management Partners reported they did not track just-cause eviction complaints so we were unable to determine the extent of such cases. A survey of just-cause eviction provisions is provided as Attachment B.

Fremont's neighbor, Union City, recently enacted a just-cause ordinance in the absence of rent controls beyond a non-binding mediation program. The effect of such a just-cause ordinance on rents is not clear because it is too new to draw any conclusions from.

### ***Public Outreach and Education***

Although not strictly an element of rent control and just-cause eviction ordinances, rent control related public outreach typically includes a range of tenant and landlord education or information programs to make sure the parties understand their rights and responsibilities. Topics covered often include processes for allowing yearly rent increases and/or petitioning higher rent increases to cover higher capital or operating costs, vacancy decontrol, habitability standards, and retaliation or anti-harassment provisions. The most effective tenant protection programs use extensive outreach and education to reduce the number of petitions and ordinance violations over time.

## Rent Control/Rent Stabilization and Just-Cause Eviction Program Elements

The Fremont City Council directed staff to investigate operational impacts of rent control/rent stabilization and just-cause ordinances. As noted previously, each jurisdiction with rent control and just-cause for eviction ordinances has unique elements to meet specific community and stakeholder interests and needs. As such, programs vary widely among agencies. This section provides an overview of the major elements of rent control and just-cause eviction programs and their operational impacts in the following areas:

- Governance,
- Expenditures and cost recovery,
- Staffing, and
- Other observations.

### ***Governance***

Most cities, whether their programs are regulatory or non-binding, establish a board to provide oversight, to act as the final appeals body when parties fail to reach agreement after mediation, or to act as the hearing body for a decision by an arbiter or hearing officer for general landlord/tenant complaints such as excessive rent increases. These boards are generally appointed by a city council, although Berkeley and Santa Monica have an independently elected board. In most programs, initial decisions are made by trained hearing officers directly employed by the rent board or contracted by the board from independent organizations.

These boards will typically hold public hearings to render a final binding decision on complaints. Although the board may be appointed by a council, we have not identified any ordinances where a board's decisions are appealable to the city council. Most appeals of board decisions are made directly to the courts. Rent control boards may also get involved in

other landlord/tenant issues, including providing informational and educational materials on landlord/tenant rights and other matters of interest to landlords and tenants.

Although a board is typically created, we found two examples where governance is not being delegated to a rental control board. The City of Hayward's program calls for arbitration; the arbiter's decision is final (subject to court review should the matter be taken to court). Under San Jose's new program, disputes are arbitrated by hearing officers and appealed to the courts. However, policy decisions remain with the City Council or are delegated to staff.

### ***Expenditures and Cost Recovery***

The cost of rent control programs varies widely across the state. The costs are related to the cost of staff required to administer the program. Programs that require detailed administrative action over routine activity such as rent increases and tenancy changes are higher in cost on a per rental unit basis. The programs in Berkeley and Santa Monica programs are examples of such programs. Programs that require little routine administrative control and are primarily complaint driven, such as San Francisco's, are fairly inexpensive on a per unit basis. Scale reduces the per unit cost in the large cities dramatically. Some factors that influence costs are:

- The level of policy control of the rent boards and their need for staff support;
- The amount of information and frequency of reporting required by landlords;
- The complexity of the petition processes, especially those related to fair-return on investment provisions;
- Whether proactive enforcement of the ordinance is performed (i.e., analysis of reporting data is used to act on rents outside of complaints); and
- The complexity of relocation programs.

A city council is typically responsible for approving the budget for rent management programs. In at least three cities (Berkeley, Santa Monica and Richmond), the budget is set by the rent board with little oversight by the City Council (although the Council must set the associated rental housing fee). In cities with strong rent regulation reporting, most of the program budget is funded through a rental housing fee on each regulated unit charged to landlords.



Fees for Model A rent control programs currently are as high as \$238 per unit per year, and cover annual costs and reserves necessary to properly fund them. The fee is established on an annual basis. If program costs increase, the fee can be increased. In some cities, a portion of the rental housing fee can be passed through to tenants through rent increases. To properly track regulated units and payment of fees, these cities require that units be registered or enrolled in a “rent registry.” In those cases where there is less rigorous rent control (i.e., with landlords only reporting on the occupied units), fees range from approximately \$40 to \$120 per year.

Some cities support their rent control program through the general fund or through a combination of general fund support and fees. For non-binding mediation programs, a non-profit may provide the service either through its own grant funding, or by charging a fee.

Table 10 below provides information on program cost and fee data collected from communities that operate rent management programs. While all of the programs in Table 10 include rent control and just-cause for eviction components, each of the cities’ programs provide a range of services as well as staffing strategies which make cost comparisons challenging. As an example, the programs in the cities of Berkeley and East Palo Alto require rental unit registration of actual rents while the others do not.

The level of service also varies. The City of Alameda’s program includes mediation services for rental properties not subject to rent control while the now defunct City of Santa Rosa’s program excluded these services. Finally, the City of Hayward’s fees are significantly less than other communities due to its policy to recover only a portion of program costs. The Hayward program has limited administrative requirements and offers some unique program features, including those that allow a landlord to remove units from the rent control portion of the program if certain conditions are met.

Table 10. Rent Control and Just-Cause Eviction Program Cost and Fee Comparisons

City	Number of Non-Exempt Housing Units	Current Program Operating Budget	Annual Per Unit Program Fee	Number of Program FTEs	Annual Allowable Rent Increase
Alameda <sup>1</sup>	13,037	\$1,900,000	\$131	6.0	5%
Berkeley	19,093	\$4,550,000	\$234	20.6	1.5% (CPI Formula)
East Palo Alto <sup>2</sup>	2,400	\$650,000	\$234	2.0	2.40% (CPI Formula)
Hayward <sup>3</sup>	3,000	\$27,875	\$2.77	0.5	5.00%
Oakland	N/A	\$1,773,209	\$30	12.0	2% (CPI Formula)
Santa Rosa <sup>4</sup>	11,076	\$1,248,674	\$113	4.5	3%

Source: Annual budget documents, city websites and program reports.

<sup>1</sup> The City of Alameda information represents an estimated amount as the program has just recently been approved; however, the fee has not yet been adopted.

<sup>2</sup> The City of East Palo Alto budget includes \$206,000 City overhead charges.

<sup>3</sup> The City of Hayward includes various conditions that allow rent increases greater than 5%, including rent carry-overs. Cost is based on 80% program recovery. A total of 20% is funded by the General Fund and 3,000 units are subject to the rent control portion of the program.

<sup>4</sup> The City of Santa Rosa program fee was adopted on August 30, 2016 based on program cost and fee estimates. The Santa Rosa and Alameda programs were selected in part because they have just recently been adopted and include one-time costs anticipated in program start up. The Santa Rosa program no longer exists because it was rejected by voters in a special election on June 6, 2017.

With respect to the provision of legal services to support the function, we observed that programs utilized either the city attorney’s staff or employed their own attorneys to focus exclusively on the rent control program. For example, Alameda, East Palo Alto and Santa Rosa secure legal services for their program through their city attorneys’ offices. The cost of this staff time is tracked and included in the program costs. Santa Monica and Berkeley both have staff attorneys who are solely responsible for the rent control program and related litigation. Periodically, the rent control program attorneys in both of those cities require supplemental assistance from the City Attorney. Several of the rent control programs also budget for additional contract services including additional legal services (e.g., East Palo Alto and Santa Monica).

## Staffing

The level of staffing for rent control programs is highly dependent on the type of program. A non-binding mediation program can be managed with more limited staff resources. On the other hand, cities with highly regulatory programs may need a significant number of staff, including a

manager, administrative personnel, (e.g., support and accounting staff), analysts, legal services and hearing officers (which may be contracted). Staff may also conduct community outreach and education activities. The City of Berkeley's rent control program, governed by an independent and elected rent board, employs 22 full-time equivalent employees (FTEs) and has a budget of over \$4.5 million. The City of Hayward's program, which is a complaint-based arbitration program for significant rent increases, is administered through the City Attorney's Office and uses a portion of two FTEs for program administration along with contractual support for mediation and arbitration. It does not utilize a board for program oversight.

### ***Technology Support***

Until this year there was no commercially available software that supported rent control programs. Cities with long term programs have all used custom software developed specifically for them. The City of San Jose is in the process of creating custom configurations of its Customer Resource Management software to provide such support. The San Jose Housing Department has used that application for several years but processes supporting the new ordinances being developed will require more sophisticated functionality. The City of Richmond is in the process of developing similar functionality using their development permit tracking and inspection system. Both cities have information technology staff with significant skills with these products and both will likely require additional assistance from their vendors.

On January 3, 2017, the City of Los Angeles went online with a new application developed for them by a southern California software development company. This company just contracted with the City of Beverly Hills to provide a version of the Los Angeles software as a "cloud-based" service, but it is not yet installed.

### ***General Observations Regarding Program Impacts***

The degree to which there is an impact on the housing market from rent management programs will depend on the type of program adopted by the city, the market and general economic development conditions within a region. In general, there is limited research on the market impacts of any of the rent management programs as they currently exist in California after Costa-Hawkins. Interest groups representing landlords and tenants rarely, if ever, agree on market impacts.

Objectively, concerns that local rent regulation would discourage new construction have largely been addressed by state law exempting new construction from rent regulation. There have been concerns that highly regulatory programs discourage investment and lead to deterioration in rental housing, but evidence of that is merely anecdotal. In reviewing the potential impacts of rental control programs, the following are some general observations about affordable housing, vacancy rates/displacement, and housing supply.

### **Affordable Housing and Rent Control**

Defining housing affordability is a complex matter that is beyond the scope of this study. However, in the broadest sense, any definition of affordable housing typically includes a link between household income and the amount of income spent on rent and/or gross housing costs. As an example, HUD generally defines housing as being affordable if a median income household is paying no more than 30% of its income on housing-related costs. While the HUD definition is commonly cited when discussing housing issues overall, a city's affordable housing program is typically geared toward the development and maintenance of subsidized rental housing including eligibility requirements tied to household income, most commonly those households with an annual income less than 80% of the Area Median Income (AMI).

Affordable housing and rent control are different in that the income of a tenant in a rent control environment is not used as a parameter in the rent setting process. We have not observed any affordability monitoring or control mechanism linking rents and household income in relation to the impact of rent regulation.

Therefore, as a general observation rent control and just-cause eviction ordinances, at best, maintain some level of affordability for those already in rental housing subject to the ordinance, but do not lead to an expansion in the availability of affordable housing.

Notwithstanding this, proponents of rent control programs and associated stakeholders often assert these programs assist in promoting tenant stabilization, with varying degrees of success, by establishing a more clearly defined rent adjustment amount and by providing an outlet for grievances related to what may be viewed as unreasonable rent increases without regard to a household's income or the amount of

household income dedicated to monthly housing costs. In addition, educating tenants and landlords about tenant rights and processes for rent adjustments and/or evictions are often components of affordable housing programs.

Affordable housing issues are not directly targeted by rent regulation. Such issues are much broader and bigger, and the subject of a lot of discussion among stakeholders and the housing industry. However, rent control and just-cause eviction may provide additional public information and a process that may affect a subset of those impacted by high housing costs.

### **Vacancy Rates/Displacement**

Management Partners has not found any current data indicating that rent control and just-cause for eviction programs will increase or decrease vacancy rates. Our observation is based on conversations with representatives from the peer cities and the results of a questionnaire regarding vacancy rates in cities with rent control programs.

Because the surveyed cities are not collecting data to track tenant displacement and/or the root causes for displacement, which are complex, we have not found any specific evidence indicating these programs improve or worsen tenant displacement. Notwithstanding the lack of available data, it seems reasonable to conclude that tenants are displaced when rent increases exceed the general cost of living, leading to a tenant being priced out of a unit and potentially out of the community. A program that mitigates rent increases accompanied by a just-cause eviction ordinance may limit the impact of rent increases thereby preventing some displacement. Of course, the associated regulatory apparatus comes at a cost and landlords will oppose this intervention in the marketplace, and with respect to their property.

As noted above, rent regulation programs are not targeted to those who may be most at risk of displacement. They provide a benefit to both those who may be displaced as well as others who can afford to pay market rents. For some tenants, the benefits of retaining a rent-regulated unit will encourage them to remain in the unit, even when their incomes rise and they can afford market rents. Some believe this may result in less turnover in the rental market, especially for those older units that tend to be most affordable, even in a high-cost area. While there is anecdotal evidence of this effect, we are not aware of any study that has quantified it.

## **Housing Supply and the Housing Market**

As noted earlier, Costa-Hawkins has largely addressed the concern that local rent regulation would discourage new apartment construction. However, highly regulatory programs can lead to some loss of rental units to condominium conversion and to owners who choose to leave the rental market all together, usually by the owner or relative occupying a condo conversion or through demolition and major reconstruction.

There is also a state law that allows evictions to remove a property from the rental market for a variety of reasons, commonly known as the Ellis Act. In response, some communities have adopted condominium conversion processes that require a rent board's review of these applications to ensure the rental unit conversion to owner occupancy is consistent with rent control and just-cause eviction program intent and practices. For example, the City of Berkeley requires a complex application review and payment of an affordable housing mitigation fee.

Santa Monica reported in its 2015 Consolidated Annual Report that since 1986 a total of 2,019 units have been withdrawn from the rental housing market. The San Francisco Chronicle reported that there were more than 100 Ellis Act evictions each year between 2010 and 2013. Other cities that regulate rents have not reported significant losses of rental units through the Ellis Act or through condominium conversion.

## Rent Intervention Alternatives – Three Options

The City Council directed staff to generate a range of program options. Management Partners has prepared three possible options at staff's request. As part of these options, we defined program elements, administrative cost, and the potential advantages and disadvantages of each (also see Attachment A). These options represent a broad overview of program elements for City consideration. Should the City Council decide to pursue any of or a component of these options, additional research would be necessary to ensure that a program is drafted to address the unique needs, stakeholder interests and program objectives for the City of Fremont.

### ***Option 1: Modified Residential Rent Increase Dispute Resolution Ordinance Process***

The City Council directed staff to develop possible revisions or alternatives to the existing RRIDRO. A non-binding mediation approach is appropriate for most communities whose objective is primarily to resolve landlord/tenant disputes. When there is balance between supply and demand in the rental market, such programs can probably help reduce displacements of lower-income tenants.

As market rents began to climb between 2013 and 2015, the City's contractor, Fremont Fair Housing, was not successful at mediating rents in the overheated rental market until the Rental Housing Association (RHA) sent an agent to assist. The agent reported to staff that Fremont Fair Housing was not able to navigate the frequently complex corporate relationships behind apartment complex ownership. This resulted in Fremont Fair Housing sometimes negotiating with people lacking the actual authority to reduce proposed rent increases, which then resulted in the decision makers refusing mediated terms. The RHA had greater resources and experience identifying the decision makers. In several cases the RHA agent was able to negotiate reductions in the proposed increases.

The City of San Leandro has a mediation-based program similar to Fremont's RRIDRO. San Leandro recently adopted an ordinance with program enhancements that may bolster the effectiveness of Fremont's current RRIDRO. Elements of San Leandro's ordinance that might be considered by Fremont include:

- Replacing the Fact-Finding Panel under the current ordinance with a standing Rent Review Board consisting of two landlord representatives, two tenant representatives, and a neutral third party;
- Establishing a rent increase threshold for eligibility;
- Strengthening the mandatory participation provisions; and
- Continued peer-to-peer counseling by landlords.

Fremont staff shared several additional possible RRIDRO revisions with our team, including the following.

1. Establish a Rent Review Board for mediation/fact finding of rent disputes to include:
  - a. Failure to participate (landlord) will render the rent increase invalid.
  - b. Failure to participate (tenant) will render the rent increase valid.
  - c. If the Rent Review Board finds retaliation, the most current rent increase becomes invalid and no further increases are permitted for 12 months from the date of the finding.
2. Revise noticing provisions (statements to be included in a notice of rent increase) to include:
  - a. A statement on the reason for increase.
  - b. A statement on Rent Review Board processes.
  - c. A statement that no more than one rent increase every 12 months will be made (9.60.040 (d)).
  - d. Require 90 days-notice of rent increases rather than *encouraging* landlords to provide at least 90 days-notice (9.60.040 (c)).
  - e. Failure to give proper notice including all statements renders the rent increase invalid and no additional rent increase notice is permitted for at least 90 days.
3. Retaliation Measures
  - a. Increase the penalty for retaliation to a larger amount (currently \$1,000) that would deter landlords from retaliatory actions (9.60.100; see Civ. Code § 1942.5).



- b. Any retaliation renders the recent rent increase invalid and no additional rent increase notice is allowed for next 12 months from the date of the finding.
4. Additional conciliation process requirements
  - a. Require mediation on rent and other terms of tenancy
  - b. Require the individual representing the landlord in the process to have the authority to make rent adjustments
  - c. Require meaningful participation or rent increase is rendered invalid.
  - d. Codify AR 10.7 to clarify that if parties agree to more than one rent increase in a 12-month period, it must be documented in a separate agreement (not the rental agreement) that identifies the agreed upon rental increase.
  - e. Agreements reached in mediation are binding.
5. Additional mediation process requirements
  - a. Require participation by representatives or the rent increase is invalid.
  - b. Agreements reached following mediation are binding.
6. Additional Fact-Finding Process Requirements
  - a. Require participation or rent increase is invalid.
  - b. Recommendations of the fact-finding panel are not binding.
  - c. Agreements reached by parties following fact finding are binding.

In addition, staff suggested a regular evaluation of the program could help ensure its effectiveness.

### **Option 1 Opportunities**

As noted in Attachment A, this model has several components. It:

- Creates an effective vehicle for addressing tenant concerns regarding significant rent increases,
- Promotes tenant stability regarding lease terminations,
- Improves landlord/tenant communication,
- Provides certainty and stability for landlords
- Reinforces non-retaliation provisions, and
- Includes tenant relocation expenses in some programs.

An additional rent mediation program element that has been used in the cities of Palo Alto and more recently Menlo Park is the requirement for

landlords to offer one-year leases to tenants each year. The tenant retains the right to refuse such leases but landlords must offer them. This eliminates the risk of tenants receiving multiple rent increases each year and provides some level of stability for both landlords and tenants, especially where student housing is an element of volatility in the local rental market. However, tenants in several South Bay communities have complained to housing support agencies of demands for very high month-to-month rents if longer term leases were refused by the tenants.

Mediation programs provide tenants with an opportunity to present their concerns about a rent increase to a neutral third party who can work with both the landlord and tenant to see if an agreement can be reached. Mediation is also a less restrictive approach with respect to landlords and their property. Transitioning the existing “panel” to a rent review board and establishing a more transparent process may provide additional incentive for both parties to reach a compromise.

### **Option 1 Challenges**

This model will not address concerns regarding affordable housing or financial hardship resulting from higher than historical or perceived “normal” rent adjustments. In addition, the overall impact on displacement is difficult to quantify. Moreover, the Rental Housing Organization (RHO) in Fremont, as reported in the September 27, 2016 staff report, has recommended a 7% to 10% yearly threshold for rent increases prior to being subject to the mediation process. At this threshold, the mediation process might not have much impact.

For example, the City of San Jose rent control ordinance has been in place since 1979. It has allowed an 8% annual increase with other opportunities for larger rent increases under certain circumstances. In a January 27, 2017 report, the City Auditor reported that between 1980 and 2014, the average rent increase was 4.9% and the 8% yearly allowable increase did not become a constraint on rent spikes except in the early 1980s when inflation was very high. San Jose’s 2015 interim apartment rent ordinance has reduced the threshold to 5%.

### **Option 1 Cost Estimate**

This option has the advantage of having a relatively low program cost. The exact costs are difficult to determine precisely because the budgets for such programs are typically embedded in the budgets of larger housing departments or organizational units, which provide support for many other services such as placing low or moderate income tenants,

administering affordable mortgage programs, and assisting other housing functions. The City of San Leandro Housing Services Department offers broad housing services to low and moderate income residents and supports a Rent Board and binding mediation program at a cost of \$874,963 in Fiscal Year 2016/2017. Of this, an estimated \$100,000 is dedicated to the rent mediation program.

As will be further explained, the cost of all three styles of rent control programs varies widely depending on sometimes small differences in the program policies and administrative processes supporting them, but Option 1 costs are typically the lowest. The volume of public education and outreach by each city or contract agency can have significant impact on the cost. Given the larger number of units subject to a program in Fremont suggests that even, a modest mediation program approach such as seen in San Leandro could approach \$300,000 annually. With lower rent ceilings, more detailed administrative processes, and other support services being provided, the costs could approach \$500,000. It is possible costs could be offset via a correctly designed fee that meets California nexus requirements, as seen with rent control programs.

### ***Option 2: Alameda/West Hollywood Style Rent Regulation or Stabilization***

A rent control and just-cause eviction program could have the features listed below for rental units not exempted by Costa-Hawkins (and City ordinance).

- Landlord requirement to notify and supply tenants with a copy of the program ordinance and annual rent increases.
- A threshold rent increase for accessing the program (5% to 10%).
- Potential to opt out of the rent control program with minimum reinvestment per unit.
- A complaint-based program, (i.e., no ongoing tracking of regulated rentals); although, should a fee be established, the City would need to determine a collection method.
- A clear set of criteria for evaluating whether a rent increase over the threshold can be justified.
- Voluntary or required mediation.
- A fact-finding process followed by a hearing before a hearing examiner or arbiter, should mediation not lead to agreement.
- An order from the hearing officer or arbiter is binding on the parties.

- An opportunity to appeal the order.
- A hearing before a board appointed by the City Council (should the matter be appealed).

### **Option 2 Opportunities**

As noted in Attachment A, this option can provide several benefits depending on the structure focusing on each community's needs. These include the potential to:

- Stabilize rent increases,
- Encourage habitability compliance,
- Expand tenants' rights,
- Attract investment,
- Ensure a method to address landlord/tenant disputes,
- Provide a fair return on investment, and
- Encourage rental housing reinvestment.

This type of program would insert the City's regulatory authority into the rental housing market to address above "normal" rent increases to some degree. Because the program includes the authority to order modifications, it may lead to more good-faith efforts for agreement. Depending on the threshold set for use of the program, it could also address only the most significant rent increases.

It is important to remember that rent increases at the high levels experienced during the past few years have moderated. Over time, depending on the threshold, allowable rent levels may catch up to market rents. For example, assuming a 7% threshold and market rental inflation over four years of 13%, 9%, 4% and 2%, the permitted increases will have caught up to market rents by year four, but at a less impactful and more predictable rate.

Because these programs are designed to address the specific housing type and needs of the respective jurisdiction, Fremont would need to consider its specific housing characteristics in the design process. Should the City move in the direction of some form of rent regulation, we suggest it also consider a just-cause ordinance to avoid evictions related to rent regulation.

An interesting element in the City of Hayward's ordinance is the option for landlords to opt out of the rent control program by making certain capital improvements to the controlled properties. In this way, Hayward addressed a community interest in improving the condition of rental

stock. The City enacted an ordinance for rent control in 1983 but later repealed it. A new ordinance was enacted in 2003. Since the current rent control program went into effect in 2003, the number of rent-stabilized units has declined from roughly 11,000 units initially to 3,000 units today.

### **Option 2 Challenges**

Even under these programs, the affordable housing gap will persist for residents at or below the Area Median Income (AMI). Further, Option 2 contemplates only short-term rent control, because voluntary vacancy and landlord compliance with permanent decontrol removes a unit from the program and rent increase limits. The program is designed to drive rental housing reinvestment, and since vacancy decontrol prohibits comprehensive application to all rental units (only units built before 1995 can be “controlled”), reinvestment is only encouraged for those units in the program.

### **Option 2 Cost Estimate**

Option 2 would require significant staff resources and costs. Assuming just-cause provisions are adopted, landlords would have to expend considerably more effort to evict tenants and be subject to potential legal challenge. Landlord costs may also increase if the City chooses to require them to pay relocation costs for certain types of evictions. Should the City wish to consider this option further, a more detailed analysis of the potential staffing requirements and program costs would need to be undertaken. The current budget for the City of Alameda’s program is \$1,950,000, covering 14,699 units under rent control. The City of West Hollywood’s rent control program budget is roughly \$1,900,000 to cover 16,805 controlled units. This rent control program is part of a larger, comprehensive housing department budget and costs are an estimate provided by their staff in 2016. A reasonable range of costs for Fremont is expected to be between \$1,900,000 and \$2,100,000. Again, there is potential for additional costs depending on program elements but West Hollywood and Alameda both provide a reasonable threshold cost estimate, depending on the number of units included.

### ***Option 3: Berkeley/Santa Monica Style Rent Control***

A rent control and just-cause eviction program might include the following elements in relation to rental units not exempted by Costa-Hawkins.

- Requiring landlords to notify and supply tenants with a copy of the program ordinance and annual rent increases.
- Establishing a board with the authority to set an annual general adjustment to rents, generally based on the Consumer Price Index or some flat maximum amount.
- Establishing a procedure to apply for individual adjustments, and a set of criteria for evaluating requests for an individual adjustment.
- Enrolling all regulated units and payment of a fee to cover the costs of the program.
- Requiring voluntary or required mediation.
- Establishing a fact-finding process followed by a hearing before a hearing examiner (should mediation not lead to agreement).
- Requiring an order from the hearing officer or arbiter to be binding on the parties with an opportunity to appeal the order.
- Requiring a hearing before a board appointed by the City Council (should the matter be appealed).

As with the previous (Model B) program, should the City move in this direction, we would suggest it also consider a just-cause for eviction ordinance.

### **Option 3 Opportunities**

This option provides for the tracking of program units; a mechanism to identify, inform, and engage landlords and tenants; reasonable rent increases while stabilizing tenant population in rental units; compliance with code (habitability) requirements; and an accessible and efficient method to address landlord/tenant disputes.

Although most California cities with such programs do not track rents on an ongoing basis, property owners must submit justification when rent increases are requested beyond the yearly allowable ceiling, and program hearing officers render decisions on whether the increase is justified. Similarly, tenant complaints of excessive increases are investigated by program staff and resolved by the hearing officers. In the most rigorous programs, such as those in Berkeley and Santa Monica, rents are tracked on every change in tenancy and change in tenancy terms (typically any rent increase).

### **Option 3 Challenges**

As noted in Attachment A, the affordable housing gap persists for residents at or below Area Median Income (AMI). The vacancy rate

impact in the short-run is negligible. There is a threat of reduction in rental units in the long-run through increased condominium conversion such as experienced in Santa Monica. Vacancy decontrol also prohibits comprehensive application to all rental units (only units built before 1995 can be “controlled”).

Traditional rent control programs cost more and require greater administrative complexity than Model B rent control or mediated rent control programs. For example, the staffing levels of the Berkeley and Santa Monica programs are twice those of the average staffing level per unit in cities with Model B rent control “unit-registries.” Both cities have elected rent boards and program staff who must support their policy development and legislative processes. The budgets in Berkeley and Santa Monica are \$4,550,000 and \$4,755,170 respectively, supporting 19,093 and 27,542 rent controlled units respectively.

The City of Los Angeles launched a rent registry in January 2017 with a much lower staffing level per rental unit. Nevertheless, the Los Angeles rental rights department has almost four times as many total staff as Berkeley or Santa Monica and a total budget over \$22 million. Between scale and current generation technology support, Los Angeles hopes to be able to operate with minimal staffing increases.

### **Option 3 Cost Estimate**

Option 3 for Fremont may have an initial cost between \$3,500,000 and \$4,000,000 because of the fewer units potentially under a rent control program. Whether the relatively low staffing levels in Los Angeles can be maintained will have to be determined as the history develops—but any new Model A rent control and just-cause eviction programs would require a dedication of staff over a period of time to develop policies and processes and refine them for efficiency due to the high levels of control that characterize such programs. Los Angeles had lower levels of rent control for many years with a concerted focus on developing efficient policies and processes. For that reason, Fremont’s startup costs for this option are expected to be in the same range as the Santa Monica and Berkeley programs with possibly some reductions in staffing needs as technologies and other efficient program elements are developed.

## Conclusion

The goal of most rent control and just-cause eviction programs is to stabilize tenancy by moderating rent increases on existing tenants and by providing some due process protections for tenants to prevent rent spikes and landlord tenant relationship problems. The communities surveyed have each designed their programs, often with only subtle differences in the rules and regulations, to address problems specific to their local rental market and stakeholder interests. Program elements focus on each local housing market including the housing inventory, habitability challenges, and balancing the needs of tenants and landlords. Mediation and counseling do continue to play a critical role in stabilizing tenancy in all tenant protection models, even those that are highly controlled. The key to success in the communities we surveyed has been to identify the specific problems that are unique to the community and its rental housing and design or develop targeted approaches to resolve the problems.



## Attachment A: Rent Control and Just-Cause Eviction Program Options

Program Features	Option 1 Enhanced Mediation Program	Option 2 Alameda/West Hollywood Style Rent Regulation/Stabilization	Option 3 Berkeley/Santa Monica Style Rent Control
<b>Units Subject to Program</b>	Typically applies to rental units with three or more units	Property owners with three to five or more units. Hayward example: Residential unit occupied by payment of rent, provided the unit is one of at least five residential units in Hayward with common ownership.	Residential rental dwelling units and rooming houses with at least five rooms (each room is counted as an individual unit) with separate leases are included in the program, along with single family homes with at least four bedrooms that are being rented separately (each bedroom is a unit).
<b>Unit Exemptions</b>	Hotels/motels, government-subsidized housing, hospitals, transient housing, etc.	Single family homes, all units occupied after February 1996 hotels/motels, government-subsidized housing, hospitals, transient housing, etc.	Single family homes, all units constructed after 1996 hotels/motels, government-subsidized housing, hospitals, transient housing, etc.
<b>Funding Mechanisms</b>	General fund or other City Fund, Arbitration Service Fees	Programs funded through administration fees (50% passed on to tenant) and may include general fund and other fund support	Programs funded through registration (50% passed on to tenant) and enforcement fees, and may include general or other fund subsidies, and grants

Program Features	Option 1 Enhanced Mediation Program	Option 2 Alameda/West Hollywood Style Rent Regulation/Stabilization	Option 3 Berkeley/Santa Monica Style Rent Control
<b>Characteristics of Program</b>	<ul style="list-style-type: none"> <li>• No ongoing tracking of rental units or rents paid is typically done</li> <li>• Due Process: Mandatory participation through conciliation, mediation and fact finding, mediated agreements are memorialized in writing. If fact-finding process is incorporated, decisions are advisory</li> <li>• Landlord must be current on all fees and in compliance with city requirements</li> <li>• Landlord must confirm substantial compliance with habitability of unit</li> </ul>	<ul style="list-style-type: none"> <li>• All eligible rent units are loosely tracked. The rent policy body (rent board or city council) publish allowed yearly rent increase maximum</li> <li>• Due Process: Petition Process with Hearing Examiner providing decisions. Mediation may be a preliminary option</li> <li>• Housing quality standards maintained (owner/landlord compliance)</li> <li>• Includes just-cause eviction, anti-harassment, and tenant/landlord problem mediation</li> <li>• Active public education programs</li> <li>• Voluntary vacancies trigger landlord option to remove unit from rent increases compliance with habitability standards (Hayward’s program).</li> </ul>	<ul style="list-style-type: none"> <li>• All eligible rental units are tracked and have an established rent ceiling. Landlord must report all changes in tenancy and terms of tenancy (rent increases)</li> <li>• Due Process: Petition Process with Hearing Examiner providing decisions. Mediation may be a preliminary option for some petitions</li> <li>• Housing quality and housing services (owner/landlord compliance)</li> <li>• Includes just-cause eviction, anti-harassment, and tenant/landlord counseling and mediation</li> <li>• Active public outreach and training programs</li> <li>• Optional program suspension - 5% vacancy rate</li> </ul>
<b>Required Tenant Notification of Program Eligibility and Features</b>	Yes, at time of initial rental, rent adjustments and notice of lease termination	Yes, rent disputes and eviction for cause provisions	Yes, rent disputes, terminate tenancy and good cause eviction provisions

Program Features	Option 1 Enhanced Mediation Program	Option 2 Alameda/West Hollywood Style Rent Regulation/Stabilization	Option 3 Berkeley/Santa Monica Style Rent Control
<b>Required Tenant Notification of Rent Increases and Rent Increase Thresholds</b>	Yes, if required by state law. Rent increases greater than 10% trigger mediation	Yes <ul style="list-style-type: none"> <li>• Landlords provide notice to tenant of the ordinance and rent increase</li> <li>• Rents may not increase more than 3-5% per year (or some portion of CPI) and may not be raised more than once in 12 months</li> <li>• Rent increases of less than the maximum allowed in a year may be “banked” (“untaken” rent increases from prior years can be applied to current year up to a maximum defined by the ordinance)</li> </ul>	Yes <ul style="list-style-type: none"> <li>• Rents can only be increased by the Annual General Adjustment (AGA) based on a standard percentage or percent of CPI as published by the Board each year</li> </ul>
<b>Mediation</b>	Yes, but does not apply to just-cause evictions	Yes	Yes, staff provides counseling and mediation
<b>Arbitration</b>	Typically not	Yes, Rent Review Officer decision is final	Yes, hearing examiner decision is final unless appealed to the Rent Board
<b>Program Administration</b>	Contractor/non-profit agency	City staff or contractor	Independent Rent Board and staff
<b>City Appointed Board/ Elected Rent Board</b>	Yes, if program includes fact-finding process	Yes	Yes
<b>Staff</b>	.25-1 FTE planner or housing specialist	10-12 FTE estimate	20.+ FTE (administration, law, hearing, registration and public information and IT)

Program Features	Option 1 Enhanced Mediation Program	Option 2 Alameda/West Hollywood Style Rent Regulation/Stabilization	Option 3 Berkeley/Santa Monica Style Rent Control
<b>Contract Services Used</b>	Contractor or non-profit agency for mediation services	Mediation and arbitration services provider (unit-based charges \$600 per mediation and \$1,200 per arbitration), legal aid	\$300,000 for various professional services
<b>Annual Program Cost</b>	\$100,000-\$300,000	Approximately \$1,900,000	\$4-4.5 million
<b>ANTICIPATED OUTCOMES</b>			
<b>Expansion of Tenant Rights</b>	Yes	Yes	Yes
<b>Impact on Vacancy Rate</b>	No	No data available. Program drives reinvestment in rental units and stabilizes rents for a limited period by setting a predictable increase.	No data available. Program stabilizes rents by setting a predictable increase.
<b>Expansion of Affordable Housing</b>	No, however, will include some related components including JCE and tenant notification requirements.	Program stabilizes rents of program units by setting a maximum allowable increase.	Program stabilizes rents of program units by setting annual allowable rent increase.
<b>Effect on Tenant Displacement</b>	No data identified supporting impact on displacement. However, JCE should have some impact.	Program monitors units not tenants.	Program tracks units, not tenants. (Relocation assistance and demolition process can be included in ordinance.)

Program Features	Option 1 Enhanced Mediation Program	Option 2 Alameda/West Hollywood Style Rent Regulation/Stabilization	Option 3 Berkeley/Santa Monica Style Rent Control
<b>Program Advantages</b>	<ul style="list-style-type: none"> <li>Creates an effective vehicle for addressing tenant grievances regarding significant rent increases</li> <li>Promotes tenant stability regarding lease terminations</li> <li>Improves landlord/tenant communication</li> <li>Reinforces non-retaliation provisions</li> <li>Some programs include tenant relocation expenses</li> </ul>	<ul style="list-style-type: none"> <li>Stabilizes rent increases</li> <li>Units comply with code (habitability)</li> <li>Expands tenants' rights</li> <li>Attracts investment</li> <li>Method to address landlord/tenant disputes</li> <li>Fair return (and "banking")</li> <li>Facilitate rental housing reinvestment</li> </ul>	<ul style="list-style-type: none"> <li>Tracks controlled units</li> <li>Mechanism to identify, inform, and engage landlords and tenant</li> <li>Educates tenants of rights</li> <li>Provides for reasonable rent increases and stabilizes tenant population in rental units</li> <li>Units comply with code (habitability)</li> <li>Accessible and efficient method to address landlord/tenant disputes</li> </ul>
<b>Program Disadvantages</b>	<ul style="list-style-type: none"> <li>Will not address concerns regarding affordable housing or financial hardship resulting from higher than normal rent adjustments</li> <li>Have not identified data indicating impact on tenant displacement overall</li> </ul>	<ul style="list-style-type: none"> <li>Affordable housing gap persists for residents at or below Area Median Income (AMI)</li> <li>Neutral effect on vacancy rates in the short run</li> <li>Contemplates only short-term rent control (voluntary vacancy and landlord compliance with permanent decontrol removes unit from program and rent increase limits)</li> <li>Program designed to drive reinvestment</li> <li>Vacancy decontrol prohibits comprehensive application to all rental units (only units built before 1995 can be "controlled")</li> </ul>	<ul style="list-style-type: none"> <li>Affordable housing gap persists for residents at or below Area Median Income (AMI)</li> <li>Neutral effect on vacancy rates in the short run</li> <li>Threat of reduction in rental units in the long run through increased condominium conversion</li> <li>Vacancy decontrol prohibits comprehensive application to all rental units (only units built before 1995 can be "cost controlled")</li> </ul>

## Attachment B: Just-Cause Eviction Survey

**Attachment B: Just-Cause for Eviction Survey**

	<b>Berkeley</b>	<b>East Palo Alto</b>	<b>Los Angeles</b>	<b>Oakland</b>	<b>San Diego</b>	<b>San Francisco</b>	<b>Santa Monica</b>	<b>West Hollywood</b>
<b>Sources</b>	Rent Stabilization and Good Cause for Eviction Chapter 13.76 and Guide to Rent Control	Rent Stabilization Ordinance and Rent Stabilization Rules and Regulations	Chapter XV Rent Stabilization Ordinance (See website forms and public information)	Regulations for the Just Cause for Eviction Ordinance (Measure EE, Codified in the Oakland Municipal Code at 8.22.300, et.seq.)	Chapter 9: Building, Housing and Sign Regulations Article 8: Housing, Division 7: Tenants' Right to Know Regulations	Chapter 37 of the San Francisco Administrative Code the Residential Rent Stabilization and Arbitration Ordinance	Rent Control Charter Amendment Article XVIII and Rent Control Regulations Chapter 9	Title 17 Rent Stabilization and Guide: Rent Stabilization
<b>Eligible for Just-cause eviction</b>	All rental units	All single family and multiple family dwellings	All rental units built before October 1, 1978	Any rental units (pre-1980)	Any rental unit with tenancy of at least two years	All rental units built before June 13, 1979; newer buildings not covered based on original certificate of occupancy	All rental units	All rental units
<b>Rental Units Exempt</b>	Units in existence before December 31, 1979 and hotel/motel occupancy less than 14 consecutive days, cooperatives, hospitals, nursing and assisted living facilities and units rented to higher learning faculty	Hotel/motel, care facilities, resident owner non-profit housing, units exempt by state and federal law and units within a dwelling shared with the landlord	Single family, except where two or more units are located on the same lot (excludes duplexes and condominiums); hotel/motel, boarding and rooming houses with occupancy 30 days or less; non-profits; hospital, convent/monastery, extended care facilities; housing owned and operated by Los Angeles City Housing Authority; housing with a certificate of occupancy after October 1, 1978; luxury housing (rent thresholds on May 31,1978; substantial renovation (i.e., defined investment based on bedroom completed after September 1, 1980); affordable housing with regulatory agreement; cooperatives; mobile homes and recreational vehicle in a park	Hotels and motels; hospital, skilled nursing and health facilities; nonprofit substance abuse treatment; temporary homeless facilities; owner-occupied units with three or less units; owner-occupied units where owner and tenant share kitchen and bath; units in trust held on behalf of developmentally disabled; newly constructed units and first rented after October 1980 (the effective date of the Residential Rent, Relocation and Arbitration Ordinance)	Institutional facilities, governmental housing, transient hotel/motel, mobile homes and rooms rented (owner and tenant share kitchen and bath)	Hotel, motel and rooming houses occupied for 31 days or less; nonprofit cooperatives; hospital, convent, monastery, extended care and adult day health facility; some government owned and rental units constructed after June 13, 1979	Single family homes not used for residential rental purposes on July 1, 1984 and those that are occupied for two years by owner as principle residence after voluntary vacancy	Units occupied by owner or close relative as primary resident and nonprofit accommodations
<b>Legal Reasons to Evict</b>	<ul style="list-style-type: none"> <li>• Failure to pay rent</li> <li>• Violates terms of rental agreement</li> <li>• Willful damage to unit</li> <li>• Fixed term expires and tenant refuses to sign new lease</li> <li>• Disturbs peace</li> <li>• Repeated denial of entry</li> <li>• Landlord needs to bring unit into compliance with code</li> <li>• Permit to demolish</li> <li>• Owner with 50% or more ownership moves in</li> <li>• Failure to sign identical lease</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to pay rent and following notice from landlord</li> <li>• Tenant fails to cure a violation of the terms of tenancy following landlord notice</li> <li>• Tenant initiated nuisance with landlord notice</li> <li>• Refusal to agree to new lease substantially identical to current</li> <li>• Disorderly conduct that persists following notice</li> <li>• Continues denial of access to unit following notice</li> <li>• Refusal access for substantial habitability repairs (ten times the amount of monthly rent) unit consist with code</li> <li>• Landlord secures demolition permits to remove unit from rental market and is denied access</li> <li>• Landlord secures permits to remove unit from rental housing use under the Ellis Act</li> <li>• Owner move-in</li> <li>• Refusal to move under terms of temporary rental agreement</li> <li>• Failure to vacate under government order</li> <li>• Tenant no longer qualifies for tenancy with a government entity</li> <li>• Sub tenancy without Owner approval</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to pay rent</li> <li>• Violation of tenancy</li> <li>• Nuisance</li> <li>• Illegal use of rental unit</li> <li>• Refusal to execute new lease with consistent terms</li> <li>• Tenant at lease term is subtenant not approved by landlord</li> <li>• Owner, relative move-in or resident manager (where no alternate unit available)</li> <li>• Tenant interferes (fails to move temporarily or honor permanent relocation agreement) with rehabilitation and landlord has an approved Tenant Habitability Plan (THP)</li> <li>• Demolition of unit or permanently remove from rental housing use</li> <li>• Order to Vacate or Abate</li> <li>• HUD owns and operates and seeks to recover</li> <li>• Residential hotel converted or demolished with City approvals (Application of Clearance)</li> <li>• Convert to affordable housing with exemption by the Housing and Community Investment Department</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to pay rent</li> <li>• Violation of rental agreement</li> <li>• Substantial repairs/damage (3 months or less)</li> <li>• Disorderly conduct/destroying peace and quiet</li> <li>• Unlawful drugs or using unit for illegal purposes</li> <li>• Failure to provide access to unit</li> <li>• Owner or Owner's relative move-in</li> <li>• Owner previously occupied unit and has agreement with tenant to reoccupy as residence</li> <li>• Correct code violations</li> <li>• Refusal to renew lease</li> <li>• Remove unit from rental market (Ellis Act)</li> </ul>	<ul style="list-style-type: none"> <li>• Nonpayment of rent</li> <li>• Violates terms of tenancy (pattern and substantial)</li> <li>• Illegal use</li> <li>• Refusal to sign new lease with similar terms</li> <li>• Nuisance</li> <li>• Refusal to provide access</li> <li>• Correct violation</li> <li>• Withdrawal of residential rental structure from rental market</li> <li>• Owner or relative move-in</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to pay rent</li> <li>• Violation of the terms of tenancy</li> <li>• Nuisance (pattern and substantial, including eviction protection of domestic violence, sexual assault and stalking victims)</li> <li>• Illegal use of rental unit</li> <li>• Failure to sign a new lease</li> <li>• Refusal of access to unit</li> <li>• Tenant at the end of the term is subtenant not approved by landlord</li> <li>• Owner move-in</li> <li>• Sale of unit per City approved condominium conversion</li> <li>• Demolish or remove unit from rental housing use</li> <li>• Landlord secures permits to temporarily remove unit from housing use for capital improvement or rehabilitation</li> <li>• Substantial rehabilitation</li> <li>• Withdrawal of rental units within any detached physical structure</li> <li>• Demolish or remove unit from rental housing use</li> <li>• Lead remediation (temporary)</li> <li>• Good Samaritan Status (i.e., natural disaster) G1:G7</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to pay rent</li> <li>• Violates terms of rental agreement</li> <li>• Willful damage to unit - nuisance</li> <li>• Tenant uses unit for illegal purposes</li> <li>• Tenant refuses to sign new lease</li> <li>• Tenant holding lease at expiration not approved by landlord</li> <li>• Landlord needs to bring unit into compliance with code and denied access</li> <li>• Owner move-in (50% ownership, no available unit in other properties, etc.)</li> <li>• Permit to demolish</li> <li>• Landlord filed "going-out-of-business" documents</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to pay rent</li> <li>• Violates terms of rental agreement</li> <li>• Caregiver after death of primary tenant</li> <li>• Nuisance</li> <li>• Refusal to sign new lease</li> <li>• Refuses to provide access</li> <li>• Subtenant not approved by Landlord</li> <li>• Termination of Resident Manager or Employee</li> <li>• Pre-existing Tenant before becoming resident manager</li> <li>• Owners temporary absence (sabbatical, extended vacation) from principal residence with associated agreement</li> <li>• Owner or relative move-in</li> <li>• Correct violations</li> <li>• Foreclosure (30 day notice)</li> <li>• Withdrawal from rental market (120 day notice)</li> <li>• Transfer to a different unit</li> <li>• Inclusionary housing (tenant income exceeds maximum allowable)</li> <li>• Demolition of rental housing units for low- and Moderate-Income Housing</li> <li>• Renter's Insurance (if contained in lease)</li> </ul>
<b>Notice:</b>	Landlord must provide proper notice of termination (three, thirty, sixty or ninety-day notices to quit.	Landlord must provide a copy of the notice within five days after notice served to tenant to Rent Board. If Unlawful detainer served, copies must also be provided to the Rent Board within 5 calendar days.	Landlord must file form of intention to evict with the City if police reports available or City Attorney engaged. Landlord required to file form of intention to evict with the City when taking possession to occupy, demolish, remove from rental use, or convert to affordable housing	Landlord must file notice with Rent Adjustment Program within 10 days of service on the tenant.	Landlord must provide proper notice. Tenant may raise landlord's noncompliance with Tenant's Right to Know Regulation as an affirmative defense.	Landlord must disclose to prospective property purchaser the legal grounds to terminate tenancy. Copies of eviction notices and proof of tenant service must be filed with the Rent Board within ten days (see Ordinance for various time frames). Notice must also include the following information: tenant failed to respond, rental rate, eligibility for affordable housing, information provided in six languages. Rent Board reports of wrongful eviction. City contracts with legal aid service providers to assist with evictions to ensure law enforced.	Landlord must file a copy of the tenant's notice of termination of tenancy to the Rent Board within 3 days.	Landlord must provide a copy of unlawful detainers within 5 business days.



# 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.”<sup>1</sup> 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

---

<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

---

<sup>2</sup> Cal. Civil Code § 827(b)(2).

<sup>3</sup> Cal. Civil Code § 827(b)(3).

<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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

---

<sup>5</sup> Cal.Civil Code § 1946.1(b).

<sup>6</sup> 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*.<sup>7</sup> 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.<sup>8</sup> 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,

---

<sup>7</sup> Palo Alto Ordinance Code, § 9.68.030.

<sup>8</sup> 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).<sup>9</sup> 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.<sup>10</sup>

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;

---

<sup>9</sup> Palo Alto Municipal Code, § 9.72.010.

<sup>10</sup> 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.<sup>11</sup> Other jurisdictions require relocation assistance payments without reference to the income level of the affected tenants.<sup>12</sup>

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.<sup>13</sup>

### **a. Types of Rent Stabilization Ordinances**

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

---

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

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

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

<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

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

---

<sup>15</sup> *Id.*, ¶ 2:708, p. 2D-4.

<sup>16</sup> *Id.*, ¶ 2:710, p. 2D-5.

<sup>17</sup> *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).<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

## **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 1995<sup>21</sup>, there was no statutory provision limiting local rent stabilization ordinances in California.<sup>22</sup> Costa-Hawkins was the California Legislature’s first major effort to limit local controls over rents chargeable to residential tenants.<sup>23</sup> 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 . . . .”<sup>24</sup> 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.”<sup>25</sup>

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;<sup>26</sup>
2. Single-family homes and condominiums (units where title is held separately) are exempt from such ordinances;<sup>27</sup> and
3. Such ordinances cannot regulate the initial rate at which a dwelling unit is offered once the previous tenants have vacated the unit.<sup>28</sup> 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*

---

<sup>18</sup> *Id.*, ¶ 5:1, p. 5–1.

<sup>19</sup> *Id.*

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

<sup>21</sup> See Cal. Civ. Code § 1954.50 *et seq.*

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

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

<sup>24</sup> *Id.* at p. 6.

<sup>25</sup> *Id.* at p. 6.

<sup>26</sup> Cal. Civ. Code § 1954.52(a)(1).

<sup>27</sup> *Id.* at § 1954.52(a)(3)

<sup>28</sup> *Id.* at § 1954.53(a).



*Inc. v. City of Santa Monica* (2007) 41 Cal. 4<sup>th</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.”<sup>31</sup> At the same time, the amount of return should not defeat the purpose of rent stabilization, which is to prevent excessive rents.<sup>32</sup>

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.<sup>33</sup> 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.<sup>34</sup>

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.”<sup>35</sup> 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

---

<sup>29</sup> 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.

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

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

<sup>32</sup> *Ibid.*

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

<sup>34</sup> *Ibid.*

<sup>35</sup> See U.S.C.A. Const. Amend. 5, 14.

borne by the public as a whole.”<sup>36</sup>

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.<sup>37</sup> 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.”<sup>38</sup>

## **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.<sup>39</sup> 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.<sup>40</sup>

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.

---

<sup>36</sup> *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).

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

<sup>38</sup> 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.

<sup>39</sup> 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.

<sup>40</sup> 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.<sup>41</sup>

---

<sup>41</sup> 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.<sup>42</sup> 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.

---

<sup>42</sup> 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.<sup>43</sup>

### **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

---

<sup>43</sup> 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>
<b>Exempt Units</b>	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
<b>Evictions for Substantial Renovation</b>	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
<b>Special Eviction Notice Rules</b>	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
<b>Relocation Assistance</b>	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: <sup>1</sup>

PRO	CON
<ul style="list-style-type: none"><li>• 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.</li><li>• Protects tenants who have short-term (month-to-month) leases.</li><li>• Slows down rapid increases in rent.</li><li>• Stabilizes communities by slowing down evictions and decreasing turnover rates.</li></ul>	<ul style="list-style-type: none"><li>• 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.</li><li>• May impact neighborhoods by making it harder for landlords to evict problematic tenants, including those suspected of involvement in criminal activity.</li><li>• Impacts surrounding neighborhood by making it difficult for landlord to remove “bad tenants.”</li></ul>

---

<sup>1</sup> 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"><li>• 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.</li><li>• 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.</li><li>• Requires landlords to internalize relocation costs as part of their “costs of doing business.”</li></ul>	<ul style="list-style-type: none"><li>• Amount of mandated compensation may be excessive relative to some tenants’ needs; landlords may not be able to afford.</li><li>• 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.</li><li>• May create a perceived windfall to well-off tenants if relocation assistance not subject to stringent income-specific criteria.</li><li>• 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.</li></ul>

**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"> <li>• Prevents landlords from imposing rent increases that cause displacement and accordingly, helps preserve income diverse, stable neighborhoods.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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</li> </ul>	<ul style="list-style-type: none"> <li>• Fundamentally unfair – why burden landlords for a broader societal problem?</li> <li>• Interferes with free market – landlord should be able to rent unit at amount that market bears.</li> <li>• May incentivize landlords to raise rents before any rent control ordinance takes effect in an attempt to evade impact of the regulation.</li> <li>• As a general matter, restricts rights of property owners as it limits what they may do with their property.</li> <li>• 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.</li> <li>• Reduces “urban vitality” by discouraging mobility; decreases vacancy</li> </ul>

<p>conditions, the landlord may threaten to increase the rent.</p> <ul style="list-style-type: none"><li>• 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.</li><li>• 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.</li><li>• 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.</li><li>• 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).</li></ul>	<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"><li>• 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.</li><li>• Incentivizes landlords to discriminate against prospective tenants likely to stay for a long time, like retiree or couples with children.</li><li>• 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).</li><li>• Encourages some owners to take their units off the market and sell properties, rather than rent.</li><li>• Depending on how they are crafted, rent control ordinances may be extremely burdensome and expensive to administer.</li></ul>
---	---

**RENT STABILIZATION DECISION MATRIX**

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

## RENT STABILIZATION DECISION MATRIX





# City of Palo Alto

## COLLEAGUES MEMO

**DATE:** October 16, 2017

**TO:** City Council Members

**FROM:** Council Member Holman, Councilwoman Kou, Council Member DuBois

**SUBJECT:** COLLEAGUES MEMO FROM COUNCIL MEMBERS DUBOIS, HOLMAN AND KOU REGARDING STRENGTHENING RENTER PROTECTION FOR PALO ALTO RESIDENTS

---

### **Issue:**

The cost of rental housing in Palo Alto and the region has soared in recent years as the pace of job growth has tripled the rate of housing growth. Housing that has been built is predominantly high-end or, to a lesser extent, subsidized, low-income housing. The needs of moderate-income workers and families too often have been ignored. These trends undermine our social and economic health and cannot be sustained.

### **Goals:**

- Support retention of a healthy, diverse community, an action that also supports our local economy;
- Moderate the rate of rent increases;
- Provide protections from unjust evictions by means that are fair to both renters and landlords;
- Continue to promote construction of new multi-unit rental developments.

### **Background and Discussion:**

Approximately 44 percent of Palo Alto residents are renters who are predominantly long-term members of our community, contributing to our social balance and economy.

In recognition of the vital importance that renters have on our civic vitality and economic health, past Palo Alto city councils have adopted long-standing renter protection ordinances. Those ordinances offer renters greater protection than under California State law and include provisions that:

- Require a sixty-day notice of large rent increases at multi-family rental units;
- Prevent discrimination against families by prohibiting landlords from requiring that fewer than two people per bedroom occupy a unit;
- Provide Tenant – Landlord mediation services;
- Require one-year leases to be offered.

Although the growth in our tech economy has been a boon to many, that growth has been accompanied by negative disruptions, including a steep increase in demand that has severely degraded our housing affordability and resulted in many long-term renters being forced out or having to spend inordinate amounts of their incomes on housing. Since 2011, the average monthly rent in Palo Alto has soared 50 percent while the county median income has risen less at 1/10 that rate. These trends are clearly not sustainable.

Our affordable housing supply is far below demand while the cost of building new affordable units dwarfs our available resources. Furthermore, many vital members of our community have moderate incomes and are not eligible for our limited affordable housing; teachers, policemen, service and retail workers, nurses and health care providers are continuing to be priced out of their homes and are being forced to leave our community.

To encourage new housing construction, cities that enact renter protections are required to do so within the framework of State law, restricting renter protections to multi-unit developments built on or before February 1, 1995.

Recognizing the severity of the problem, Mountain View voters and the San Jose City Council recently passed renter protection measures. Other cities have recognized that the issue has reached a near crisis level and are considering similar measures. Palo Alto's rental housing problems are even more severe than these other cities. Current and future economic forces have made additional renter protections necessary for the well-being of our community, its valuable diversity, and a viable economy. In addition, the Council's Healthy City, Healthy Community priority identifies diversity as a key component.

Renter protections are only one part of protecting our existing housing supply. This initiative is not intended to substitute for other measures that may be addressed separately from this memo including short-term rental abuses, loss of existing housing units, and investment homes left vacant for long periods of time.

**Recommendation:**

We recommend that Council refer this proposal to the Policy and Services Committee for review. The review should consider the following:

- An annual percentage cap on rent increases for buildings of 5 or more housing units built before Feb. 1, 1995. This removes any disincentive for new construction.
- Measures to protect tenants against termination without just cause while protecting the fair rights of property owners.
- Other updates to our existing renter protections as needed to continue a healthy community.

In addition, the council may elect to refer the item to the Human Relations Commission as part of the review process.

**Staff Impact:**

The breadth, diversity and complexity of policy, fiscal and legal issues implicated by this initiative will mean that fairly substantial staff resources could be needed, depending on the Council's direction, to analyze and support the Council's consideration of the issues. Staff from Planning & Community Environment, Administrative Services/Management & Budget, the City Manager's Office and the City Attorney's Office will be involved. As an initial step, staff has added a supplemental Memorandum from the City Attorney to this Colleagues' Memorandum (see attached), which transmits two background reports from other jurisdictions regarding renter protection programs. These materials provide an overview of state and federal laws relating to municipal renter protection regulations; describe renter protection measures adopted by a number of California cities; and list key areas for policy determination.

If Council adopts additional renter protection regulations, staff resources will be required to implement and administer the program. The resources required will vary widely depending on the program elements selected by the Council. The background reports attached to the City Attorney's Memorandum describe staffing requirements typically associated with the various approaches to regulation in this area. Those range from very little or no staffing, to significant additional staffing including administrative boards and investigative, analytical, enforcement and legal personnel.



# Office Memorandum

## Office of the City Attorney

### City of Palo Alto

---

Date: October 4, 2017

To: The Honorable City Council

From: Molly Stump  
City Attorney

Subject: Background Material on Municipal Renter Protection Programs

Renter protection measures vary significantly between jurisdictions. Some programs are limited in scope and straightforward to administer. Others are complex, involving numerous program elements and raising potential legal and administrative challenges. As background material to assist the Council in its initial consideration of this topic, staff is attaching two reports prepared by Bay Area jurisdictions in recent years:

1. *City of Fremont, Rent Control and Just-Cause Eviction: Review of Programs*, Management Partners, June 2017
2. *Continuum of Residential Tenant Protection Measures*, County of San Mateo Interdepartmental Correspondence from County Counsel John C. Bieirs to All County Departments, September 23, 2015

These reports survey programs in cities throughout California, identifying trends and program options. The reports describe staffing requirements associated with implementation and enforcement of various types of programs. The San Mateo report provides a basic explanation of state and federal laws that constrain municipal regulation in this area. Finally, the San Mateo report includes a list of policy areas for discussion by jurisdictions considering additional renter protection measures.

Depending on the Council's direction, these reports will need to be updated to include recent developments in California and our region.

**City of Fremont**

**Rent Control and Just-Cause Eviction: Review of Programs**

**June 2017**

**Management  
Partners**







June 9, 2017

Mr. Dan Schoenholz  
Deputy Community Development Director  
City of Fremont  
3300 Capitol Avenue  
Fremont, CA 94538

Dear Mr. Schoenholz:

Management Partners is pleased to transmit this report, which provides the results of our review of rent control/stabilization and just-cause eviction programs in California. This report provides information based on other cities' experience with such programs including analysis and context regarding a range of policy and program options.

We look forward to further discussion on this topic with the City as it seeks to develop a strategy associated with landlord/tenant issues to assist in the development of solutions appropriate to community needs in Fremont.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew S. Belknap".

Andrew S. Belknap  
Regional Vice President





## Table of Contents

---

<b>Introduction</b> .....	<b>1</b>
<b>Background</b> .....	<b>3</b>
November 2016 Election.....	3
Fremont Rental Housing Profile .....	6
Residential Rent Increase Dispute Resolution Ordinance.....	12
RRIDRO Challenges.....	13
<b>Overview of Rent Control/Just-Cause Eviction Ordinances</b> .....	<b>15</b>
Model A: (Berkeley/Santa Monica Style Rent Control).....	17
Model B: (Alameda/West Hollywood Style Rent Regulation or Stabilization).....	18
Just-Cause Eviction .....	18
Public Outreach and Education .....	20
<b>Rent Control/Rent Stabilization and Just-Cause Eviction Program Elements</b> .....	<b>21</b>
Governance .....	21
Expenditures and Cost Recovery .....	22
Staffing .....	24
Technology Support.....	25
General Observations Regarding Program Impacts .....	25
<i>Affordable Housing and Rent Control</i> .....	26
<i>Vacancy Rates/Displacement</i> .....	27
<i>Housing Supply and the Housing Market</i> .....	28
<b>Rent Intervention Alternatives – Three Options</b> .....	<b>29</b>
Option 1: Modified Residential Rent Increase Dispute Resolution Ordinance Process.....	29
<i>Option 1 Opportunities</i> .....	31
<i>Option 1 Challenges</i> .....	32
<i>Option 1 Cost Estimate</i> .....	32
Option 2: Alameda/West Hollywood Style Rent Regulation or Stabilization.....	33
<i>Option 2 Opportunities</i> .....	34
<i>Option 2 Challenges</i> .....	35
<i>Option 2 Cost Estimate</i> .....	35
Option 3: Berkeley/Santa Monica Style Rent Control .....	35
<i>Option 3 Opportunities</i> .....	36
<i>Option 3 Challenges</i> .....	36
<i>Option 3 Cost Estimate</i> .....	37

<b>Conclusion.....</b>	<b>38</b>
<b>Attachment A: Rent Control and Just-Cause Eviction Program Options.....</b>	<b>39</b>
<b>Attachment B: Just-Cause Eviction Survey .....</b>	<b>44</b>

## Tables

---

<b>Table 1. Overview of November 2016 Rent Control Measures.....</b>	<b>4</b>
<b>Table 2. Overview of Recent Bay Area City Council Rent Control Activities.....</b>	<b>5</b>
<b>Table 3. Overview of Fremont Housing Stock for 2006 through 2010 and 2011 through 2015.....</b>	<b>6</b>
<b>Table 4. Overview of Fremont Vacancy Rates and Median Monthly Rent from 2011 to 2015.....</b>	<b>8</b>
<b>Table 5. Fremont Gross Rent as a Percent of Household Income from 2011 to 2015.....</b>	<b>8</b>
<b>Table 6. Summary of Peer Rental Housing for 2011 through 2015 (Five-Year Estimates).....</b>	<b>9</b>
<b>Table 7. Summary of Peer Renter Financial Information for 2011 through 2015.....</b>	<b>11</b>
<b>Table 8. Average Rents for One and Two Bedroom Units in Fremont.....</b>	<b>11</b>
<b>Table 9. Rent Increase Case Reports from July 1, 2016 through December 31, 2016.....</b>	<b>13</b>
<b>Table 10. Rent Control and Just-Cause Eviction Program Cost and Fee Comparisons.....</b>	<b>24</b>

## Figures

---

<b>Figure 1. Fremont Percent of Occupied Housing Units Occupied by Owners versus Renters for 2011 through 2015.....</b>	<b>7</b>
<b>Figure 2. Peer Comparison of the Percent of Total Occupied Housing Units Occupied by Renters for 2011 through 2015.....</b>	<b>10</b>

## Introduction

In 2016, the Fremont City Council considered preliminary research and information prepared by City staff regarding rent control and just-cause eviction programs in California and requested additional information about such programs to help inform their discussion of the issue. The City requested Management Partners' assistance in providing more in-depth information regarding rent control and just-cause eviction policies, options as well as program costs.

City staff met with tenant and landlord organizations in 2016 to gather input from stakeholders concerning potential program changes. As stated in a report to the City Council on September 27, 2016, staff was unable to identify much common ground. The tenant group believes a much stronger and binding rent control and just cause eviction ordinance is necessary while the landlord group believes some improvements to the Residential Rental Increase Dispute Resolution Ordinance would be sufficient.

At the September 27, 2016 meeting, Council directed staff to research rent control (also known as rent stabilization or rent regulation) and just-cause (or just) evictions and develop options for consideration. The City Council approved a motion directing staff to:

- Investigate the operational impacts of rent control and just-cause ordinances,
- Create optional models for an ordinance that meets City-specific needs, and
- Present possible revisions to the existing Residential Rent Increase Dispute Resolution Ordinance (RRIDRO).

The City of Fremont subsequently engaged Management Partners to assist in the analysis of rent control and just-cause eviction ordinances. Management Partners has undertaken this type of work for the cities of San Jose, Santa Rosa, Burlingame and Richmond in the past two years.

This report includes four major sections:

1. Background, which briefly sets the context for this report;
2. Overview of rent control/just-cause eviction ordinances, which provides a general overview of rent control and just-cause eviction ordinances;
3. Rent control and just-cause eviction program elements, which includes information on the costs and staffing requirements to operate rent control programs; and
4. Rent intervention alternatives (three options), which describes three possible options the City of Fremont may pursue as it determines next steps.

## Background

Tenant displacement and issues related to the condition and availability of rental housing continue to be a focus of residents and local government officials in the Bay Area and various cities in Southern California. Rising rents in metropolitan regions have sparked discussions regarding local government roles and responsibilities in rental housing markets as well as actions by residents.

### ***November 2016 Election***

The November 2016 election had nine ballot measures related to apartment rent control in seven California cities and one mobile home rent stabilization measure. All of the apartment rent control measures were proposed in Bay Area cities.

Table 1 below provides an overview of the nine rent control and tenant eviction ballot measures considered in the 2016 election. Most of the measures were placed on the ballot through a public petition; almost all of them included both rent stabilization and tenant eviction protections. Rent stabilization measures passed in five cities and failed in two cities. Roughly half of the measures were new, while half were modifications of existing rental programs. The cities of Alameda and Mountain View each had two different rent control and mediation ballot measures proposed. In both cities, the public initiated a rent stabilization and tenant eviction protection measure while the city councils placed a tenant-landlord mediation measure on the ballot as an alternative. The results were split, with Alameda voters favoring the mediation program and Mountain View establishing a rent control program.

*Table 1. Overview of November 2016 Rent Control Measures*

City	Measure	Components	Initiated By	New Measure or Modification	Pass? Y/N
<b>Alameda</b>	Measure M1	Limits rent increases, provides eviction control, and requires certain relocation benefits	Public	Modification	No
<b>Alameda</b>	Measure L1	Requires mediation for large rent increases, establishes eviction control, requires certain relocation benefits	City Council	Modification	Yes
<b>Burlingame</b>	Measure R	Repeals earlier ordinance prohibiting regulation of rents by the city and establishes rent control program	Public	New	No
<b>East Palo Alto</b>	Measure J	Streamlines administrative processes behind existing rent control ordinance	City Council	Modification	Yes
<b>Mountain View</b>	Measure V	Charter amendment establishing a rent and eviction control program	Public	New	Yes
<b>Mountain View</b>	Measure W	Alternative program requiring landlord-tenant mediation in lieu of rent control	City Council	New	No
<b>Oakland</b>	Measure JJ	Extends existing rent control program to cover all buildings occupied prior to 1996. Original ordinance covered units occupied prior to 1980.	Public	Modification	Yes
<b>Richmond</b>	Measure L	Establishes traditional rent and eviction control program under a rent board assigned by the City Council	Public	New	Yes
<b>San Mateo</b>	Measure Q	Rent and eviction control	Public	New	No

Source: Ballotpedia.org, City websites, and local newspapers and voter resources.

Note: Table does not include mobile home rent measures.

Table 2 summarizes City Council actions on rental housing issues over the past year in the Bay Area.

*Table 2. Overview of Recent Bay Area City Council Rent Control Activities*

City	Components	Date
<b>Pacifica</b>	Established an interim ordinance for rent and eviction control. A permanent measure is planned for the ballot in November 2017.	April 2017 (Second reading of ordinance in May)
<b>San Jose</b>	Created interim ordinance modifying existing rent control ordinance to reduce maximum increase allowed. Staff was instructed to return with long-term options for rent control, eviction protection, and anti-retaliation ordinances.	April 2016
<b>San Jose</b>	Approved an ordinance that defines eviction controls for rent stabilized units only. (Other possible changes to existing rent control programs are under development.)	April 2017
<b>Santa Rosa</b>	Established a rent and eviction control program but placed it on hold pending a special election on a measure submitted by City Council in response to a referendum petition created by opponents. The special election was held on June 6, 2017 and voters rejected the measure. The election results ended the rent control program.	August 2016 and June 2017
<b>Union City</b>	Established eviction controls. Council instructed staff to return with a proposal providing non-binding mediation on large rent increases.	April 2017

## **Fremont Rental Housing Profile**

The Fremont City Council received the Report to Council on Rent Control, Just-Cause Eviction and Other Options for Promoting Affordable Rental Housing on September 27, 2016. In the report, staff provided a high-level overview of the advantages and disadvantages of implementing rent control and just-cause for eviction programs. Quoting from a report prepared by the Legislative Analyst’s Office, Staff noted that between 2010 and 2016 the, “...imbalance between demand and supply has resulted in high costs for both rental and for-sale housing in the Bay Area and the rest of the State.”

After declines in rents in 2008 and 2009 the average rental cost of a two-bedroom, one-bathroom apartment in Fremont increased 64% (or almost 13% per year) between 2010 and 2015. More recently, between June 2015 and June 2016, rent increases moderated to an annual rate of 3.9%.<sup>1</sup>

Table 3 provides an overview of housing stock in Fremont. These five-year estimates are from the American Community Survey, which is a collection of population, housing, and workforce data provided by the U.S. Census Bureau. Estimates are based on 60 months of data during the periods of 2006 to 2010 and 2011 to 2015. The estimates show that the number of housing units has increased slightly between 2010 and 2015 across all categories except housing with three or more units.

*Table 3. Overview of Fremont Housing Stock for 2006 through 2010 and 2011 through 2015*

Data	American Community Survey 5-Year Estimates	
	2010 <sup>1</sup>	2015 <sup>2</sup>
<b>Total Housing Units</b>	74,218	75,420
<b>Total Occupied Units</b>	68,969	72,684
<b>Owner Occupied Units</b>	44,684	45,144
<b>Renter Occupied Units</b>	24,285	27,540
<b>Housing with 3 or more units</b>	19,643	19,151

Source: American Community Survey 5-year estimates.

<sup>1</sup>The 2010 estimate includes data collected from 2006 through 2010.

<sup>2</sup>The 2015 estimate includes data collected from 2011 through 2015.

Note: The American Community Survey estimates for housing units and housing tenure (owner or renter occupied) have a margin of error less than 4%. The data on housing with 3 or more units has a larger margin of error of 8% for both estimates.

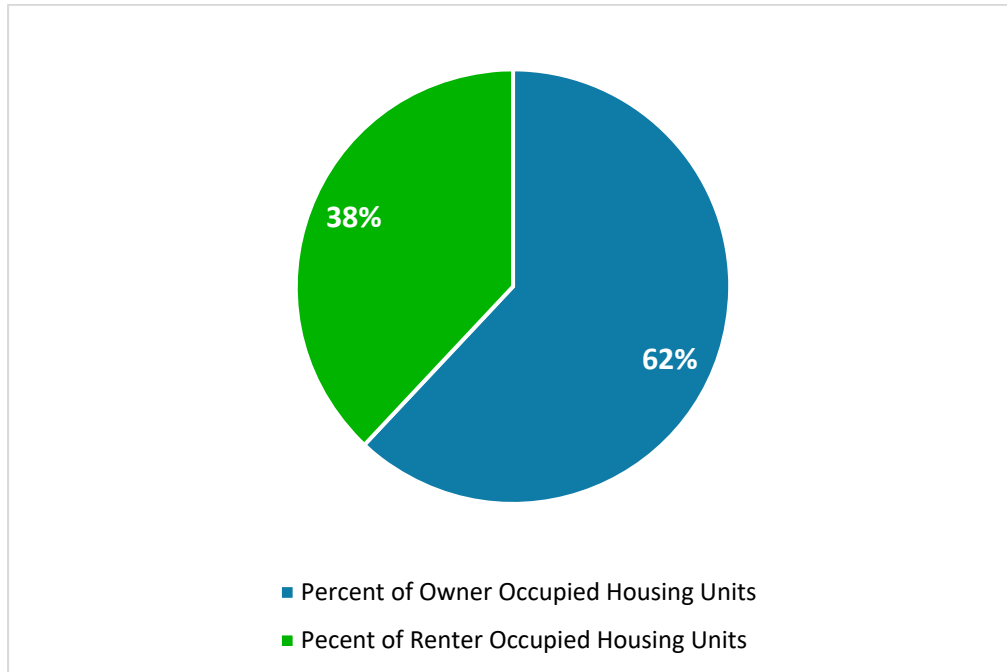
---

<sup>1</sup> City of Fremont, City Council Meeting, *Report to Council on Rent Control, Just-Cause Eviction and Other Options for Promoting Affordable Rental Housing*, dated September 27, 2016.



Figure 1 shows the percentage of occupied housing units occupied by owners and renters according to the American Community Survey's 2015 five-year estimates. Renters occupy approximately 38% of total occupied housing in Fremont.

Figure 1. Fremont Percent of Occupied Housing Units Occupied by Owners versus Renters for 2011 through 2015



Source: American Community Survey 5-year estimates.

Table 4 shows homeowner and rental vacancy rates as well as median monthly gross rents for Fremont from 2011 to 2015. These statistics come from the American Community Survey one-year estimates, which are based on 12 months of data collected during each year shown in the table. For owner occupied housing units the vacancy rate has been below 2% over the five-year period. The rental vacancy rate has fluctuated over the last few years, hitting a low of 2.2 percent in 2012 and then steadily rising to 4.9 percent for 2015 with an average of 3.9. The median rent has increased at a constant rate over the last five years.

Table 4. Overview of Fremont Vacancy Rates and Median Monthly Rent from 2011 to 2015

Data	American Community Survey 1-Year Estimates				
	2011	2012	2013	2014	2015
Homeowner vacancy rate (%)	1.2	1.6	0.8	0.3	1.0
Rental vacancy rate (%)	4.1	2.2	3.4	4.7	4.9
Median monthly gross rent	\$1,528	\$1,613	\$1,669	\$1,832	\$1,923

Source: American Community Survey 1-year estimates.

Table 5 below shows the gross monthly rent as a percentage of household income in Fremont over a five-year period. The United States Census Bureau considers households that pay over 30% of their monthly income to rent as cost burdened. Over this five-year period, an average of 41% of households paid 30% or more of their income for rent. The percent of households paying 30% or more of their income peaked in 2013 at 46% and has since remained around 40% or less.

Table 5. Fremont Gross Rent as a Percent of Household Income from 2011 to 2015

Percent of Household Income	American Community Survey 1-Year Estimates					5-Year Average
	2011	2012	2013	2014	2015	
Less than 15%	10.0%	12.6%	16.0%	10.5%	13.9%	12.6%
15 to 19.9%	19.8%	15.7%	13.3%	20.1%	11.6%	16.1%
20 to 24.9%	16.1%	20.6%	15.9%	21.0%	16.8%	18.1%
25 to 29.9%	10.6%	11.7%	8.7%	10.4%	18.3%	11.9%
30% or more	43.6%	39.4%	46.0%	38.0%	39.3%	41.3%

Source: American Community Survey 1-year estimates.

Table 6 provides a summary of rental housing information for the cities reviewed in this study of rent control and related programs. This American Community Survey data uses five-year estimates, which is the most comprehensive information available for all peer jurisdictions. The population information shows there is diversity in the size of cities that have adopted rent stabilization programs. Similarly, there is a wide range of housing units and tenure among this group of cities. The cities of Los Angeles and San Jose were excluded from the average calculation in this table because they are outliers to the dataset. Fremont's population is near the average for these cities. Fremont is also near the average for total housing units and total occupied housing units. However, Fremont has only half the number of renter-occupied units and housing structures

with three or more units as the average for those communities with rent control/stabilization and related programs.

*Table 6. Summary of Peer Rental Housing for 2011 through 2015 (Five-Year Estimates)*

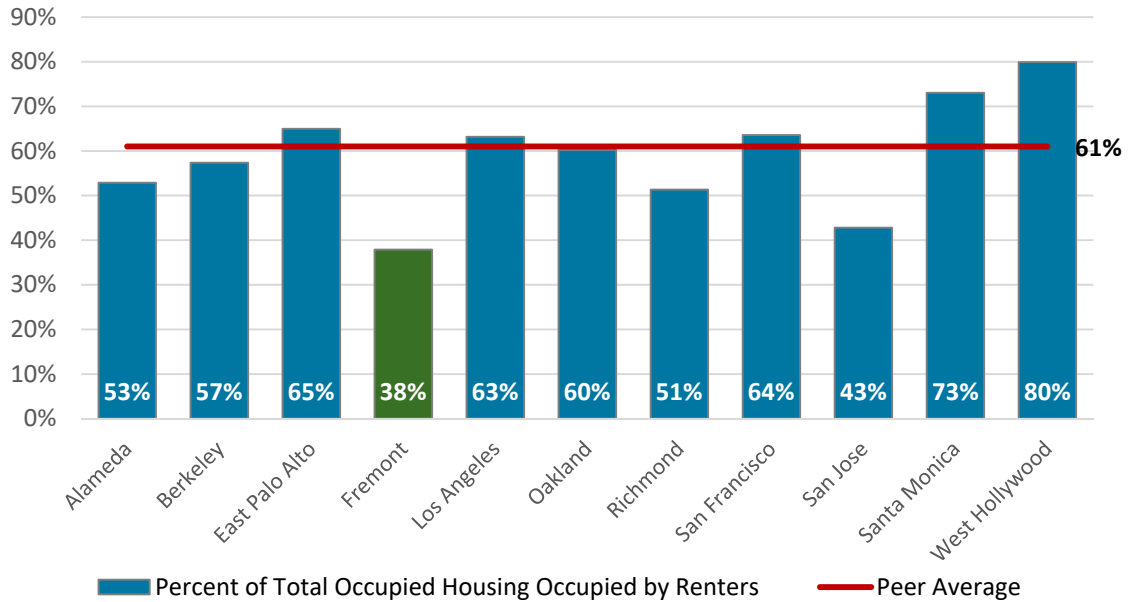
Cities	Population	Total Housing Units	Total Occupied Housing Units	Renter Occupied Housing Units	Housing structures with three or more units
Alameda	76,733	32,244	30,708	16,240	12,677
Berkeley	117,384	49,671	45,917	26,334	21,971
East Palo Alto	29,198	7,455	7,065	4,589	3,003
Los Angeles	3,900,794	1,436,543	1,342,761	848,079	744,523
Oakland	408,073	171,087	158,424	95,402	77,216
Richmond	107,597	39,922	36,973	18,981	12,037
San Francisco	840,763	383,676	353,287	224,589	223,316
San Jose	1,000,860	325,256	314,297	134,488	97,408
Santa Monica	92,169	50,934	46,688	34,095	38,179
West Hollywood	35,332	23,997	22,077	17,643	20,473
<b>Fremont</b>	<b>225,221</b>	<b>75,420</b>	<b>72,684</b>	<b>27,540</b>	<b>19,151</b>
<b>Average</b>	<b>213,406</b>	<b>94,873</b>	<b>87,642</b>	<b>54,734</b>	<b>51,109</b>

Source: American Community Survey 5-year estimates.

Note: The American Community Survey estimates for housing units and housing tenure (owner or renter occupied) have a margin of error less than 5% for all the peers.

Figure 2 shows the percent of total occupied housing units occupied by renters. The average percent of housing units occupied by renters is 61% for the cities with rent control or related programs. Fremont has the smallest proportion of occupied housing occupied by renters. At only 38%, Fremont is more than one third below the peer average.

Figure 2. Peer Comparison of the Percent of Total Occupied Housing Units Occupied by Renters for 2011 through 2015



Source: American Community Survey 5-year estimates.

Table 7 below provides a summary of peer renter financial information, including median household income, median monthly gross rent, and the percent of total renters with rent costing over 30% of their household income. It shows Fremont has the highest median renter household income. The median gross rents in Fremont are also greater than the average for the peers, which correlates with the income information. Fremont also has the smallest proportion of renters spending more than 30% of household income on rent and is 10% below the peer average.

The figures reported below in Table 7 are estimates developed by the U.S. Department of Labor and reported in the American Community Survey. Care should be used in interpreting the rental rate information because of the multi-year nature of the estimate, which may not completely track market conditions. This data is available for all peer jurisdictions, however.

Table 7. Summary of Peer Renter Financial Information for 2011 through 2015

Cities	Median Renter Household Income	Median Monthly Gross Rent	Percent of Renters with Rent Costing over 30% of Income
Alameda	\$55,311	\$1,407	47%
Berkeley	\$40,074	\$1,362	56%
East Palo Alto	\$43,527	\$1,433	66%
Los Angeles	\$36,489	\$1,209	61%
Oakland	\$38,222	\$1,144	55%
Richmond	\$40,355	\$1,205	57%
San Francisco	\$62,532	\$1,558	44%
San Jose	\$55,152	\$1,585	54%
Santa Monica	\$63,476	\$1,593	49%
West Hollywood	\$50,722	\$1,399	53%
Fremont	\$81,695	\$1,743	42%
Average	\$49,277	\$1,390	54%

Source: American Community Survey 5-year estimates.

Another source of more recent rental information is the Rent Jungle website, which bases estimates on rent sampling data. Table 8 is a summary of Rent Jungle’s sampling data for one- and two-bedroom rentals in Fremont gathered in March of each year from 2011 through 2017. Over this six-year period, rents for one-bedroom units increased 79% and two-bedroom units increased by 64%. The increases peaked in the summer of 2015, with some moderation since.

Table 8. Average Rents for One and Two Bedroom Units in Fremont

Year	One Bedroom	Change From Prior Year	Two Bedroom	Change From Prior Year
2011	\$1,190		\$1,520	
2012	\$1,532	29%	\$1,792	18%
2013	\$1,638	7%	\$1,911	7%
2014	\$1,760	10%	\$2,177	14%
2015	\$1,981	13%	\$2,408	11%
2016	\$2,137	8%	\$2,561	6%
2017	\$2,134	0%	\$2,498	-2%

Source: <https://www.rentjungle.com/average-rent-in-fremont-rent-trends/>.

The City has also experienced a decline in the number of Section 8 Federal Housing Program vouchers accepted by landlords from 1,363 in 2012 to 1,134 in 2015. This has impacted more than 200 of the lowest income residents.

### ***Residential Rent Increase Dispute Resolution Ordinance***

Fremont adopted a Residential Rental Increase Dispute Resolution Ordinance (RRIDRO) in 1997. The intent of the ordinance was to establish requirements for properly notifying tenants of rent increases and their rights regarding rent increases, and to provide formal processes for the resolution of complaints over rent increases. The RRIDRO allows one rent increase per year for all units and sets forth a three-step process for complaint resolution. All parties have the opportunity to resolve disputes over rent increases in the three-step process described below.

1. *Conciliation.* The tenant or landlord may work with an outside third party to assist with resolving any disagreement about a rent increase. The conciliator will work with the parties separately to resolve the disagreement. If successful, a written agreement is binding.
2. *Mediation.* If conciliation does not result in agreement, the parties move into formal mediation. The trained mediators generally work with the parties together. Any written agreement is binding.
3. *Fact Finding.* If conciliation and mediation are not successful, the remaining step in the process is fact finding by a panel appointed by the City. The panel includes a tenant representative, a landlord representative and an outside third party. The panel's role is to issue a fact-finding report regarding the reasonableness of the rent increases and the impact of the rental rate on the affected households. The conclusions or recommendations of the panel are not binding.

Conciliation, mediation, and fact-finding services are provided by Fremont Fair Housing, the local division of "Project Sentinel," a U.S. Department of Housing and Urban Development approved housing counseling agency. Project Sentinel provides housing related services under contract for many cities in the Bay Area.

Table 9 provides a summary of the rent increase cases processed by Fremont Fair Housing from July 1 through December 31, 2016. In addition to these cases opened, Fremont Fair Housing received 130 rent

increase related phone calls. The majority of the phone calls (113) were made by tenants.

Table 9. Rent Increase Case Reports from July 1, 2016 through December 31, 2016

Activity	Cases Opened	Tenant Filed	Landlord Filed
Cases Sent to Dispute Resolution (Cases Opened)	31	31	0
Cases Resolved with Reduced Rent Increases	20	20	0

According to Fremont Fair Housing’s Year End Report:

*Representatives from the Rental Housing Association (RHA) continued to volunteer to assist with the conciliation of RRIDRO cases by using “peer counseling.” Fifteen cases, with increases ranging from 9.97% to 79.82%, were referred to RHA, and all cases were successfully resolved. In 13 cases, the landlords agreed to substantial rent increase reductions, and in the other two cases tenancies were preserved.*

*Of the 31 cases opened, the increases ranged from a low of 2.23% to a high of 79.82%. In general, tenants reported that increases have been larger and more frequent (every year) than previously. In general, tenants also reported that the premium charged to rent on a month-to-month basis, rather than a fixed term lease, is higher than in previous years. In one case, the tenants were offered a 12-month lease with an increase of \$160 (6.0%), but if they wished to continue renting on a month-to-month basis, the increase was \$2,827 (79.8%). The RHA successfully conciliated the case, resulting in a 1.6% rent increase as opposed to the proposed increase of 79.8%.*

### **RRIDRO Challenges**

As market rents began to climb in 2013, Fremont Fair Housing found it challenging to mediate rents. The Rental Housing Association serving southern Alameda County (RHA) sent an agent to assist in the process and reported to City staff that Fremont Fair Housing often was not able to navigate the frequently complex corporate relationships behind ownership of apartment complexes to identify the party having authority. In several cases, apparently, Fremont Fair Housing was not negotiating with people who had authority to reduce proposed rent increases,

resulting in the decision makers refusing mediated terms. In several cases the RHA agent was able to help negotiate moderate increases.

Based on best practices adopted by other jurisdictions with rent mediation processes similar to RRIDRO, and on improved results achieved by RRIDRO with active landlord involvement, there are a number of potential changes to the program the City may wish to consider. These are discussed in Options section below.



## Overview of Rent Control/Just-Cause Eviction Ordinances

Of the 482 incorporated cities in California, the vast majority do not regulate rents. Still, whether by legislation or local petition, rent control and just-cause eviction ordinances have become part of the municipal regulatory environment in a number of cities in California.

Until 2016 approximately a dozen cities in the State of California had rent control regulations. As was noted earlier, the 2016 elections resulted in a few more cities in the Bay Area establishing rent control regulations. Some California cities have some type of regulation regarding rents which stops short of control or stabilization. These are usually mediation type programs similar to Fremont's.

Clearly there is more policy and community interest in this issue in the Bay Area than there has been in many years. Cities as well as stakeholders (sometimes through voter initiative) are trying to address rent control issues with a range of programs. The programs are typically designed to meet the needs of the local community, the economic and market environment as well as stakeholder interests. Programs vary in scope and degree of regulation, and are generally designed to address the following areas:

- Rent control or stabilization,
- Just-cause for eviction requirements,
- Tenant protections against retaliation, and
- Relocation assistance for non-fault tenant evictions in particular circumstances.

Each program has unique elements, and there is a complex inter-relationship between government regulation and the market that almost always leads to unanticipated consequences. The analysis presented below reflects our best professional judgment, given these constraints and uncertainties.

As part of our work, we contacted the communities of Santa Monica, Berkeley, Los Angeles, San Jose, and East Palo Alto for information about their rent control and just-cause for eviction programs. In addition, we reviewed ordinances and operating practices currently in place in the cities of Hayward and West Hollywood. While these programs have some common features, it is important to understand that each jurisdiction's scope and implementation processes are unique to their experience of the issues and stakeholder interests. San Jose is currently operating under an interim ordinance while staff develop broad policy recommendations and a program to support a comprehensive program. (San Jose has had a rent control/stabilization program in place since the 1970s, but because rent increases of up to 8% were allowed per year, it rarely had an impact on rents.)

Also noteworthy are programs adopted by the cities of Alameda and Santa Rosa in 2016, and the City of Richmond in 2017. However, the proposed ordinance in Santa Rosa was rejected by voters in a special election, in June 2017, so the program planned by the City will not be implemented. Therefore, these programs do not have data that can be used to inform discussions on this issue. Nevertheless, where appropriate we have used relevant information from these communities.

Local ordinances to address rapidly escalating rents have existed in California since the late 1970s. Cities such as Santa Monica and Berkeley pioneered strong ordinances that strictly regulated rent increases. More typical are ordinances that provide for non-binding mediation of landlord/tenant disputes similar to Fremont's program. In response to the rent inflation experienced in the Bay Area since the end of the Great Recession, several cities are looking at their current programs or are considering developing a program to regulate rents and establish just-cause eviction procedures.

The state has set some limits on the power of a local jurisdiction to address rent increases. In 1995, the California legislature passed the Costa-Hawkins Rental Housing Act (AB 1164) (Costa-Hawkins). Costa-Hawkins allows, among other things, property owners to set rental rates when there is a change in unit vacancy (known as "vacancy decontrol"). In addition, Costa-Hawkins prohibits interfering in a property owner's ability to set rents for any unit that received a certificate of occupancy after February 1, 1995, and any single-family home and condominium.

Fremont staff estimated in their September 2016 staff report that there are 16,782 rental housing units in multifamily developments in Fremont, with 2,840 built after February 1995 and an additional 1,491 that are income restricted affordable units. (These numbers do not include renter occupied units that would not be subject to regulation, or alternative regulation, such as mobile homes, condominiums and single-family homes.) Therefore, staff indicate that approximately 12,451 units may be covered by a rent control ordinance.<sup>2</sup>

Today, these programs, also referred to as rent stabilization programs, generally take one of three forms. An overview of the elements of the three forms is provided in Attachment A.

### ***Model A: (Berkeley/Santa Monica Style Rent Control)***

Traditional or “Model A” rent control ordinances strictly regulate rent increases by providing the annual maximum rents for each unit rather than merely providing the maximum percentage allowed. Cities such as Berkeley and Santa Monica pioneered these types of ordinances, but ordinances that establish the allowed individual rent increases remain rare. Recently, the City of Richmond adopted a Model A rent control ordinance following a voter initiative.

Model A rent control programs typically involve the city registering all eligible rental units. Limits on annual rent increases are generally defined in relation to either the Consumer Price Index (CPI) or a flat rate. Should a landlord believe increased operating costs justify a greater increase than permitted by regulation, they must petition for an individual rent adjustment. Similarly, tenants may petition to decrease rents if the services provided by the landlord are reduced. Individual petitions are typically heard by a hearing officer, with the ability of either party to appeal to some public body, usually a rent board, or ultimately the court. Rent boards may be independently elected (as in Berkeley), or appointed by the City Council (as in West Hollywood). Although they have been challenged in the courts, rent control ordinances in Berkeley, Santa Monica, East Palo Alto, West Hollywood and, very recently, Richmond have withstood legal challenge.

---

<sup>2</sup> City of Fremont, City Council Meeting, *Report to Council on Rent Control, Just-Cause Eviction and Other Options for Promoting Affordable Rental Housing*, dated September 27, 2016.

Due to the extensive regulatory apparatus associated with Model A rent control programs, these are the most complex and expensive for cities to implement and operate. Also, litigation typically ensues following the enactment of such programs.

### ***Model B: (Alameda/West Hollywood Style Rent Regulation or Stabilization)***

These programs are intended to address swings in the market that can lead to higher rent increases. They are triggered when a proposed rent increase exceeds some specified threshold (usually 5% to 10 %) and a tenant files a petition. Model B rent control programs typically try first to resolve issues through mediation, which can be a mandatory first step. If mediation fails, the next step is a hearing or arbitration that results in a binding decision.

Most rent control programs provide for mediation as either a first step in the dispute resolution process, or as a required step. Some cities provide mediation services to address any type of landlord/tenant dispute before it escalates into formal hearings or court actions. These landlord/tenant dispute resolution programs are similar to Fremont's RRIDRO. Participation in the program is sometimes mandatory, and failure to participate in good faith can be grounds for disallowing a rent increase.

A mandated mediation program is intended to provide a tenant access to a grievance process that meets program guidelines for mediation and addresses the issue of tenants being uninformed about how to process rent or service-related grievances.

Mediation can be provided to resolve many landlord/tenant disputes on a "cost-to-the-parties" basis. However, many cities choose to fund the service or charge only a nominal fee. Mediation services are typically provided through a third-party contractor or non-profit organization, as Fremont currently is utilizing.

### ***Just-Cause Eviction***

State law allows a landlord to terminate a tenancy without cause at the end of a lease or other tenancy term by giving the tenant a 30- or 60-day notice. A just-cause for eviction ordinance retains the state's noticing timelines, but also requires a landlord to provide written cause for the termination and evidence supporting the termination action. Typically, "just-cause" ordinances provide a limited range of allowable causes for

eviction. One of the primary impacts of these programs is that they shift the burden of proof for a tenant eviction from the tenant to the landlord, because failure to prove one of the allowable causes for eviction is an affirmative defense a tenant may use to contest the eviction.

Just-cause for eviction rules are often part of a strong rent regulation ordinance to protect tenants from a landlord's ability to evict them without cause under civil procedures to gain potentially significant rent increases by creating a vacancy that allows greater market rents to be charged pursuant to the Costa-Hawkins Act. However, just-cause ordinances can also become problematic for a landlord seeking to evict a tenant for reasons other than to increase the rent. Because legitimately evicted tenants may use the appeals processes to delay the eviction, many landlords believe that just-cause ordinances make it difficult to evict bad tenants.

The effectiveness of just-cause ordinances is difficult to track statewide because most of the cases are taken directly to the courts for resolution and the results are not published in a comprehensive way.

However, to assess the effectiveness of such ordinances, Community Legal Services of East Palo Alto (CLSEPA) tracked their caseload over an eight-month test period in 2014. CLSEPA provides defense for tenants facing eviction in East Palo Alto and many other areas of San Mateo County. Currently, East Palo Alto is the only city in San Mateo County with a just-cause for eviction ordinance (it has also had a rent control ordinance since 2010). Over the test period CLSEPA obtained "pay and stay" settlements (where the tenant agrees to a rent increase and is not evicted) for 70% of cases in East Palo Alto. However, in all other San Mateo County cities pay and stay settlements were achieved in only 14% of cases. CLSEPA did not have the capacity to track cases beyond the test period.

An important caveat to this example is that eviction in a rent control environment is different than in a non-regulated environment. As stated above when rents are controlled landlords may have an incentive to evict to obtain the economic benefit of vacancy decontrol. Therefore, comparing eviction settlements in a controlled environment like East Palo Alto may not yield a meaningful comparison in a mainly unregulated environment such as other areas in San Mateo County.

While typically paired with rent control or stabilization, a just-cause ordinance can be a stand-alone ordinance designed to protect tenants from unilateral landlord eviction decisions. They can apply to most tenants as well as to specific tenants, such as to tenants of rent stabilized units only. For example, the just-cause sections of ordinances for both Richmond and Berkeley apply to the rent-controlled units as well as to almost all other rental units. Just-cause ordinances also can be used to provide additional protections for certain classes of tenants, such as the disabled, elderly, infirm and families with children in school.

Just-cause for eviction programs typically are designed so the city is not an active participant in the process. Instead, the eviction processes play out through the courts. Rent board staff in several of the California cities with rent control contacted by Management Partners reported they did not track just-cause eviction complaints so we were unable to determine the extent of such cases. A survey of just-cause eviction provisions is provided as Attachment B.

Fremont's neighbor, Union City, recently enacted a just-cause ordinance in the absence of rent controls beyond a non-binding mediation program. The effect of such a just-cause ordinance on rents is not clear because it is too new to draw any conclusions from.

### ***Public Outreach and Education***

Although not strictly an element of rent control and just-cause eviction ordinances, rent control related public outreach typically includes a range of tenant and landlord education or information programs to make sure the parties understand their rights and responsibilities. Topics covered often include processes for allowing yearly rent increases and/or petitioning higher rent increases to cover higher capital or operating costs, vacancy decontrol, habitability standards, and retaliation or anti-harassment provisions. The most effective tenant protection programs use extensive outreach and education to reduce the number of petitions and ordinance violations over time.

## Rent Control/Rent Stabilization and Just-Cause Eviction Program Elements

The Fremont City Council directed staff to investigate operational impacts of rent control/rent stabilization and just-cause ordinances. As noted previously, each jurisdiction with rent control and just-cause for eviction ordinances has unique elements to meet specific community and stakeholder interests and needs. As such, programs vary widely among agencies. This section provides an overview of the major elements of rent control and just-cause eviction programs and their operational impacts in the following areas:

- Governance,
- Expenditures and cost recovery,
- Staffing, and
- Other observations.

### ***Governance***

Most cities, whether their programs are regulatory or non-binding, establish a board to provide oversight, to act as the final appeals body when parties fail to reach agreement after mediation, or to act as the hearing body for a decision by an arbiter or hearing officer for general landlord/tenant complaints such as excessive rent increases. These boards are generally appointed by a city council, although Berkeley and Santa Monica have an independently elected board. In most programs, initial decisions are made by trained hearing officers directly employed by the rent board or contracted by the board from independent organizations.

These boards will typically hold public hearings to render a final binding decision on complaints. Although the board may be appointed by a council, we have not identified any ordinances where a board's decisions are appealable to the city council. Most appeals of board decisions are made directly to the courts. Rent control boards may also get involved in

other landlord/tenant issues, including providing informational and educational materials on landlord/tenant rights and other matters of interest to landlords and tenants.

Although a board is typically created, we found two examples where governance is not being delegated to a rental control board. The City of Hayward's program calls for arbitration; the arbiter's decision is final (subject to court review should the matter be taken to court). Under San Jose's new program, disputes are arbitrated by hearing officers and appealed to the courts. However, policy decisions remain with the City Council or are delegated to staff.

### ***Expenditures and Cost Recovery***

The cost of rent control programs varies widely across the state. The costs are related to the cost of staff required to administer the program. Programs that require detailed administrative action over routine activity such as rent increases and tenancy changes are higher in cost on a per rental unit basis. The programs in Berkeley and Santa Monica programs are examples of such programs. Programs that require little routine administrative control and are primarily complaint driven, such as San Francisco's, are fairly inexpensive on a per unit basis. Scale reduces the per unit cost in the large cities dramatically. Some factors that influence costs are:

- The level of policy control of the rent boards and their need for staff support;
- The amount of information and frequency of reporting required by landlords;
- The complexity of the petition processes, especially those related to fair-return on investment provisions;
- Whether proactive enforcement of the ordinance is performed (i.e., analysis of reporting data is used to act on rents outside of complaints); and
- The complexity of relocation programs.

A city council is typically responsible for approving the budget for rent management programs. In at least three cities (Berkeley, Santa Monica and Richmond), the budget is set by the rent board with little oversight by the City Council (although the Council must set the associated rental housing fee). In cities with strong rent regulation reporting, most of the program budget is funded through a rental housing fee on each regulated unit charged to landlords.



Fees for Model A rent control programs currently are as high as \$238 per unit per year, and cover annual costs and reserves necessary to properly fund them. The fee is established on an annual basis. If program costs increase, the fee can be increased. In some cities, a portion of the rental housing fee can be passed through to tenants through rent increases. To properly track regulated units and payment of fees, these cities require that units be registered or enrolled in a “rent registry.” In those cases where there is less rigorous rent control (i.e., with landlords only reporting on the occupied units), fees range from approximately \$40 to \$120 per year.

Some cities support their rent control program through the general fund or through a combination of general fund support and fees. For non-binding mediation programs, a non-profit may provide the service either through its own grant funding, or by charging a fee.

Table 10 below provides information on program cost and fee data collected from communities that operate rent management programs. While all of the programs in Table 10 include rent control and just-cause for eviction components, each of the cities’ programs provide a range of services as well as staffing strategies which make cost comparisons challenging. As an example, the programs in the cities of Berkeley and East Palo Alto require rental unit registration of actual rents while the others do not.

The level of service also varies. The City of Alameda’s program includes mediation services for rental properties not subject to rent control while the now defunct City of Santa Rosa’s program excluded these services. Finally, the City of Hayward’s fees are significantly less than other communities due to its policy to recover only a portion of program costs. The Hayward program has limited administrative requirements and offers some unique program features, including those that allow a landlord to remove units from the rent control portion of the program if certain conditions are met.

Table 10. Rent Control and Just-Cause Eviction Program Cost and Fee Comparisons

City	Number of Non-Exempt Housing Units	Current Program Operating Budget	Annual Per Unit Program Fee	Number of Program FTEs	Annual Allowable Rent Increase
Alameda <sup>1</sup>	13,037	\$1,900,000	\$131	6.0	5%
Berkeley	19,093	\$4,550,000	\$234	20.6	1.5% (CPI Formula)
East Palo Alto <sup>2</sup>	2,400	\$650,000	\$234	2.0	2.40% (CPI Formula)
Hayward <sup>3</sup>	3,000	\$27,875	\$2.77	0.5	5.00%
Oakland	N/A	\$1,773,209	\$30	12.0	2% (CPI Formula)
Santa Rosa <sup>4</sup>	11,076	\$1,248,674	\$113	4.5	3%

Source: Annual budget documents, city websites and program reports.

<sup>1</sup> The City of Alameda information represents an estimated amount as the program has just recently been approved; however, the fee has not yet been adopted.

<sup>2</sup> The City of East Palo Alto budget includes \$206,000 City overhead charges.

<sup>3</sup> The City of Hayward includes various conditions that allow rent increases greater than 5%, including rent carry-overs. Cost is based on 80% program recovery. A total of 20% is funded by the General Fund and 3,000 units are subject to the rent control portion of the program.

<sup>4</sup> The City of Santa Rosa program fee was adopted on August 30, 2016 based on program cost and fee estimates. The Santa Rosa and Alameda programs were selected in part because they have just recently been adopted and include one-time costs anticipated in program start up. The Santa Rosa program no longer exists because it was rejected by voters in a special election on June 6, 2017.

With respect to the provision of legal services to support the function, we observed that programs utilized either the city attorney’s staff or employed their own attorneys to focus exclusively on the rent control program. For example, Alameda, East Palo Alto and Santa Rosa secure legal services for their program through their city attorneys’ offices. The cost of this staff time is tracked and included in the program costs. Santa Monica and Berkeley both have staff attorneys who are solely responsible for the rent control program and related litigation. Periodically, the rent control program attorneys in both of those cities require supplemental assistance from the City Attorney. Several of the rent control programs also budget for additional contract services including additional legal services (e.g., East Palo Alto and Santa Monica).

## Staffing

The level of staffing for rent control programs is highly dependent on the type of program. A non-binding mediation program can be managed with more limited staff resources. On the other hand, cities with highly regulatory programs may need a significant number of staff, including a

manager, administrative personnel, (e.g., support and accounting staff), analysts, legal services and hearing officers (which may be contracted). Staff may also conduct community outreach and education activities. The City of Berkeley's rent control program, governed by an independent and elected rent board, employs 22 full-time equivalent employees (FTEs) and has a budget of over \$4.5 million. The City of Hayward's program, which is a complaint-based arbitration program for significant rent increases, is administered through the City Attorney's Office and uses a portion of two FTEs for program administration along with contractual support for mediation and arbitration. It does not utilize a board for program oversight.

### ***Technology Support***

Until this year there was no commercially available software that supported rent control programs. Cities with long term programs have all used custom software developed specifically for them. The City of San Jose is in the process of creating custom configurations of its Customer Resource Management software to provide such support. The San Jose Housing Department has used that application for several years but processes supporting the new ordinances being developed will require more sophisticated functionality. The City of Richmond is in the process of developing similar functionality using their development permit tracking and inspection system. Both cities have information technology staff with significant skills with these products and both will likely require additional assistance from their vendors.

On January 3, 2017, the City of Los Angeles went online with a new application developed for them by a southern California software development company. This company just contracted with the City of Beverly Hills to provide a version of the Los Angeles software as a "cloud-based" service, but it is not yet installed.

### ***General Observations Regarding Program Impacts***

The degree to which there is an impact on the housing market from rent management programs will depend on the type of program adopted by the city, the market and general economic development conditions within a region. In general, there is limited research on the market impacts of any of the rent management programs as they currently exist in California after Costa-Hawkins. Interest groups representing landlords and tenants rarely, if ever, agree on market impacts.

Objectively, concerns that local rent regulation would discourage new construction have largely been addressed by state law exempting new construction from rent regulation. There have been concerns that highly regulatory programs discourage investment and lead to deterioration in rental housing, but evidence of that is merely anecdotal. In reviewing the potential impacts of rental control programs, the following are some general observations about affordable housing, vacancy rates/displacement, and housing supply.

### **Affordable Housing and Rent Control**

Defining housing affordability is a complex matter that is beyond the scope of this study. However, in the broadest sense, any definition of affordable housing typically includes a link between household income and the amount of income spent on rent and/or gross housing costs. As an example, HUD generally defines housing as being affordable if a median income household is paying no more than 30% of its income on housing-related costs. While the HUD definition is commonly cited when discussing housing issues overall, a city's affordable housing program is typically geared toward the development and maintenance of subsidized rental housing including eligibility requirements tied to household income, most commonly those households with an annual income less than 80% of the Area Median Income (AMI).

Affordable housing and rent control are different in that the income of a tenant in a rent control environment is not used as a parameter in the rent setting process. We have not observed any affordability monitoring or control mechanism linking rents and household income in relation to the impact of rent regulation.

Therefore, as a general observation rent control and just-cause eviction ordinances, at best, maintain some level of affordability for those already in rental housing subject to the ordinance, but do not lead to an expansion in the availability of affordable housing.

Notwithstanding this, proponents of rent control programs and associated stakeholders often assert these programs assist in promoting tenant stabilization, with varying degrees of success, by establishing a more clearly defined rent adjustment amount and by providing an outlet for grievances related to what may be viewed as unreasonable rent increases without regard to a household's income or the amount of

household income dedicated to monthly housing costs. In addition, educating tenants and landlords about tenant rights and processes for rent adjustments and/or evictions are often components of affordable housing programs.

Affordable housing issues are not directly targeted by rent regulation. Such issues are much broader and bigger, and the subject of a lot of discussion among stakeholders and the housing industry. However, rent control and just-cause eviction may provide additional public information and a process that may affect a subset of those impacted by high housing costs.

### **Vacancy Rates/Displacement**

Management Partners has not found any current data indicating that rent control and just-cause for eviction programs will increase or decrease vacancy rates. Our observation is based on conversations with representatives from the peer cities and the results of a questionnaire regarding vacancy rates in cities with rent control programs.

Because the surveyed cities are not collecting data to track tenant displacement and/or the root causes for displacement, which are complex, we have not found any specific evidence indicating these programs improve or worsen tenant displacement. Notwithstanding the lack of available data, it seems reasonable to conclude that tenants are displaced when rent increases exceed the general cost of living, leading to a tenant being priced out of a unit and potentially out of the community. A program that mitigates rent increases accompanied by a just-cause eviction ordinance may limit the impact of rent increases thereby preventing some displacement. Of course, the associated regulatory apparatus comes at a cost and landlords will oppose this intervention in the marketplace, and with respect to their property.

As noted above, rent regulation programs are not targeted to those who may be most at risk of displacement. They provide a benefit to both those who may be displaced as well as others who can afford to pay market rents. For some tenants, the benefits of retaining a rent-regulated unit will encourage them to remain in the unit, even when their incomes rise and they can afford market rents. Some believe this may result in less turnover in the rental market, especially for those older units that tend to be most affordable, even in a high-cost area. While there is anecdotal evidence of this effect, we are not aware of any study that has quantified it.

## **Housing Supply and the Housing Market**

As noted earlier, Costa-Hawkins has largely addressed the concern that local rent regulation would discourage new apartment construction. However, highly regulatory programs can lead to some loss of rental units to condominium conversion and to owners who choose to leave the rental market all together, usually by the owner or relative occupying a condo conversion or through demolition and major reconstruction.

There is also a state law that allows evictions to remove a property from the rental market for a variety of reasons, commonly known as the Ellis Act. In response, some communities have adopted condominium conversion processes that require a rent board's review of these applications to ensure the rental unit conversion to owner occupancy is consistent with rent control and just-cause eviction program intent and practices. For example, the City of Berkeley requires a complex application review and payment of an affordable housing mitigation fee.

Santa Monica reported in its 2015 Consolidated Annual Report that since 1986 a total of 2,019 units have been withdrawn from the rental housing market. The San Francisco Chronicle reported that there were more than 100 Ellis Act evictions each year between 2010 and 2013. Other cities that regulate rents have not reported significant losses of rental units through the Ellis Act or through condominium conversion.

## Rent Intervention Alternatives – Three Options

The City Council directed staff to generate a range of program options. Management Partners has prepared three possible options at staff's request. As part of these options, we defined program elements, administrative cost, and the potential advantages and disadvantages of each (also see Attachment A). These options represent a broad overview of program elements for City consideration. Should the City Council decide to pursue any of or a component of these options, additional research would be necessary to ensure that a program is drafted to address the unique needs, stakeholder interests and program objectives for the City of Fremont.

### ***Option 1: Modified Residential Rent Increase Dispute Resolution Ordinance Process***

The City Council directed staff to develop possible revisions or alternatives to the existing RRIDRO. A non-binding mediation approach is appropriate for most communities whose objective is primarily to resolve landlord/tenant disputes. When there is balance between supply and demand in the rental market, such programs can probably help reduce displacements of lower-income tenants.

As market rents began to climb between 2013 and 2015, the City's contractor, Fremont Fair Housing, was not successful at mediating rents in the overheated rental market until the Rental Housing Association (RHA) sent an agent to assist. The agent reported to staff that Fremont Fair Housing was not able to navigate the frequently complex corporate relationships behind apartment complex ownership. This resulted in Fremont Fair Housing sometimes negotiating with people lacking the actual authority to reduce proposed rent increases, which then resulted in the decision makers refusing mediated terms. The RHA had greater resources and experience identifying the decision makers. In several cases the RHA agent was able to negotiate reductions in the proposed increases.

The City of San Leandro has a mediation-based program similar to Fremont's RRIDRO. San Leandro recently adopted an ordinance with program enhancements that may bolster the effectiveness of Fremont's current RRIDRO. Elements of San Leandro's ordinance that might be considered by Fremont include:

- Replacing the Fact-Finding Panel under the current ordinance with a standing Rent Review Board consisting of two landlord representatives, two tenant representatives, and a neutral third party;
- Establishing a rent increase threshold for eligibility;
- Strengthening the mandatory participation provisions; and
- Continued peer-to-peer counseling by landlords.

Fremont staff shared several additional possible RRIDRO revisions with our team, including the following.

1. Establish a Rent Review Board for mediation/fact finding of rent disputes to include:
  - a. Failure to participate (landlord) will render the rent increase invalid.
  - b. Failure to participate (tenant) will render the rent increase valid.
  - c. If the Rent Review Board finds retaliation, the most current rent increase becomes invalid and no further increases are permitted for 12 months from the date of the finding.
2. Revise noticing provisions (statements to be included in a notice of rent increase) to include:
  - a. A statement on the reason for increase.
  - b. A statement on Rent Review Board processes.
  - c. A statement that no more than one rent increase every 12 months will be made (9.60.040 (d)).
  - d. Require 90 days-notice of rent increases rather than *encouraging* landlords to provide at least 90 days-notice (9.60.040 (c)).
  - e. Failure to give proper notice including all statements renders the rent increase invalid and no additional rent increase notice is permitted for at least 90 days.
3. Retaliation Measures
  - a. Increase the penalty for retaliation to a larger amount (currently \$1,000) that would deter landlords from retaliatory actions (9.60.100; see Civ. Code § 1942.5).



- b. Any retaliation renders the recent rent increase invalid and no additional rent increase notice is allowed for next 12 months from the date of the finding.
4. Additional conciliation process requirements
  - a. Require mediation on rent and other terms of tenancy
  - b. Require the individual representing the landlord in the process to have the authority to make rent adjustments
  - c. Require meaningful participation or rent increase is rendered invalid.
  - d. Codify AR 10.7 to clarify that if parties agree to more than one rent increase in a 12-month period, it must be documented in a separate agreement (not the rental agreement) that identifies the agreed upon rental increase.
  - e. Agreements reached in mediation are binding.
5. Additional mediation process requirements
  - a. Require participation by representatives or the rent increase is invalid.
  - b. Agreements reached following mediation are binding.
6. Additional Fact-Finding Process Requirements
  - a. Require participation or rent increase is invalid.
  - b. Recommendations of the fact-finding panel are not binding.
  - c. Agreements reached by parties following fact finding are binding.

In addition, staff suggested a regular evaluation of the program could help ensure its effectiveness.

### **Option 1 Opportunities**

As noted in Attachment A, this model has several components. It:

- Creates an effective vehicle for addressing tenant concerns regarding significant rent increases,
- Promotes tenant stability regarding lease terminations,
- Improves landlord/tenant communication,
- Provides certainty and stability for landlords
- Reinforces non-retaliation provisions, and
- Includes tenant relocation expenses in some programs.

An additional rent mediation program element that has been used in the cities of Palo Alto and more recently Menlo Park is the requirement for

landlords to offer one-year leases to tenants each year. The tenant retains the right to refuse such leases but landlords must offer them. This eliminates the risk of tenants receiving multiple rent increases each year and provides some level of stability for both landlords and tenants, especially where student housing is an element of volatility in the local rental market. However, tenants in several South Bay communities have complained to housing support agencies of demands for very high month-to-month rents if longer term leases were refused by the tenants.

Mediation programs provide tenants with an opportunity to present their concerns about a rent increase to a neutral third party who can work with both the landlord and tenant to see if an agreement can be reached. Mediation is also a less restrictive approach with respect to landlords and their property. Transitioning the existing “panel” to a rent review board and establishing a more transparent process may provide additional incentive for both parties to reach a compromise.

### **Option 1 Challenges**

This model will not address concerns regarding affordable housing or financial hardship resulting from higher than historical or perceived “normal” rent adjustments. In addition, the overall impact on displacement is difficult to quantify. Moreover, the Rental Housing Organization (RHO) in Fremont, as reported in the September 27, 2016 staff report, has recommended a 7% to 10% yearly threshold for rent increases prior to being subject to the mediation process. At this threshold, the mediation process might not have much impact.

For example, the City of San Jose rent control ordinance has been in place since 1979. It has allowed an 8% annual increase with other opportunities for larger rent increases under certain circumstances. In a January 27, 2017 report, the City Auditor reported that between 1980 and 2014, the average rent increase was 4.9% and the 8% yearly allowable increase did not become a constraint on rent spikes except in the early 1980s when inflation was very high. San Jose’s 2015 interim apartment rent ordinance has reduced the threshold to 5%.

### **Option 1 Cost Estimate**

This option has the advantage of having a relatively low program cost. The exact costs are difficult to determine precisely because the budgets for such programs are typically embedded in the budgets of larger housing departments or organizational units, which provide support for many other services such as placing low or moderate income tenants,

administering affordable mortgage programs, and assisting other housing functions. The City of San Leandro Housing Services Department offers broad housing services to low and moderate income residents and supports a Rent Board and binding mediation program at a cost of \$874,963 in Fiscal Year 2016/2017. Of this, an estimated \$100,000 is dedicated to the rent mediation program.

As will be further explained, the cost of all three styles of rent control programs varies widely depending on sometimes small differences in the program policies and administrative processes supporting them, but Option 1 costs are typically the lowest. The volume of public education and outreach by each city or contract agency can have significant impact on the cost. Given the larger number of units subject to a program in Fremont suggests that even, a modest mediation program approach such as seen in San Leandro could approach \$300,000 annually. With lower rent ceilings, more detailed administrative processes, and other support services being provided, the costs could approach \$500,000. It is possible costs could be offset via a correctly designed fee that meets California nexus requirements, as seen with rent control programs.

### ***Option 2: Alameda/West Hollywood Style Rent Regulation or Stabilization***

A rent control and just-cause eviction program could have the features listed below for rental units not exempted by Costa-Hawkins (and City ordinance).

- Landlord requirement to notify and supply tenants with a copy of the program ordinance and annual rent increases.
- A threshold rent increase for accessing the program (5% to 10%).
- Potential to opt out of the rent control program with minimum reinvestment per unit.
- A complaint-based program, (i.e., no ongoing tracking of regulated rentals); although, should a fee be established, the City would need to determine a collection method.
- A clear set of criteria for evaluating whether a rent increase over the threshold can be justified.
- Voluntary or required mediation.
- A fact-finding process followed by a hearing before a hearing examiner or arbiter, should mediation not lead to agreement.
- An order from the hearing officer or arbiter is binding on the parties.

- An opportunity to appeal the order.
- A hearing before a board appointed by the City Council (should the matter be appealed).

### **Option 2 Opportunities**

As noted in Attachment A, this option can provide several benefits depending on the structure focusing on each community's needs. These include the potential to:

- Stabilize rent increases,
- Encourage habitability compliance,
- Expand tenants' rights,
- Attract investment,
- Ensure a method to address landlord/tenant disputes,
- Provide a fair return on investment, and
- Encourage rental housing reinvestment.

This type of program would insert the City's regulatory authority into the rental housing market to address above "normal" rent increases to some degree. Because the program includes the authority to order modifications, it may lead to more good-faith efforts for agreement. Depending on the threshold set for use of the program, it could also address only the most significant rent increases.

It is important to remember that rent increases at the high levels experienced during the past few years have moderated. Over time, depending on the threshold, allowable rent levels may catch up to market rents. For example, assuming a 7% threshold and market rental inflation over four years of 13%, 9%, 4% and 2%, the permitted increases will have caught up to market rents by year four, but at a less impactful and more predictable rate.

Because these programs are designed to address the specific housing type and needs of the respective jurisdiction, Fremont would need to consider its specific housing characteristics in the design process. Should the City move in the direction of some form of rent regulation, we suggest it also consider a just-cause ordinance to avoid evictions related to rent regulation.

An interesting element in the City of Hayward's ordinance is the option for landlords to opt out of the rent control program by making certain capital improvements to the controlled properties. In this way, Hayward addressed a community interest in improving the condition of rental

stock. The City enacted an ordinance for rent control in 1983 but later repealed it. A new ordinance was enacted in 2003. Since the current rent control program went into effect in 2003, the number of rent-stabilized units has declined from roughly 11,000 units initially to 3,000 units today.

### **Option 2 Challenges**

Even under these programs, the affordable housing gap will persist for residents at or below the Area Median Income (AMI). Further, Option 2 contemplates only short-term rent control, because voluntary vacancy and landlord compliance with permanent decontrol removes a unit from the program and rent increase limits. The program is designed to drive rental housing reinvestment, and since vacancy decontrol prohibits comprehensive application to all rental units (only units built before 1995 can be “controlled”), reinvestment is only encouraged for those units in the program.

### **Option 2 Cost Estimate**

Option 2 would require significant staff resources and costs. Assuming just-cause provisions are adopted, landlords would have to expend considerably more effort to evict tenants and be subject to potential legal challenge. Landlord costs may also increase if the City chooses to require them to pay relocation costs for certain types of evictions. Should the City wish to consider this option further, a more detailed analysis of the potential staffing requirements and program costs would need to be undertaken. The current budget for the City of Alameda’s program is \$1,950,000, covering 14,699 units under rent control. The City of West Hollywood’s rent control program budget is roughly \$1,900,000 to cover 16,805 controlled units. This rent control program is part of a larger, comprehensive housing department budget and costs are an estimate provided by their staff in 2016. A reasonable range of costs for Fremont is expected to be between \$1,900,000 and \$2,100,000. Again, there is potential for additional costs depending on program elements but West Hollywood and Alameda both provide a reasonable threshold cost estimate, depending on the number of units included.

### ***Option 3: Berkeley/Santa Monica Style Rent Control***

A rent control and just-cause eviction program might include the following elements in relation to rental units not exempted by Costa-Hawkins.

- Requiring landlords to notify and supply tenants with a copy of the program ordinance and annual rent increases.
- Establishing a board with the authority to set an annual general adjustment to rents, generally based on the Consumer Price Index or some flat maximum amount.
- Establishing a procedure to apply for individual adjustments, and a set of criteria for evaluating requests for an individual adjustment.
- Enrolling all regulated units and payment of a fee to cover the costs of the program.
- Requiring voluntary or required mediation.
- Establishing a fact-finding process followed by a hearing before a hearing examiner (should mediation not lead to agreement).
- Requiring an order from the hearing officer or arbiter to be binding on the parties with an opportunity to appeal the order.
- Requiring a hearing before a board appointed by the City Council (should the matter be appealed).

As with the previous (Model B) program, should the City move in this direction, we would suggest it also consider a just-cause for eviction ordinance.

### **Option 3 Opportunities**

This option provides for the tracking of program units; a mechanism to identify, inform, and engage landlords and tenants; reasonable rent increases while stabilizing tenant population in rental units; compliance with code (habitability) requirements; and an accessible and efficient method to address landlord/tenant disputes.

Although most California cities with such programs do not track rents on an ongoing basis, property owners must submit justification when rent increases are requested beyond the yearly allowable ceiling, and program hearing officers render decisions on whether the increase is justified. Similarly, tenant complaints of excessive increases are investigated by program staff and resolved by the hearing officers. In the most rigorous programs, such as those in Berkeley and Santa Monica, rents are tracked on every change in tenancy and change in tenancy terms (typically any rent increase).

### **Option 3 Challenges**

As noted in Attachment A, the affordable housing gap persists for residents at or below Area Median Income (AMI). The vacancy rate

impact in the short-run is negligible. There is a threat of reduction in rental units in the long-run through increased condominium conversion such as experienced in Santa Monica. Vacancy decontrol also prohibits comprehensive application to all rental units (only units built before 1995 can be “controlled”).

Traditional rent control programs cost more and require greater administrative complexity than Model B rent control or mediated rent control programs. For example, the staffing levels of the Berkeley and Santa Monica programs are twice those of the average staffing level per unit in cities with Model B rent control “unit-registries.” Both cities have elected rent boards and program staff who must support their policy development and legislative processes. The budgets in Berkeley and Santa Monica are \$4,550,000 and \$4,755,170 respectively, supporting 19,093 and 27,542 rent controlled units respectively.

The City of Los Angeles launched a rent registry in January 2017 with a much lower staffing level per rental unit. Nevertheless, the Los Angeles rental rights department has almost four times as many total staff as Berkeley or Santa Monica and a total budget over \$22 million. Between scale and current generation technology support, Los Angeles hopes to be able to operate with minimal staffing increases.

### **Option 3 Cost Estimate**

Option 3 for Fremont may have an initial cost between \$3,500,000 and \$4,000,000 because of the fewer units potentially under a rent control program. Whether the relatively low staffing levels in Los Angeles can be maintained will have to be determined as the history develops—but any new Model A rent control and just-cause eviction programs would require a dedication of staff over a period of time to develop policies and processes and refine them for efficiency due to the high levels of control that characterize such programs. Los Angeles had lower levels of rent control for many years with a concerted focus on developing efficient policies and processes. For that reason, Fremont’s startup costs for this option are expected to be in the same range as the Santa Monica and Berkeley programs with possibly some reductions in staffing needs as technologies and other efficient program elements are developed.

## Conclusion

The goal of most rent control and just-cause eviction programs is to stabilize tenancy by moderating rent increases on existing tenants and by providing some due process protections for tenants to prevent rent spikes and landlord tenant relationship problems. The communities surveyed have each designed their programs, often with only subtle differences in the rules and regulations, to address problems specific to their local rental market and stakeholder interests. Program elements focus on each local housing market including the housing inventory, habitability challenges, and balancing the needs of tenants and landlords. Mediation and counseling do continue to play a critical role in stabilizing tenancy in all tenant protection models, even those that are highly controlled. The key to success in the communities we surveyed has been to identify the specific problems that are unique to the community and its rental housing and design or develop targeted approaches to resolve the problems.



## Attachment A: Rent Control and Just-Cause Eviction Program Options

Program Features	Option 1 Enhanced Mediation Program	Option 2 Alameda/West Hollywood Style Rent Regulation/Stabilization	Option 3 Berkeley/Santa Monica Style Rent Control
<b>Units Subject to Program</b>	Typically applies to rental units with three or more units	Property owners with three to five or more units. Hayward example: Residential unit occupied by payment of rent, provided the unit is one of at least five residential units in Hayward with common ownership.	Residential rental dwelling units and rooming houses with at least five rooms (each room is counted as an individual unit) with separate leases are included in the program, along with single family homes with at least four bedrooms that are being rented separately (each bedroom is a unit).
<b>Unit Exemptions</b>	Hotels/motels, government-subsidized housing, hospitals, transient housing, etc.	Single family homes, all units occupied after February 1996 hotels/motels, government-subsidized housing, hospitals, transient housing, etc.	Single family homes, all units constructed after 1996 hotels/motels, government-subsidized housing, hospitals, transient housing, etc.
<b>Funding Mechanisms</b>	General fund or other City Fund, Arbitration Service Fees	Programs funded through administration fees (50% passed on to tenant) and may include general fund and other fund support	Programs funded through registration (50% passed on to tenant) and enforcement fees, and may include general or other fund subsidies, and grants

Program Features	Option 1 Enhanced Mediation Program	Option 2 Alameda/West Hollywood Style Rent Regulation/Stabilization	Option 3 Berkeley/Santa Monica Style Rent Control
<b>Characteristics of Program</b>	<ul style="list-style-type: none"> <li>• No ongoing tracking of rental units or rents paid is typically done</li> <li>• Due Process: Mandatory participation through conciliation, mediation and fact finding, mediated agreements are memorialized in writing. If fact-finding process is incorporated, decisions are advisory</li> <li>• Landlord must be current on all fees and in compliance with city requirements</li> <li>• Landlord must confirm substantial compliance with habitability of unit</li> </ul>	<ul style="list-style-type: none"> <li>• All eligible rent units are loosely tracked. The rent policy body (rent board or city council) publish allowed yearly rent increase maximum</li> <li>• Due Process: Petition Process with Hearing Examiner providing decisions. Mediation may be a preliminary option</li> <li>• Housing quality standards maintained (owner/landlord compliance)</li> <li>• Includes just-cause eviction, anti-harassment, and tenant/landlord problem mediation</li> <li>• Active public education programs</li> <li>• Voluntary vacancies trigger landlord option to remove unit from rent increases compliance with habitability standards (Hayward’s program).</li> </ul>	<ul style="list-style-type: none"> <li>• All eligible rental units are tracked and have an established rent ceiling. Landlord must report all changes in tenancy and terms of tenancy (rent increases)</li> <li>• Due Process: Petition Process with Hearing Examiner providing decisions. Mediation may be a preliminary option for some petitions</li> <li>• Housing quality and housing services (owner/landlord compliance)</li> <li>• Includes just-cause eviction, anti-harassment, and tenant/landlord counseling and mediation</li> <li>• Active public outreach and training programs</li> <li>• Optional program suspension - 5% vacancy rate</li> </ul>
<b>Required Tenant Notification of Program Eligibility and Features</b>	Yes, at time of initial rental, rent adjustments and notice of lease termination	Yes, rent disputes and eviction for cause provisions	Yes, rent disputes, terminate tenancy and good cause eviction provisions

Program Features	Option 1 Enhanced Mediation Program	Option 2 Alameda/West Hollywood Style Rent Regulation/Stabilization	Option 3 Berkeley/Santa Monica Style Rent Control
<b>Required Tenant Notification of Rent Increases and Rent Increase Thresholds</b>	Yes, if required by state law. Rent increases greater than 10% trigger mediation	Yes <ul style="list-style-type: none"> <li>• Landlords provide notice to tenant of the ordinance and rent increase</li> <li>• Rents may not increase more than 3-5% per year (or some portion of CPI) and may not be raised more than once in 12 months</li> <li>• Rent increases of less than the maximum allowed in a year may be “banked” (“untaken” rent increases from prior years can be applied to current year up to a maximum defined by the ordinance)</li> </ul>	Yes <ul style="list-style-type: none"> <li>• Rents can only be increased by the Annual General Adjustment (AGA) based on a standard percentage or percent of CPI as published by the Board each year</li> </ul>
<b>Mediation</b>	Yes, but does not apply to just-cause evictions	Yes	Yes, staff provides counseling and mediation
<b>Arbitration</b>	Typically not	Yes, Rent Review Officer decision is final	Yes, hearing examiner decision is final unless appealed to the Rent Board
<b>Program Administration</b>	Contractor/non-profit agency	City staff or contractor	Independent Rent Board and staff
<b>City Appointed Board/ Elected Rent Board</b>	Yes, if program includes fact-finding process	Yes	Yes
<b>Staff</b>	.25-1 FTE planner or housing specialist	10-12 FTE estimate	20.+ FTE (administration, law, hearing, registration and public information and IT)

Program Features	Option 1 Enhanced Mediation Program	Option 2 Alameda/West Hollywood Style Rent Regulation/Stabilization	Option 3 Berkeley/Santa Monica Style Rent Control
<b>Contract Services Used</b>	Contractor or non-profit agency for mediation services	Mediation and arbitration services provider (unit-based charges \$600 per mediation and \$1,200 per arbitration), legal aid	\$300,000 for various professional services
<b>Annual Program Cost</b>	\$100,000-\$300,000	Approximately \$1,900,000	\$4-4.5 million
<b>ANTICIPATED OUTCOMES</b>			
<b>Expansion of Tenant Rights</b>	Yes	Yes	Yes
<b>Impact on Vacancy Rate</b>	No	No data available. Program drives reinvestment in rental units and stabilizes rents for a limited period by setting a predictable increase.	No data available. Program stabilizes rents by setting a predictable increase.
<b>Expansion of Affordable Housing</b>	No, however, will include some related components including JCE and tenant notification requirements.	Program stabilizes rents of program units by setting a maximum allowable increase.	Program stabilizes rents of program units by setting annual allowable rent increase.
<b>Effect on Tenant Displacement</b>	No data identified supporting impact on displacement. However, JCE should have some impact.	Program monitors units not tenants.	Program tracks units, not tenants. (Relocation assistance and demolition process can be included in ordinance.)

Program Features	Option 1 Enhanced Mediation Program	Option 2 Alameda/West Hollywood Style Rent Regulation/Stabilization	Option 3 Berkeley/Santa Monica Style Rent Control
<b>Program Advantages</b>	<ul style="list-style-type: none"> <li>Creates an effective vehicle for addressing tenant grievances regarding significant rent increases</li> <li>Promotes tenant stability regarding lease terminations</li> <li>Improves landlord/tenant communication</li> <li>Reinforces non-retaliation provisions</li> <li>Some programs include tenant relocation expenses</li> </ul>	<ul style="list-style-type: none"> <li>Stabilizes rent increases</li> <li>Units comply with code (habitability)</li> <li>Expands tenants' rights</li> <li>Attracts investment</li> <li>Method to address landlord/tenant disputes</li> <li>Fair return (and "banking")</li> <li>Facilitate rental housing reinvestment</li> </ul>	<ul style="list-style-type: none"> <li>Tracks controlled units</li> <li>Mechanism to identify, inform, and engage landlords and tenant</li> <li>Educates tenants of rights</li> <li>Provides for reasonable rent increases and stabilizes tenant population in rental units</li> <li>Units comply with code (habitability)</li> <li>Accessible and efficient method to address landlord/tenant disputes</li> </ul>
<b>Program Disadvantages</b>	<ul style="list-style-type: none"> <li>Will not address concerns regarding affordable housing or financial hardship resulting from higher than normal rent adjustments</li> <li>Have not identified data indicating impact on tenant displacement overall</li> </ul>	<ul style="list-style-type: none"> <li>Affordable housing gap persists for residents at or below Area Median Income (AMI)</li> <li>Neutral effect on vacancy rates in the short run</li> <li>Contemplates only short-term rent control (voluntary vacancy and landlord compliance with permanent decontrol removes unit from program and rent increase limits)</li> <li>Program designed to drive reinvestment</li> <li>Vacancy decontrol prohibits comprehensive application to all rental units (only units built before 1995 can be "controlled")</li> </ul>	<ul style="list-style-type: none"> <li>Affordable housing gap persists for residents at or below Area Median Income (AMI)</li> <li>Neutral effect on vacancy rates in the short run</li> <li>Threat of reduction in rental units in the long run through increased condominium conversion</li> <li>Vacancy decontrol prohibits comprehensive application to all rental units (only units built before 1995 can be "cost controlled")</li> </ul>

## Attachment B: Just-Cause Eviction Survey

**Attachment B: Just-Cause for Eviction Survey**

	<b>Berkeley</b>	<b>East Palo Alto</b>	<b>Los Angeles</b>	<b>Oakland</b>	<b>San Diego</b>	<b>San Francisco</b>	<b>Santa Monica</b>	<b>West Hollywood</b>
<b>Sources</b>	Rent Stabilization and Good Cause for Eviction Chapter 13.76 and Guide to Rent Control	Rent Stabilization Ordinance and Rent Stabilization Rules and Regulations	Chapter XV Rent Stabilization Ordinance (See website forms and public information)	Regulations for the Just Cause for Eviction Ordinance (Measure EE, Codified in the Oakland Municipal Code at 8.22.300, et.seq.)	Chapter 9: Building, Housing and Sign Regulations Article 8: Housing, Division 7: Tenants' Right to Know Regulations	Chapter 37 of the San Francisco Administrative Code the Residential Rent Stabilization and Arbitration Ordinance	Rent Control Charter Amendment Article XVIII and Rent Control Regulations Chapter 9	Title 17 Rent Stabilization and Guide: Rent Stabilization
<b>Eligible for Just-cause eviction</b>	All rental units	All single family and multiple family dwellings	All rental units built before October 1, 1978	Any rental units (pre-1980)	Any rental unit with tenancy of at least two years	All rental units built before June 13, 1979; newer buildings not covered based on original certificate of occupancy	All rental units	All rental units
<b>Rental Units Exempt</b>	Units in existence before December 31, 1979 and hotel/motel occupancy less than 14 consecutive days, cooperatives, hospitals, nursing and assisted living facilities and units rented to higher learning faculty	Hotel/motel, care facilities, resident owner non-profit housing, units exempt by state and federal law and units within a dwelling shared with the landlord	Single family, except where two or more units are located on the same lot (excludes duplexes and condominiums); hotel/motel, boarding and rooming houses with occupancy 30 days or less; non-profits; hospital, convent/monastery, extended care facilities; housing owned and operated by Los Angeles City Housing Authority; housing with a certificate of occupancy after October 1, 1978; luxury housing (rent thresholds on May 31,1978; substantial renovation (i.e., defined investment based on bedroom completed after September 1, 1980); affordable housing with regulatory agreement; cooperatives; mobile homes and recreational vehicle in a park	Hotels and motels; hospital, skilled nursing and health facilities; nonprofit substance abuse treatment; temporary homeless facilities; owner-occupied units with three or less units; owner-occupied units where owner and tenant share kitchen and bath; units in trust held on behalf of developmentally disabled; newly constructed units and first rented after October 1980 (the effective date of the Residential Rent, Relocation and Arbitration Ordinance)	Institutional facilities, governmental housing, transient hotel/motel, mobile homes and rooms rented (owner and tenant share kitchen and bath)	Hotel, motel and rooming houses occupied for 31 days or less; nonprofit cooperatives; hospital, convent, monastery, extended care and adult day health facility; some government owned and rental units constructed after June 13, 1979	Single family homes not used for residential rental purposes on July 1, 1984 and those that are occupied for two years by owner as principle residence after voluntary vacancy	Units occupied by owner or close relative as primary resident and nonprofit accommodations
<b>Legal Reasons to Evict</b>	<ul style="list-style-type: none"> <li>• Failure to pay rent</li> <li>• Violates terms of rental agreement</li> <li>• Willful damage to unit</li> <li>• Fixed term expires and tenant refuses to sign new lease</li> <li>• Disturbs peace</li> <li>• Repeated denial of entry</li> <li>• Landlord needs to bring unit into compliance with code</li> <li>• Permit to demolish</li> <li>• Owner with 50% or more ownership moves in</li> <li>• Failure to sign identical lease</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to pay rent and following notice from landlord</li> <li>• Tenant fails to cure a violation of the terms of tenancy following landlord notice</li> <li>• Tenant initiated nuisance with landlord notice</li> <li>• Refusal to agree to new lease substantially identical to current</li> <li>• Disorderly conduct that persists following notice</li> <li>• Continues denial of access to unit following notice</li> <li>• Refusal access for substantial habitability repairs (ten times the amount of monthly rent) unit consist with code</li> <li>• Landlord secures demolition permits to remove unit from rental market and is denied access</li> <li>• Landlord secures permits to remove unit from rental housing use under the Ellis Act</li> <li>• Owner move-in</li> <li>• Refusal to move under terms of temporary rental agreement</li> <li>• Failure to vacate under government order</li> <li>• Tenant no longer qualifies for tenancy with a government entity</li> <li>• Sub tenancy without Owner approval</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to pay rent</li> <li>• Violation of tenancy</li> <li>• Nuisance</li> <li>• Illegal use of rental unit</li> <li>• Refusal to execute new lease with consistent terms</li> <li>• Tenant at lease term is subtenant not approved by landlord</li> <li>• Owner, relative move-in or resident manager (where no alternate unit available)</li> <li>• Tenant interferes (fails to move temporarily or honor permanent relocation agreement) with rehabilitation and landlord has an approved Tenant Habitability Plan (THP)</li> <li>• Demolition of unit or permanently remove from rental housing use</li> <li>• Order to Vacate or Abate</li> <li>• HUD owns and operates and seeks to recover</li> <li>• Residential hotel converted or demolished with City approvals (Application of Clearance)</li> <li>• Convert to affordable housing with exemption by the Housing and Community Investment Department</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to pay rent</li> <li>• Violation of rental agreement</li> <li>• Substantial repairs/damage (3 months or less)</li> <li>• Disorderly conduct/destroying peace and quiet</li> <li>• Unlawful drugs or using unit for illegal purposes</li> <li>• Failure to provide access to unit</li> <li>• Owner or Owner's relative move-in</li> <li>• Owner previously occupied unit and has agreement with tenant to reoccupy as residence</li> <li>• Correct code violations</li> <li>• Refusal to renew lease</li> <li>• Remove unit from rental market (Ellis Act)</li> </ul>	<ul style="list-style-type: none"> <li>• Nonpayment of rent</li> <li>• Violates terms of tenancy (pattern and substantial)</li> <li>• Illegal use</li> <li>• Refusal to sign new lease with similar terms</li> <li>• Nuisance</li> <li>• Refusal to provide access</li> <li>• Correct violation</li> <li>• Withdrawal of residential rental structure from rental market</li> <li>• Owner or relative move-in</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to pay rent</li> <li>• Violation of the terms of tenancy</li> <li>• Nuisance (pattern and substantial, including eviction protection of domestic violence, sexual assault and stalking victims)</li> <li>• Illegal use of rental unit</li> <li>• Failure to sign a new lease</li> <li>• Refusal of access to unit</li> <li>• Tenant at the end of the term is subtenant not approved by landlord</li> <li>• Owner move-in</li> <li>• Sale of unit per City approved condominium conversion</li> <li>• Demolish or remove unit from rental housing use</li> <li>• Landlord secures permits to temporarily remove unit from housing use for capital improvement or rehabilitation</li> <li>• Substantial rehabilitation</li> <li>• Withdrawal of rental units within any detached physical structure</li> <li>• Demolish or remove unit from rental housing use</li> <li>• Lead remediation (temporary)</li> <li>• Good Samaritan Status (i.e., natural disaster) G1:G7</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to pay rent</li> <li>• Violates terms of rental agreement</li> <li>• Willful damage to unit - nuisance</li> <li>• Tenant uses unit for illegal purposes</li> <li>• Tenant refuses to sign new lease</li> <li>• Tenant holding lease at expiration not approved by landlord</li> <li>• Landlord needs to bring unit into compliance with code and denied access</li> <li>• Owner move-in (50% ownership, no available unit in other properties, etc.)</li> <li>• Permit to demolish</li> <li>• Landlord filed "going-out-of-business" documents</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to pay rent</li> <li>• Violates terms of rental agreement</li> <li>• Caregiver after death of primary tenant</li> <li>• Nuisance</li> <li>• Refusal to sign new lease</li> <li>• Refuses to provide access</li> <li>• Subtenant not approved by Landlord</li> <li>• Termination of Resident Manager or Employee</li> <li>• Pre-existing Tenant before becoming resident manager</li> <li>• Owners temporary absence (sabbatical, extended vacation) from principal residence with associated agreement</li> <li>• Owner or relative move-in</li> <li>• Correct violations</li> <li>• Foreclosure (30 day notice)</li> <li>• Withdrawal from rental market (120 day notice)</li> <li>• Transfer to a different unit</li> <li>• Inclusionary housing (tenant income exceeds maximum allowable)</li> <li>• Demolition of rental housing units for low- and Moderate-Income Housing</li> <li>• Renter's Insurance (if contained in lease)</li> </ul>
<b>Notice:</b>	Landlord must provide proper notice of termination (three, thirty, sixty or ninety-day notices to quit.	Landlord must provide a copy of the notice within five days after notice served to tenant to Rent Board. If Unlawful detainer served, copies must also be provided to the Rent Board within 5 calendar days.	Landlord must file form of intention to evict with the City if police reports available or City Attorney engaged. Landlord required to file form of intention to evict with the City when taking possession to occupy, demolish, remove from rental use, or convert to affordable housing	Landlord must file notice with Rent Adjustment Program within 10 days of service on the tenant.	Landlord must provide proper notice. Tenant may raise landlord's noncompliance with Tenant's Right to Know Regulation as an affirmative defense.	Landlord must disclose to prospective property purchaser the legal grounds to terminate tenancy. Copies of eviction notices and proof of tenant service must be filed with the Rent Board within ten days (see Ordinance for various time frames). Notice must also include the following information: tenant failed to respond, rental rate, eligibility for affordable housing, information provided in six languages. Rent Board reports of wrongful eviction. City contracts with legal aid service providers to assist with evictions to ensure law enforced.	Landlord must file a copy of the tenant's notice of termination of tenancy to the Rent Board within 3 days.	Landlord must provide a copy of unlawful detainers within 5 business days.



# 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.”<sup>1</sup> 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

---

<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

---

<sup>2</sup> Cal. Civil Code § 827(b)(2).

<sup>3</sup> Cal. Civil Code § 827(b)(3).

<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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

---

<sup>5</sup> Cal.Civil Code § 1946.1(b).

<sup>6</sup> 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*.<sup>7</sup> 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.<sup>8</sup> 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,

---

<sup>7</sup> Palo Alto Ordinance Code, § 9.68.030.

<sup>8</sup> 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).<sup>9</sup> 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.<sup>10</sup>

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;

---

<sup>9</sup> Palo Alto Municipal Code, § 9.72.010.

<sup>10</sup> 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.<sup>11</sup> Other jurisdictions require relocation assistance payments without reference to the income level of the affected tenants.<sup>12</sup>

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.<sup>13</sup>

### **a. Types of Rent Stabilization Ordinances**

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

---

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

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

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

<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

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

---

<sup>15</sup> *Id.*, ¶ 2:708, p. 2D-4.

<sup>16</sup> *Id.*, ¶ 2:710, p. 2D-5.

<sup>17</sup> *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).<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

## 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 1995<sup>21</sup>, there was no statutory provision limiting local rent stabilization ordinances in California.<sup>22</sup> Costa-Hawkins was the California Legislature’s first major effort to limit local controls over rents chargeable to residential tenants.<sup>23</sup> 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 . . . .”<sup>24</sup> 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.”<sup>25</sup>

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;<sup>26</sup>
2. Single-family homes and condominiums (units where title is held separately) are exempt from such ordinances;<sup>27</sup> and
3. Such ordinances cannot regulate the initial rate at which a dwelling unit is offered once the previous tenants have vacated the unit.<sup>28</sup> 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*

---

<sup>18</sup> *Id.*, ¶ 5:1, p. 5–1.

<sup>19</sup> *Id.*

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

<sup>21</sup> See Cal. Civ. Code § 1954.50 *et seq.*

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

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

<sup>24</sup> *Id.* at p. 6.

<sup>25</sup> *Id.* at p. 6.

<sup>26</sup> Cal. Civ. Code § 1954.52(a)(1).

<sup>27</sup> *Id.* at § 1954.52(a)(3)

<sup>28</sup> *Id.* at § 1954.53(a).



*Inc. v. City of Santa Monica* (2007) 41 Cal. 4<sup>th</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.”<sup>31</sup> At the same time, the amount of return should not defeat the purpose of rent stabilization, which is to prevent excessive rents.<sup>32</sup>

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.<sup>33</sup> 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.<sup>34</sup>

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.”<sup>35</sup> 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

---

<sup>29</sup> 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.

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

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

<sup>32</sup> *Ibid.*

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

<sup>34</sup> *Ibid.*

<sup>35</sup> See U.S.C.A. Const. Amend. 5, 14.

borne by the public as a whole.”<sup>36</sup>

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.<sup>37</sup> 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.”<sup>38</sup>

## **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.<sup>39</sup> 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.<sup>40</sup>

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.

---

<sup>36</sup> *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).

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

<sup>38</sup> 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.

<sup>39</sup> 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.

<sup>40</sup> 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.<sup>41</sup>

---

<sup>41</sup> 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.<sup>42</sup> 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.

---

<sup>42</sup> 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.<sup>43</sup>

### **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

---

<sup>43</sup> 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>
<b>Exempt Units</b>	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
<b>Evictions for Substantial Renovation</b>	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
<b>Special Eviction Notice Rules</b>	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
<b>Relocation Assistance</b>	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: <sup>1</sup>

PRO	CON
<ul style="list-style-type: none"><li>• 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.</li><li>• Protects tenants who have short-term (month-to-month) leases.</li><li>• Slows down rapid increases in rent.</li><li>• Stabilizes communities by slowing down evictions and decreasing turnover rates.</li></ul>	<ul style="list-style-type: none"><li>• 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.</li><li>• May impact neighborhoods by making it harder for landlords to evict problematic tenants, including those suspected of involvement in criminal activity.</li><li>• Impacts surrounding neighborhood by making it difficult for landlord to remove “bad tenants.”</li></ul>

---

<sup>1</sup> 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:

<b>PRO</b>	<b>CON</b>
<ul style="list-style-type: none"><li>• 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.</li><li>• 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.</li><li>• Requires landlords to internalize relocation costs as part of their “costs of doing business.”</li></ul>	<ul style="list-style-type: none"><li>• Amount of mandated compensation may be excessive relative to some tenants’ needs; landlords may not be able to afford.</li><li>• 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.</li><li>• May create a perceived windfall to well-off tenants if relocation assistance not subject to stringent income-specific criteria.</li><li>• 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.</li></ul>

**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"> <li>• Prevents landlords from imposing rent increases that cause displacement and accordingly, helps preserve income diverse, stable neighborhoods.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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</li> </ul>	<ul style="list-style-type: none"> <li>• Fundamentally unfair – why burden landlords for a broader societal problem?</li> <li>• Interferes with free market – landlord should be able to rent unit at amount that market bears.</li> <li>• May incentivize landlords to raise rents before any rent control ordinance takes effect in an attempt to evade impact of the regulation.</li> <li>• As a general matter, restricts rights of property owners as it limits what they may do with their property.</li> <li>• 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.</li> <li>• Reduces “urban vitality” by discouraging mobility; decreases vacancy</li> </ul>

<p>conditions, the landlord may threaten to increase the rent.</p> <ul style="list-style-type: none"><li>• 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.</li><li>• 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.</li><li>• 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.</li><li>• 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).</li></ul>	<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"><li>• 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.</li><li>• Incentivizes landlords to discriminate against prospective tenants likely to stay for a long time, like retiree or couples with children.</li><li>• 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).</li><li>• Encourages some owners to take their units off the market and sell properties, rather than rent.</li><li>• Depending on how they are crafted, rent control ordinances may be extremely burdensome and expensive to administer.</li></ul>
---	---

**RENT STABILIZATION DECISION MATRIX**

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

## RENT STABILIZATION DECISION MATRIX





# CITY OF PALO ALTO CITY COUNCIL EXCERPT ACTION MINUTES

Special Meeting  
October 16, 2017

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:12 P.M.

Present: DuBois, Filseth, Fine, Holman, Kniss, Kou, Scharff, Tanaka, Wolbach

Absent:

## Action Items

13. Colleagues' Memo From Council Members DuBois, Holman, and Kou Regarding Strengthening Renter Protection for Palo Alto Residents.

**MOTION:** Council Member DuBois moved, seconded by Council Member Holman to refer this proposal to Staff to bring back to Council for one or more discussions of an Ordinance to increase renter protections that considers the following:

- A. An annual percentage cap on rent increases for buildings of 5 or more housing units built before February 1, 1995 (to remove any disincentive for new construction); and
- B. Measures to protect residents against termination without just cause while protecting the fair rights of property owners; and
- C. Other updates to our existing renter protections as needed to continue a healthy community; and
- D. Include the Human Relations Commission as part of the review process.

**MOTION FAILED:** 3-6 DuBois, Holman, Kou yes

Adjournment: The meeting was adjourned at 12:27 P.M.