Limits on Local Rent Control

A General Overview of California's Costa-Hawkins Rental Housing Act

In 1995, the California Legislature passed and the Governor signed AB 1164 – a law that is known as the Costa-Hawkins Rental Housing Act. This law cleared the way for owners in local rent control communities to establish initial rental rates when there is turnover of a dwelling unit – a policy known as vacancy decontrol.

While cities and counties continue to maintain the ability to implement local rent control laws, they must follow the parameters established in the Costa-Hawkins Rental Housing Act. At the heart of Costa-Hawkins are a number of basic rules: (1) housing constructed after 1995 must be exempt from local rent controls; (2) housing that was already exempt as "new construction" from a local rent control law in place before February 1, 1995, must remain exempt (i.e., pre-existing new construction exemptions cannot move the cutoff date forward); (3) single family homes and other units like condominiums that are separate from the title to any other dwelling units must be exempt from local rent controls; and (4) local ordinances cannot prohibit rental property owners from establishing their own rental rates when re-renting a unit following a vacancy. The intent of this law was to provide a "moderate" approach to the otherwise "extreme" vacancy control ordinances that were in place during the 1980's in Berkeley, Santa Monica, Cotati, East Palo Alto, and West Hollywood.

The outline below is intended to provide a general overview of the provisions of the Costa-Hawkins Rental Housing Act. For specific language, see the California Civil Code, beginning at Section 1954.50.

In 2019, the Legislature enacted AB 1482, the Tenant Protection Act. This law took effect on January 1, 2020 and imposes annual rent caps (of 5% plus inflation as measured by the Consumer Price Index) and just cause eviction requirements on many residential rental properties in California that were not already regulated by a local rent control or just cause ordinance. AB 1482's rent cap provisions do not apply to housing that is subject to a local rent control ordinance enacted under Costa-Hawkins that restricts annual increases in the rental rent to an amount less than AB 1482's cap. Note that some types of rental units that may be exempt from local rent control as a result of Costa-Hawkins may still be subject to AB 1482's rent caps, such as rental units built after 1995 but not within the previous 15 years. For more information on AB 1482 and its interaction with local rent control ordinances, see www.caanet.org/ab1482/.

I
Local Rent Control Ordinances

For a detailed list of the cities and counties that currently have rent control ordinances in place, along with additional information regarding those city and county rent control ordinances, please see CAA Industry Insight: Local Rent Control Chart.

II
Units Exempt from Local Rent Control – Civil Code 1954.52

No local law can interfere with an owner's ability to establish the rental rate for his/her property when:

1. **New Construction** – The property has a certificate of occupancy issued after February 1, 1995 (Civil Code 1954.52(a)(1);

2. **Exempt Under Pre-Existing New Construction Exception** – The property was already exempt from a local residential rent control ordinance on or before February 1, 1995, pursuant to a local exemption for newly constructed units. (Civil Code 1954.52(a)(2); and

3. **Single Family Homes & Condominiums** – The property is a single-family home or is separate from the title of any other dwelling unit, such as condominium units. (Several exceptions do apply in this case[1]) (Civil Code Section 1954.52(a)(3)(A)).

III
Exceptions to Vacancy Decontrol - Civil Code Section 1954.53

Local laws cannot prohibit an owner from establishing the initial rental rate for a dwelling or unit, except in the following conditions:

1. **Owner Terminates the Tenancy with a 30-Day or 60-Day Notice** - The previous tenancy was terminated by the owner with a 30-day or 60-day notice to terminate the tenancy (pursuant to Civil Code Section 1946 or 1946.1) or has been terminated upon a change in the terms of the tenancy (noticed pursuant to Civil Code Section 827), except a change permitted by law in the amount of rent or fees (Civil Code Section 1954.53(a)(1)). In the case of a dwelling unit subject to "just cause" eviction rules, this typically means that the termination of tenancy was for a "no fault" reason.

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[1] 1 This exception does not apply in the following cases:

(i) A dwelling or unit where the preceding tenancy has been terminated by the owner with a 30-day or 60-day notice to terminate the tenancy (pursuant to Civil Code Section 1946) or has been terminated upon a change in the terms of the tenancy, noticed pursuant to Civil Code Section 827. (Civil Code Section 1954.52 (a)(3)(B)(i)).

(ii) A condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value. The initial rent amount of such a unit for purposes of this law is the lawful rent in effect on May 7, 2001, unless the rental amount is governed by a different provision of this chapter. However, if a condominium dwelling or unit has (1) a certificate of occupancy issued after February 1, 1995, or (2) it has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units, or (3) if all the dwellings or units except one have been sold separately by the subdivider to a bona fide purchaser for value, and the subdivider has occupied that remaining unsold condominium dwelling or unit as his or her principal residence for at least one year after the subdivision occurred, then the unsold unit is exempt from rent control. (Civil Code Section 1954.52 (a)(3)(B)(ii)).

[2] The rental rate of a dwelling or unit whose initial rental rate is controlled by ordinance or charter provision in effect on January 1, 1995, shall, until January 1, 1999, be established in accordance with this subdivision. Where the previous tenant has voluntarily vacated, abandoned, or been evicted for failure to pay rent pursuant to paragraph (2) of Section 1161 of Code of Civil Procedure, an owner of residential real property may, no more than twice, establish the initial rental rate for a dwelling or unit in an amount that is no greater than 15 percent more than the rental rate in effect for the immediately preceding tenancy or in an amount that is 70 percent of the prevailing market rent for comparable units, whichever amount is greater. The initial rental rate established pursuant to this subdivision may not be deemed to substitute for or replace increases in rental rates otherwise authorized pursuant to law. (Civil Code Section 1954.53(c)).

2. **Owner Fails to Renew Government Contract** - The owner terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant (Civil Code Section 1954.53(a)(1)):
   a. **3-Year Rent Freeze** - An owner cannot set an initial rent for 3 years following the date of the termination or nonrenewal of the contract or agreement. For any new tenancy established during the three-year period, the rental rate for a new tenancy established in that vacated dwelling or unit must be at the same rate as the rent under the terminated or nonrenewed contract or recorded agreement with a governmental agency that provided for a rent limitation to a qualified tenant, plus any increases authorized after the termination or cancellation of the contract or recorded agreement (Civil Code Section 1954.53(a)(1)(A)).

   b. **Exemption for 12-Month Contracts** - These provisions do not apply to any new tenancy of 12 months or more duration established after January 1, 2000, pursuant to the owner's contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant unless the prior vacancy in that dwelling or unit was pursuant to a nonrenewed or canceled contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant (Civil Code Section 1954.53(a)(1)(B)).

   c. **Government Contracts** - The owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code (Civil Code Section 1954.52(b) and Civil Code Section 1954.53(a)(2)).

   d. **Substandard Housing** - The dwelling or unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations, as defined by Section 17920.3 of the Health and Safety Code, excluding any violation caused by a disaster; if the citation was issued at least 60 days prior to the date of the vacancy; and the cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time. However, the 60-day time period may be extended by the appropriate governmental agency that issued the citation (Civil Code Section 1954.53(f)).

3. **Unit Change to Accommodate Mobility Disability –** Effective January 1, 2024, an amendment to Costa-Hawkins enacted by AB 1620 allows local governments to adopt a requirement for landlords subject to the local rent control ordinance to permit a tenant who has a permanent physical disability related to mobility to move to an available comparable or smaller unit located on an accessible floor of the property while maintaining their lease at the same rental rate and terms, provided all of the below-listed conditions are met (Civil Code Section 1954.53(a)(4)).
   a. The tenant has a physical disability, as defined in Government Code Section 12926(m), and that disability is related to mobility.
   b. The tenant is not subject to eviction for nonpayment.
   c. The tenant provides the landlord a written request to move into an available comparable or smaller unit located on an accessible floor of the property prior to that unit becoming available. A "comparable or smaller unit" means a dwelling or unit that has the same or less than the number of bedrooms and bathrooms, square footage, and parking spaces as the unit being vacated.
   d. The owner, or their spouse, domestic partner, children, grandchildren, parents, or grandparents, do <u>not</u> intend to occupy the available comparable or smaller unit.
   e. The move is determined to be necessary to accommodate the tenant's mobility-related physical disability.
   f. There is no operational elevator that serves the floor of the tenant's current dwelling or unit.
   g. The new dwelling or unit is in the same building or on the same parcel with at least four other units and shares the same owner.

h. The new dwelling or unit does not require renovation to comply with applicable requirements of the Health and Safety Code.
i. The applicable rent control board or authority determines that the owner will continue to receive a fair rate of return or offers an administrative procedure ensuring a fair rate of return for the new unit.
j. All of the tenants on the lease agree to move to the new unit.

If the tenant is permitted to move to a new unit pursuant to this exception, the law provides any security deposit paid by the tenant in connection with the unit being vacated shall be handled in accordance with Civil Code Section 1950.5. The law does not expressly state whether the landlord can collect a new security deposit for the unit being moved into.

It is important to keep in mind that, while this exception specifies one set of circumstances in which a landlord *must* allow a tenant to move to a different unit without resetting the rent, the fact that a particular situation may not qualify under this exception does not necessarily mean that the landlord is not required grant the requested accommodation (or a different accommodation). This is because landlords have an independent obligation under state and federal fair housing laws to provide reasonable accommodations to tenants with disabilities, which might include allowing a tenant to change housing units and retain the existing lease at the same rental rate and terms (even if they don't qualify for the specific exception specified above). For example, at least one case has found such a request to be within the scope of what might be considered a reasonable accommodation under the Federal Fair Housing Act. See *Bentley v. Peace and Quiet Realty 2 LLC* (E.D.N.Y. 2005) 367 F.Supp.2d 341. The amendment to Costa-Hawkins that created the above-described expressly states that it is *in addition to* those obligations landlords have under any other fair housing laws. For additional information regarding reasonable accommodations in general, see CAA Industry Insight – Reasonable Accommodations and Modifications.

IV
Other Provisions

1. **Ability of Local Community to Enforce Eviction Rules** – The statute affirms a public entity's authority to monitor the basis for eviction (Civil Code Section 1954.52(c) and 1954.53(e)).

2. **Sublease Provisions** – The following sublease provisions are included in the law:

   A. This law does not preclude the express establishment in a lease or rental agreement of the rental rates to be charged in the event the rental unit is sublet, and nothing in this law shall be construed to impair the obligations of contracts entered into prior to January 1, 1996. (Civil Code Section 1954.53(d)(1)).

   B. Where the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this statute to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996. (Civil Code Section 1954.53(d)(2)).

   C. This section does not enlarge or diminish an owner's right to withhold consent to a sublease or assignment (Civil Code Section 1954.53(d)(3)).

   D. Acceptance of rent by the owner does not operate as a waiver or otherwise prevent enforcement of a covenant that prohibits a sublease or assignment unless the owner has received written notice from the tenant that is a party to the agreement and thereafter accepts rent. (Civil Code Section 1954.53(d)(4)).

E. The owner waives his/her rights to establish the initial rental rate if he/she has received written notice from the tenant that is a party to the agreement and the owner thereafter accepts rent (Civil Code Section 1954.53(d)(4)).

3. **Contractual Relationships** - This statute shall not be interpreted to impair the obligations of contracts entered into prior to January 1, 1996 (Civil Code Section 1954.53(d)(1)).

4. **Partial Changes in Occupancy** – An owner cannot establish a new rent when there is a partial change in occupancy by one or more of the occupants of the premises, and one of the occupants remains in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee, who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit (Civil Code Section 1954.53(d)(3)).

5. **Protection of Tenants Upon Renewal of Lease** – The owner cannot establish a new rent when there is a renewal of the initial hiring by the same tenant, lessee, authorized subtenant, or authorized sublessee. (Civil Code Section 1954.53 (b).

6. **90-Days' Notice When Owner Terminates a Government Contract** - When an owner terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for rent limitations to a qualified tenant, the tenant or tenants who were the beneficiaries of the contract shall be given at least 90 days' written notice of the effective date of the termination and shall not be obligated to pay more than their portion of the rent, as calculated under the contract or recorded agreement, for 90 days following receipt of the termination notice (Civil Code Section 1954.535).

V
Definitions

The following definitions apply to this law:

"Comparable units" means rental units that have approximately the same living space, have the same number of bedrooms, are located in the same or similar neighborhoods, and feature the same, similar, or equal amenities and housing services.

"Owner" includes any person, acting as principal or through an agent, having the right to offer residential real property for rent, and includes a predecessor in interest to the owner, except that this term does not include the owner or operator of a mobilehome park, or the owner of a mobilehome or his or her agent.

"Prevailing market rent" means the rental rate that would be authorized pursuant to 42 U.S.C.A. 1437 (f), as calculated by the United States Department of Housing and Urban Development pursuant to Part 888 of Title 24 of the Code of Federal Regulations.

"Public entity" has the same meaning as set forth in Section 811.2 of the Government Code.

"Residential real property" includes any dwelling or unit that is intended for human habitation.

"Tenancy" includes the lawful occupation of property and includes a lease or sublease.

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VI
Legal Interpretations

Since the Costa-Hawkins Rental Housing Act ("Costa-Hawkins") passed in 1995, several legal challenges have been brought against local rent control and inclusionary housing ordinances on the grounds that such ordinances violated state law.

In *Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal.App.4th 488 the court invalidated a provision of the San Francisco rent control ordinance which required landlords who performed an "owner move-in" eviction to offer the displaced tenant another unit owned by the landlord, if available, *at the same rental rate paid by the tenant for the unit from which the tenant was being evicted* (with adjustments for condition, size, and other amenities, if they differed). The city claimed that the provision did not violate Costa-Hawkins because the provision regulated evictions, rather than rents. The court rejected that argument, reasoning that the limit on the amount of rent the landlord could charge for the replacement unit directly contradicted Costa-Hawkins' mandate that landlords may set the initial rental rate for a unit, unless a specified exception applies. However, in *Mak v. City of Berkeley Rent Stabilization Board* (2015) 240 Cal.App.4th 60 the court upheld a provision in the Berkeley rent control ordinance which created a presumption that, if a landlord serves an "owner move-in" notice of termination of tenancy and subsequently rescinds the notice but the tenant nevertheless vacates within a year, the tenancy is presumed to have been terminated by the landlord as a result of the notice and the unit remains subject to prior rent limit.

Palmer/Sixth Street Properties, LP v. City of Los Angeles (2009) 175 Cal.App.4th 1396 was a challenge to an inclusionary housing ordinance enacted by the City of Los Angeles which required developers of residential and mixed-use properties to build a certain number of affordable housing units in each new development, or alternatively, the developer could pay an "in lieu" fee to the city. A developer of a mixed-use project challenged the ordinance after the city refused to grant approval to the developer's project unless the developer agreed to either build the affordable housing units or pay the fee. The developer claimed that the requirement violated Costa-Hawkins' mandate that residential landlords could set the initial rental rate for a rental unit, unless a specified exception applied. Costa Hawkins allows for the initial rental rate for newly constructed units to be regulated if the owner/developer agreed to build affordable units in exchange for a direct financial contribution or another form of assistance, such as a density bonus, from the local government. The developer in *Palmer* had not agreed to any such assistance, and therefore the requirement that the developer either build a certain number of affordable units, or pay a fee, was entirely involuntary. The court agreed with the developer, finding that ordinance was "hostile" to the right afforded to landlords under Costa-Hawkins to set the initial rental rate, and was, therefore, preempted. In contrast to *Palmer*, the California Supreme Court upheld an inclusionary housing ordinance in *California Building Industry Association v. City of San Jose* (2015) 61 Cal.4th 435. The ordinance in *California Building Industry Association*, however, was adopted after *Palmer* had been decided, and expressly provided that it applied only to projects developed *for-sale* (not for rent) unless or until *Palmer* is overturned either by a future case or by the Legislature.

In *Mosser Companies v. San Francisco Rent Stabilization and Arbitration Board* (2015) 233 Cal.App.4th 505, the court broadly interpreted the term "occupant" to include any person, including children, residing in the unit with the landlord's consent. The case revolved around a provision of Costa-Hawkins, which allows landlords to raise the rent to market when "the original occupant or occupants of the dwelling or unit… no longer permanently reside there…." In *Mosser*, the plaintiff had moved into the unit with his parents when he was 13 years old. Nine years later, the parents vacated the apartment, but the son (by then an adult) continued to live in the apartment. The landlord sought to raise the rent to nearly twice what it was at the time the parents vacated. The plaintiff filed a complaint with the San Francisco rent board, claiming that he was an "original occupant" and thus, the provision of Costa-Hawkins allowing the rent to be raised after all original occupants have vacated was not applicable. The rent board agreed with

the plaintiff and denied the landlord's rent increase. The court affirmed the rent board's ruling, finding that even though the plaintiff was not an original *tenant* (due to his status as minor), the provision in Costa-Hawkins spoke of "occupants," not tenants, and that the plaintiff was an original *occupant*.

NCR Properties, LLC v. City of Berkeley (2023) 89 Cal.App.5th 39, was a challenge to the City of Berkeley's application of its local rent control ordinance to several housing units that received new certificates of occupancy following substantial renovation. The property owner contended that the properties were exempt from the city's rent control law under Costa-Hawkins' "new construction" exemption because the properties were issued new certificates of occupancy following their rehabilitation. The City argued that this exemption should be interpreted to only apply to entirely new construction, not units that were substantially renovated and received new certificates of occupancy post February 1, 1995. The court agreed with the City and held that the operative certificate of occupancy for exemption purposes is the certificate of occupancy issued prior to the residential use of the unit. In other words, in most circumstances the first certificate of occupancy should be used to determine whether a unit is exempt from local rent control pursuant to Costa Hawkins' new construction exemption. See also *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039.

In *San Francisco Apartment Association v. City and County of San Francisco* (2022) 74 Cal.App.5th 288, review denied (May 11, 2022), the court held that Costa-Hawkins' provision allowing local governments to "monitor the basis for eviction" authorized local governments to implement rent restrictions on units that are exempt from rent control under Costa-Hawkins when a pretextual rent increase is issued as a means of circumventing just cause eviction requirements.