



# RENT CONTROL

BY MELANIE WOLFE '20

PHOTO CREDIT: *Wikimedia/Bigtimepeace*

On the ballot in 2018, Proposition 10 offered Californians the possibility to create more flexible rent control regulations on a city-by-city basis, a possibility they rejected with 59% of the votes, a margin of over two million votes. Prop 10 would have expanded local government authority to enact rent control. Local governments are currently constrained by the Costa-Hawkins Rental Housing Act, passed in 1995, which places two main limits on local rent control laws. First, it exempts certain types of housing from rent control. This includes single family dwellings, condominiums, and newly constructed apartments. Second, it eliminates vacancy control, a policy that limits the amount that a landlord can increase rent between tenants. Fifteen cities in the state have rent control policies in place, including some of California's largest like Los Angeles and San Francisco. Palm Springs is the only city in the Inland Empire with rent control for apartments. As reported by the *Desert Sun*, rent control's prominence in Palm Springs has rapidly decreased as older, rent-controlled

buildings have been replaced by newer structures. While rent control once applied to 1,300 mobile units and 4,300 apartments across Palm Springs, as of August 2018, only 20 apartments and 670 mobile homes still face rent control from the city.

Rent control has a long and tangled history in California. Although the 1995 Costa-Hawkins Act is perhaps the best-known effort at reforming rent control in the state, a Southern California Public Radio timeline of rent stabilization in Southern California points two decades earlier to the California Tenant Law of 1978. This piece of legislation, passed by the Los Angeles City Council, prohibited rent increases on residential properties within a six-month period, though the ordinance itself was only given a one-year term before it was set to expire in 1979. In the wake of the Los Angeles experiment with rent stabilization, not only did the city decide to adopt a rent stabilization order (RSO), but within two years Beverly Hills, Santa Monica, Thousand Oaks, and Palm Springs

had joined it to similarly combat affordable housing shortages in Southern California. Each city initially tailored its RSO differently to address concerns of rapidly rising rents, low vacancy rates, and apartment shortages. By 1985 there was statewide support for the Ellis Act to scale back certain efforts at rent stabilization. The Ellis Act allows landlords to evict tenants in cases where the landlord will convert the entire property away from rental units. Even twenty years after the implementation of the Ellis Act, the success of its enforcement has been questioned by organizations like Tenants Together, California's Statewide Organization for Renter's Rights. In 2009, Tenants Together published a press release suggesting that the recent Ellis Task Force had discovered a major failure of enforcement in that 59 'Ellised' properties — comprising 245 units — had not been demolished or converted in line with the act's mandate. Moreover, approximately 42 of these were occupied without a required re-occupancy permit, which explicitly violates the reason to allow landlords to apply the Ellis Act to remove renters.

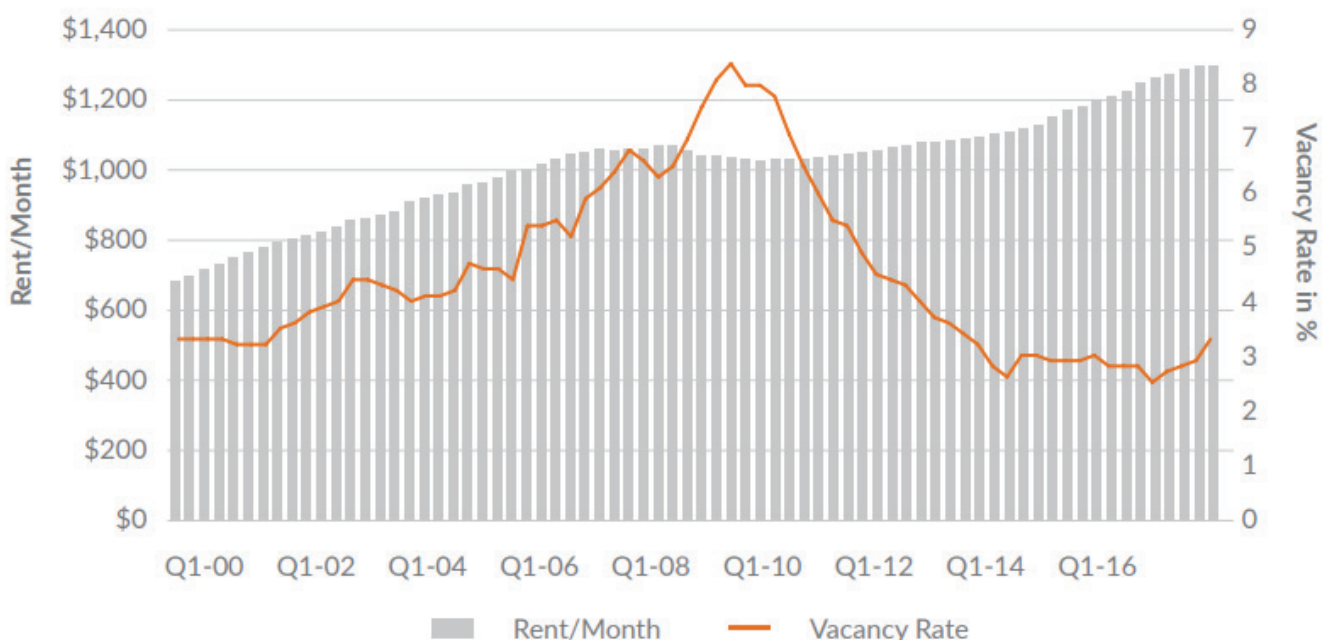
Apart from the complications introduced by the Ellis Act, after twenty years of rent stabilization legislation stemming from city councils and their

local ordinances, rent control became an issue of state policy with the passage of the Costa-Hawkins Rental Act of 1995. Costa-Hawkins limits the types of rent controls that cities can impose. The bill's primary limitations on rent control mandate that landlords reserve the right to raise rents to market-rate upon turnover of the property between tenants, that cities cannot impose rent control policies to regulate rents on properties constructed after February 1995, and finally that single-family homes and condos must be excluded from all rent control policies. The first provision addresses a specific type of rent control referred to as vacancy control, which maintained prohibitions on raising rents even between tenants. Costa-Hawkins does not impose specific limits on the extent of rent increases allowed in cities that do wish to regulate rents for eligible pre-1995 properties, though some cities have sought to impart these limits themselves.

As rent control currently stands in Los Angeles, the city's Rent Stabilization Ordinance regulates rental increases for buildings constructed before October 1978 in accordance with Costa-Hawkins. This applies to 631,000 units in 118,000 properties across the city.

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## INLAND EMPIRE RENTAL MARKET



Source: Robert Kleinhenz & Christopher Thornberg, Housing in the Inland Empire: Where it's Been and Where it's Going, May 2018

## CALIFORNIA CITIES WITH RENT CONTROL

| Municipality                      | Restriction   |
|-----------------------------------|---|
| Alameda                           | Only one increase is allowed every 12 months. Non-binding review available if increase is 5% or less. Landlord seeking more than 5% must file a formal petition with the Rent Review Advisory Committee for binding review.   |
| Berkeley                          | 65% of the regional CPI, once per year. Landlord or tenant may petition for exception.  |
| Beverly Hills                     | Landlord may increase rent once every 12 months, limited to 3% or the regional CPI, whichever is higher.  |
| City of Commerce                  | May not exceed 3% per 12 month period. Ordinance will expire either March 20, 2019 or when permanent rent control is enacted.   |
| East Palo Alto                    | 80% of the percentage increase in the regional CPI. Overall increase may not exceed 10% in any 12-month period.   |
| Gardena                           | Increases exceeding 5% are subject to mediation and binding arbitration.  |
| Hayward                           | 5% per year absent exception. Landlords may “bank” increases, but aggregate rent increases cannot exceed 10% in any year.   |
| Los Angeles                       | Only one increase allowed every 12 months based upon the regional CPI. Effective July 1, 2017, the annual allowable increase is 3%.   |
| Unincorporated Los Angeles County | Effective for six months beginning December 20, 2018 unless extended, or replaced with a permanent ordinance. Temporary 3% annual limit on rent retroactive to base rents on Sept. 11, 2018. Only one rent increase allowed annually. Landlords may petition for variance.                                    |
| Los Gatos                         | Subject to mediation and arbitration depending on unit size. Must be “fair and reasonable,” generally not exceeding 5% of existing rent or 70% of the regional CPI, whichever is greater (plus improvements and fees), unless the arbitrator determines that other factors make a larger increase reasonable. |



## CALIFORNIA CITIES WITH RENT CONTROL

| Municipality   | Restriction  |
|----------------|--|
| Mountain View  | Rents may be raised starting September 1st each year by board-determined amount that is no less than 2%, nor more than 5%, of the existing rent. Landlords may “bank” rent increases.  |
| Oakland        | Only one increase annually based upon the regional CPI or prior “banked” increases. Owners must petition Rent Adjustment Program (RAP) for increases exceeding CPI.  |
| Palm Springs   | Only one increase annually, limited to 75% of the increase in the regional CPI. Rent control is permanently removed after tenant voluntarily vacates or is evicted for cause. As a result, few properties remain subject to rent control.  |
| Richmond       | Rents may be raised starting September 1 each year by an amount equal to the regional CPI. Landlords and tenants may petition for upward and downward departures.  |
| San Francisco  | Yearly rent increases are limited to 60% of the regional CPI.  |
| San Jose       | Annual increase generally may not exceed 5%. Landlord must petition for higher increase.   |
| Santa Monica   | The Rent Control Board determines each year’s increase (“General Adjustment” or GA). The Maximum Allowable Rent (or MAR) for any unit is its base rent plus the increase allowed per the annual GA. A tenancy must be in place for at least one year before a GA is allowed. A GA may then be implemented the following September 1st or anytime thereafter. |
| Thousand Oaks  | Very limited—for tenants in the same unit since 1987.  |
| West Hollywood | 75% of the increase in the regional CPI during the preceding 12 months.  |

SOURCE: Chris Barta, J.D., California Rent Control Law, | <https://www.nolo.com/legal-encyclopedia/california-rent-control-law.html>

According to the Los Angeles Housing + Community Investment department, the RSO establishes the extent of rent increases permitted, the legal reasons to call for an eviction, and the types of evictions that require landlords to offer tenant relocation assistance. Typical offenses such as failure to pay rent or causing repeated disturbances at a property still allow landlords to evict their tenants without assistance, but in cases of conversion to affordable housing, property demolition or removal from the rental market, or reclamation of the rental unit by a property owner intending to move back into the unit, the tenant is considered not at-fault and is entitled to monetary relocation assistance from the landlord under the RSO. A January 2019 update by the L.A. Housing + Community Investment Department outlines the most recent allowable rates in line with the RSO, setting the permissible increase at 3% for the coming year and 4% for the subsequent year. Relocation fees, when applicable, range from \$7,900 to \$20,450 depending on the status of the landlord and tenant, with ‘qualified’ tenants (senior citizens, disabled individuals, and tenants with a minor dependent child) and long-term tenants receiving larger amounts, and “Mom & Pop” properties (owned by individuals with fewer than four residential units in L.A.) paying out slightly less in relocation fees.

Costa-Hawkins has also been criticized on the grounds that it may inhibit local inclusionary zoning programs. Exclusionary zoning is employed to shape the development of neighborhoods. To do so, city governments and zoning boards can require precise housing specifications that are costly to uphold, limit the number of multi-family properties approved for construction in favor of single-family homes, and establish a large minimum lot size. All of these examples can make neighborhoods more amenable toward wealthier families that tend to be whiter, while minority groups and marginalized populations such as the elderly and disabled may find it difficult to overcome the economic barriers to entry into an “overzealously” zoned neighborhood. On the other hand, inclusionary zoning seeks to accomplish just the opposite, compelling developers to incorporate affordable options into any new project. In a 2001 California Law Review article, Nadia I. El Mallakh suggests that there is indeed a relationship between Costa Hawkins and limitations on inclusionary

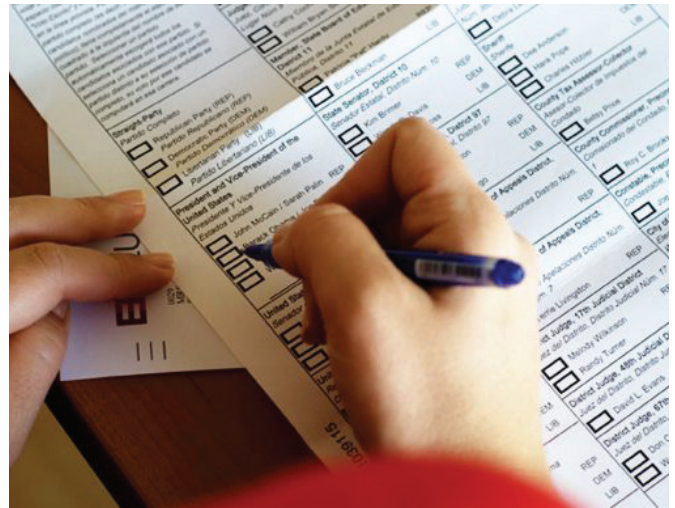


PHOTO CREDIT: *Wikimedia Commons*

zoning, as the act imposes vacancy decontrol.

Proposition 10 sought to lift the Costa-Hawkins restrictions, allowing cities across California the discretion to set the terms of their own rent control, even if that involves vacancy control. State Assemblyman Richard Bloom, D-Santa Monica, introduced an earlier bill in February of 2017, but after receiving significant pushback from Sacramento’s real estate interests, he shelved the proposal. Roughly a year later, the support of individuals and organizations aligned with tenants’ rights brought about a similar proposal via the Prop 10 ballot initiative. Supporters argued that cities should simply have greater power in setting their own rent control policies tailored to their unique history of development, zoning, and housing crises, or lack thereof. After all, Costa-Hawkins neither requires nor forbids rent control in its entirety, and proponents of the repeal via Prop 10 assured doubtful Californians that no changes to rent control would actually occur until cities began reconsidering and passing new ordinances through the local legislative process.

On the other side of the debate are landlords and other advocates aligned with real estate interests. They argue that Costa-Hawkins is needed to protect landlords, who would not be able to sustain livelihoods based on renting properties if they cannot keep up with market values. They argue that not only do aggressive rent control policies threaten their own economic stability, but they also threaten the state’s broader real estate market by discouraging investment

and development of land. If potential developers are deterred from pursuing new construction projects, California's housing shortage will only become more dire. Economist Walter Block writes that rent control reduces that quantity and quality of housing available. It diverts new investment from rental housing toward more lucrative projects.

A group of Stanford researchers published a paper last year showing that the extension of rent control to smaller buildings in San Francisco in 1994 resulted in fewer properties on the rental market and a decline in the number of residents living in rent controlled buildings. Rent control actually shrank the overall supply of rental housing. The authors, Rebecca Diamond, Timothy McQuade and Franklin Qian, studied landlords and tenants in buildings that came under rent control and compared them to their counterparts in similar buildings that were not under rent control. They found that rent control policies benefited the families who were in units when the policy went into effect, but worsened the affordability crisis in the long term. The researchers found that owners of rent controlled properties were 10 percent more likely to convert them to condos or renovate them and thus make the properties exempt from rent control. Properties were also freed from rent control restrictions if the owners moved in themselves. Occupying their own buildings also released the properties from rent control restrictions. As a result, there was a 15 percent decline in the number of tenants in rent controlled buildings and a 25 percent decline in those living in rent controlled units. Rent control dramatically limited the supply of rental housing. Moreover, the effects spread across San Francisco, with an overall decrease of rental housing of 6 percent and a corresponding increase in rent of 5.1 percent in the time period studied. The study concluded that rent control policies likely fueled the gentrification of San Francisco and contributed to a higher level of income inequality in the city overall.

Tenants' groups such as LA Tenants unions, ACCE Action and Eviction Defense Network, and the AIDS Healthcare Foundation (AHF) fought hard for Prop 10 to expand rent control in cities like Los Angeles, where existing policies could theoretically be expanded to cover more recent construction and protect tenants

who need to move between properties. Writing in the *Los Angeles Times*, economists Donald Wittman and Jesse Cunha point out that rent control pits tenants against each other by creating a dynamic that severely divides the affordable from the non-affordable housing. So long as the "fair return" remains below the market return for rental properties in the housing market, landlords will tend to prioritize short-term tenants that mean that they can raise their rent more frequently, and try to keep their rents competitive compared to other landlords across the city. This dynamic makes certain renters—Wittman and Cunha point to the elderly and disabled as common victims—inherently less appealing to landlords, who realize that they may be making a long-term commitment to maintain a rental rate and potentially pay higher relocation fees if they decide to force the tenant out. Moreover, Wittman and Cunha speak to the burden that one city's rent control policies can place on its neighbors, given the inevitably rent-hike that befalls neighboring cities. When rent control regulations have been in place long enough to limit the housing stock in one city, potential renters with no physical options look to nearby towns instead, pushing those towns even further into housing crisis. Ultimately, Wittman and Cunha suggested that because Prop 10 does not even guarantee that the neediest of Californians end up with access to rent-controlled properties, concerned citizens were better off supporting other propositions on the ballot—1 and 2—that do orient housing resources toward the state's most vulnerable.

In line with Wittman and Cunha's position, Prop 10 did ultimately fail, but not before \$104 million was spent in campaigning for and against the ballot initiative. As the most expensive initiative in California's history, Prop 10 garnered serious news coverage, activist engagement, and public debate over California's wider housing crisis. ♦