



RENT CONTROLS

A White Paper Report

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Legal Research Center, Inc.
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Rent Control is an active topic in several state and local governments, and new developments occur frequently. The research conducted for this White Paper was originally completed in the fall of 2016; thus, references to “pending” or “proposed” actions, as well as the overall content of this paper, are representative of that timeframe.

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PREFACE

Housing prices in markets with strong economic growth are skyrocketing. In many cities, lower-income families are effectively priced out of the housing market. In some areas, even middle-income families find themselves stretched to provide adequate housing for their families.

Numerous cities in the four states that permit local rent control and the District of Columbia have attempted to solve their high-rent crises by adopting some form of rent regulation. In some cases, the programs date back to World War II. Most tenant advocate groups and tenants lucky enough to locate rent-regulated housing praise the programs as lifesavers, citing protection from excessive rent increases, reduced tenant displacement, and reduced vacancies. But many analysts criticize any form of rent regulation, noting both negative economic effects on regulated housing markets and detrimental social effects in rent-regulated communities. Most economists strongly disagree that rent regulation creates a fairer housing market, arguing instead that it

reduces the quantity and quality of available housing, discourages new construction, encourages eviction without just cause, increases rent for unprotected tenants, and creates other challenges for both landlords and tenants.

Despite economists' nearly universal criticism of rent controls, localities in states that permit local rent regulation continue to look to rent control and rent regulation as a possible solution to extreme market conditions. Although the number of strictly rent-controlled units is slowly declining and the more extreme rent-control laws are giving way to more flexible rent-stabilization ordinances, the topic remains actively debated.

This White Paper contains a comprehensive discussion of rent regulations, including an analysis of several rent-regulated markets, and the regulations' ramifications for rental real estate markets. The intent of the discussion below is to educate real estate professionals so that they are aware of the potential effects of rent regulation on owners and managers of rental property as well as on tenants searching for property in regulated markets.

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The information presented in this White Paper is not intended as, nor should it be construed as, legal advice. Consult an attorney with experience in the relevant practice area for counsel on particular legal questions relating to rent regulation or any other areas of concern.



I. WHAT IS RENT CONTROL?

A. Overview

Some of the most expensive cities in the United States apply rent-regulation laws to certain residential units. These legal schemes typically both limit the amount landlords may increase rents for existing tenants in some buildings and address many other aspects of the landlord-tenant relationship.

1. Definition of Rent Control

Although the term “rent control” is often used loosely, it is actually only one method of regulating rent. The two most common rent-regulation schemes include rent control and rent stabilization. In markets such as New York City that have both types of regulatory

schemes, rent control and rent stabilization are governed by entirely different sets of regulations.¹

True rent control is fairly rare, and becoming more uncommon. With rent control, the rent charged to a tenant who lives in qualified housing is strictly regulated, with a maximum placed on the amount the landlord may charge the tenant. Therefore, rent control is effectively a price ceiling imposed by the governing entity.² In New York City, the number of rent-controlled apartments has declined from more than two million in the early 1950s to approximately 27,000 in 2014.³ Most new rent regulations reviewed for this paper are a variation on a rent-stabilization scheme, rather than true rent control.

2. *Distinction between Rent Stabilization and Rent Control*

The basic difference between rent control and rent stabilization is that the former places a cap on the rent a landlord may charge, whereas the latter sets limits on how much a landlord may increase the rent over time.⁴ Rent control and rent stabilization also frequently address other tenant-related aspects differently, such as what property is exempt and when a landlord may evict a tenant. For example, while lease renewals are an integral part of New York's rent-stabilization provisions, the city's rent-control

¹ New York City Rent Guidelines Board, *Rent Control FAQ* (June 1, 2016), <http://www.nycrgb.org/html/resources/faq/rentcontrol.html>.

² Investor Words, *Rent Control*, http://www.investorwords.com/4178/rent_control.html (last visited Sept. 14, 2016).

³ New York City Rent Guidelines Board, *Rent Control FAQ*, *supra* note 1.

⁴ E.H., *The Economist Explains: Do Rent Controls Work*, *The Economist* (Aug. 30, 2015), <http://www.economist.com/blogs/economist-explains/2015/08/economist-explains-19>.

provisions do not address renewal leases because the tenants are considered "statutory" tenants.⁵

The distinction can be complicated in New York, where both rent-control and rent-stabilization laws coexist but apply to different properties, regulate rent increases differently, and cover different additional terms.⁶ For instance, New York's rent-control laws generally apply to apartments in residential buildings built before 1947 that have the same tenant or his or her lawful successor continuously occupying the unit since before July 1, 1971; the city's rent-stabilization laws generally apply to apartments with six or more units that were built between February 1, 1947, and January 1, 1974, and to certain tenants who moved after June 30, 1971, into a building with six or more units that were built before February 1, 1947.⁷

B. History of Rent Control

1. Early Beginnings

Rent regulations date back centuries. Student protests regarding housing shortages in Bologna, Italy, led Emperor Frederick Barbarossa to award the students "protection from exploitation in 1158."⁸ In England, medieval clerics developed the

⁵ New York State Division of Housing and Community Renewal, Office of Rent Administration, *Fact Sheet: #1 Rent Stabilization and Rent Control* (Dec. 2015), <http://www.nyshcr.org/Rent/FactSheets/orafac1.pdf>.

⁶ For additional information regarding rent regulation in New York City, see III.B.1. below.

⁷ Urban Justice Center, *Tenants: Know Your Rights!*, https://cdp.urbanjustice.org/sites/default/files/Tenant%20KYR_010515.pdf (last visited Sept. 7, 2016).

⁸ Timothy L. Collins, *An Introduction to the New York City Rent Guidelines Board and the Rent Stabilization System*, New York City Rent Guidelines Board, at 16-17 (Feb. 2016), http://www.nycrgb.org/html/about/intro%20PDF/full%20pdf/intro_2016.pdf (quoting from *The Life Millennium*, A University Education, Life Books, at 89 (1998)).

concept of a just price for the necessities of life.⁹ During the American revolutionary era, the colonies limited the amount innkeepers could charge for food and lodging, and Trinity Church, which owned a “town rental market,” was subject to a ceiling on its annual income.¹⁰



In New York during the late 1800s, hundreds of thousands of new immigrants entered an already overcrowded housing market. By the end of World War I, poor housing conditions and lack of affordability created widespread demands for protection.¹¹

In response to both that crisis and the sharp increases in dispossess proceedings and reduced construction after World War I, New York adopted the Emergency Rent Laws of 1920.¹² Under that law, New York State courts were effectively charged with administering rents. If a tenant challenged his or her rent, the landlord was required to justify the rent increase, which the courts reviewed using a “reasonableness” standard. However, vacancy rates during this period fell below one percent, so the city exempted new construction from its rent-control laws.¹³ That law terminated in 1929, when vacancy rates rose to almost eight percent.¹⁴

⁹ *Id.* at 17 (citing William H. Dunbar, *State Regulation of Prices and Rates*, 9 Harv. Q.J. Econ. 1, 4 (1895)).

¹⁰ *Id.* at 17.

¹¹ *Id.* at 20.

¹² *Id.* at 13.

¹³ *Id.* at 21-22.

¹⁴ *Id.* at 13.

In 1943, the federal government adopted nationwide rent controls in anticipation of wartime housing shortages and inflation. Those laws, which were amended in 1947 to exempt new construction, expired in 1951.¹⁵ Pursuant to that regulatory scheme, the administrator of the Office of Price Administration set rents, subject to review by an Emergency Court of Appeals. Generally, the federal law froze rents on November 1, 1943, for all rental units in New York City at the rent levels that had existed on March 1, 1943, but the administrator could subsequently adjust those rents as conditions warranted.¹⁶

In 1951, New York, anticipating the withdrawal of federal controls, adopted a rent-regulation system similar to the federal scheme and transferred administration of rents for 2.1 million apartments from the federal government to the state.¹⁷ Other cities subsequently adopted rent regulations from the late 1960s through the early 1980s. By the late 1970s, 170 municipalities had rent-regulation laws in place.¹⁸ However, in the 1980s, an “emerging conservative onslaught” put tenants on the defensive and effectively curtailed any additional rent-regulation ordinances.¹⁹

¹⁵ *Id.* at 13.

¹⁶ *Id.* at 26.

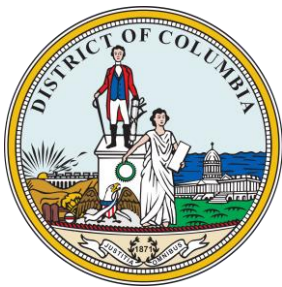
¹⁷ *Id.* at 25-26.

¹⁸ Mitchell Crispell, *Urban Displacement Project Rent Control Policy Brief*, University of California Berkeley (Feb. 2016), http://www.urbandisplacement.org/sites/default/files/images/urbandisplacementproject_rentcontrolbrief_feb2016.pdf.

¹⁹ *Id.*

2. Major Court Decisions

Courts at all levels have heard cases regarding rent controls. So far, they have upheld rent-control laws against challenges to the laws' basic premises. Most of these cases are based on the plaintiff's contention that the government's regulation of rent on private property is so onerous that it amounts to a taking under the Fifth Amendment, which provides that the government may not take private property for public use without just compensation.²⁰



Early Supreme Court decisions were inconsistent—while one 1921 decision²¹ held that the District of Columbia's rent regulation was constitutional (at least as a temporary measure), a 1924 decision²² struck down the same law (in part because the earlier exigency in the housing market no longer existed). More recently, the Supreme Court has consistently upheld rent regulations on various theories. For example, in *Fisher v. City of Berkeley*,²³ the Court examined rent controls in the context of the Sherman Act and held that the Sherman Act did not preempt the city's ordinance. In a unanimous ruling in *Yee v. Escondido*,²⁴ a case involving a mobile-home park in Escondido, California, the Supreme Court upheld the city's rent-regulation scheme, finding that regulating the terms

²⁰ [U.S. Const. amend. V](#).

²¹ [Block v. Hirsh](#), 256 U.S. 135 (1921).

²² [Chastleton Corp. v. Sinclair](#), 264 U.S. 543 (1924).

²³ [Fisher v. City of Berkeley](#), 475 U.S. 260 (1986).

²⁴ [Yee v. City of Escondido](#), 503 U.S. 519 (1992).

of a lease did not amount to the type of complete government takeover of property that is barred by the taking clause.



Nevertheless, the Supreme Court has not been without its rent-control opponents. For instance, in *Pennell v. City of San Jose*,²⁵ the Court held that San Jose's rent-control ordinance did not violate the Constitution's Takings Clause, Due Process Clause, or Equal Protection Clause. However, Justice Antonin Scalia, dissenting in part, noted the antidemocratic nature of rent control and stated that he would have held that the ordinance's tenant-hardship provision causes a taking of private property without just compensation that violates both the Fifth and the Fourteenth Amendments. He also asserted that if the government believes a social goal is served by permitting tenants to sit on someone else's property in perpetuity, then the government should use public funds to buy or lease the premises for market value and lease it to particular tenants. He argued that the best way to handle the issue is by "the distribution to such persons of funds raised from the public at large through taxes, either in cash (welfare payments) or in goods (public housing, publicly subsidized housing, and food stamps)"²⁶ and not by using "the occasion of rent regulation . . . to establish a welfare program privately funded by those landlords who happen to have 'hardship' tenants."²⁷

²⁵ *Pennell v. City of San Jose*, 485 U.S. 1 (1988).

²⁶ *Id.* at 21 (1988) (dissent).

²⁷ *Id.* at 22 (1988) (dissent); see also Richard A. Epstein, *Rent Control Hits the Supreme Court*, Wall Street Journal, Jan. 4, 2012, available at <http://www.wsj.com/articles/SB10001424052970204464404577118912082926658>.

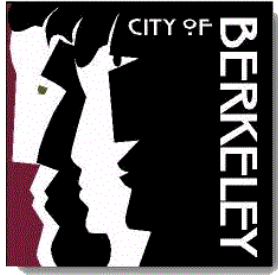
Cases in the other federal courts have also generally upheld local rent-control schemes. For example, in *Harmon v. Markus*,²⁸ James and Jeanne Harmon owned a five-story brownstone near Central Park. They lived on the lower floors and rented out the six apartments above them, three of which were subject to New York's rent-stabilization laws. Pursuant to those regulations, the government set the maximum permitted rent increases, and tenants were generally allowed to renew their leases indefinitely. According to the Harmons' lawsuit, the tenants in the rent-stabilized units paid approximately \$1,000 a month in 2008, which was about 60 percent below the market rate at the time. The Harmons asserted that requiring them to accept below-market rents was an unconstitutional taking of their property.

The Court of Appeals ruled against the Harmons, holding that the couple knew what they were getting into when they purchased the building. The Court reasoned that the Harmons retained important rights under the city's rent regulations; for example, they could reclaim the apartments for their own use in some situations, demolish the building as long as they did not replace it with housing, or evict a tenant for cause.²⁹ The Harmons appealed the decision to the U.S. Supreme Court, which declined to hear the case.³⁰

²⁸ *Harmon v. Markus*, No. 10-1126-cv, 2011 WL 782233 (2d Cir. Mar. 8, 2011).

²⁹ *Id.*; see also Adam Liptak, *U.S. Supreme Court Declines to Hear Suit Challenging the Rent Stabilization Law*, N. Y. Times, April 23, 2012, available at http://www.nytimes.com/2012/04/24/us/supreme-court-declines-to-hear-rent-control-challenge.html?_r=0.

³⁰ *Harmon v. Kimmel*, No. 11-496, 132 S. Ct. 1991 (Mem.) (Apr. 23, 2012), <https://www.supremecourt.gov/orders/courtorders/042312zor.pdf> (order denying cert of *Harmon v. Markus*).



California courts have also recently addressed the state's rent-regulation provisions. For example, in 2015, the California Court of Appeals evaluated a situation in which a landlord's eviction notice was alleged to be an attempt to circumvent Berkeley's rent-control protections in *Mak v. City of Berkeley Rent Stabilization Board*.³¹ The landlord in *Mak* served a long-term tenant an eviction notice stating that he was moving into the rental unit. After the tenant moved out, the landlord withdrew his notice, and, instead of moving in, re-rented the unit for more than twice the rate the evicted tenant had been paying. The court held that a landlord who falsely represents that he intends to occupy a unit could not then rent it to a different tenant instead at a higher rate than the rate he could have charged the former tenant.³²

3. *Evolution to Current Climate*

After a relatively calm era for new rent controls during the early 2000s, the topic appears to be hot again. As Peter Dreier, the former Boston housing director, notes, the gap between housing costs and wages is prompting additional discussions to protect renters. Although other methods exist for assisting tenants, Mr. Dreier asserts, "Rent control is part of the toolbox of policies that local governments can adopt without waiting for a big infusion of federal funds to create more affordable rental housing."³³

³¹ [*Mak v. City of Berkeley Rent Stabilization Board*](#), No. A143671 (Cal. Ct. App. Sept. 2, 2015).

³² *Id.*

³³ Teresa Wiltz, *Can Rent Control Fix the Gap Between Wages and Housing Costs?*, U.S.A. Today, July 31, 2015, available at <http://www.usatoday.com/story/news/nation/2015/07/31/stateline-rent-control/30782501/>.

Several local governments have recently considered rent regulations, despite the ubiquitous criticisms of existing programs. For example, in July 2015, the Richmond, California, city council considered limiting how much rent landlords may charge tenants in their Bay Area community, which had experienced rent increases of approximately 30 percent over the previous four years.³⁴ Several other California towns are similarly proposing to limit the rents landlords may charge.³⁵

"Rents are higher than they've ever been. Wages are declining. There's a huge, huge gap between wages and housing costs.... Not surprisingly, there's renewed talk about ways to protect renters."

***~ Peter Dreier, former
Boston Housing
Director***

Tenant activists in other cities have recently unsuccessfully tried to enact rent regulations. For example, in Seattle, where some renters assert that their rent has increased by up to 150 percent, two city council members in the summer of 2015 hosted a town-hall meeting to debate whether to impose rent regulations, despite the fact that Washington has a state law that prohibits cities from imposing rent controls.³⁶

C. How Rent Stabilization Works

Rent regulations vary from community to community, even within a single state. Although jurisdictions frequently borrowed language from each other, several details, including the scope of the local rent control ordinances, the standards for permitted rent

³⁴ *Id.*

³⁵ See Section III.D.2. below for a more in-depth review of rent-regulation in Silicon Valley and the Bay Area.

³⁶ Wiltz, *supra* note 33.

increases, and the enforcement mechanisms, vary greatly. In some jurisdictions, the controls are weak, appearing to be “cosmetic responses to popular feeling,” while in other communities, the controls are strong enough to reduce rent increases, at least slightly or sometimes almost completely.³⁷

1. *Price Controls*

- a. Typical Restrictions

Rent-regulation schemes use various approaches to affect rental rates. Many laws limit the frequency or restrict the timing of rent increases, regulate the reduction of services offered in connection with the rental, permit a one-time decontrol of rent upon a vacancy, and permit additional rent increases in extraordinary circumstances.³⁸

Typically, apartments in dwellings that existed when the controls were adopted are subject to rent control. Public housing, luxury apartments, and single-family houses are frequently exempt. Local ordinances often encourage new construction of rental units by exempting buildings built after the control date, but, in some circumstances, those buildings may subsequently become subject to the controls.³⁹

- b. Overview of Controlled Rent Calculations

In many jurisdictions, the rent charged for a unit during the base period before the controls were imposed becomes the rent ceiling. Generally, a rent control board reviews housing market conditions, inflation (using statistics such as the consumer price index or

³⁷ Ira S. Lowry, *Rent Control and Housing Assistance: the U.S. Experience*, The Urban Institute (Dec. 1996), http://pdf.usaid.gov/pdf_docs/PNABZ891.pdf.

³⁸ Landlord.com, *Residential Rent Control Law Guide by State*, 2014, http://www.landlord.com/rent_control_laws_by_state.htm.

³⁹ Lowry, *supra* note 37.

studies of landlords' operating costs), and other changes in the costs of owning and operating rental property to determine the size of the next year's permitted rent increase.⁴⁰

Many local ordinances also allow landlords to assess rent increases on individual apartments or buildings by submitting proof of capital improvements, increased services, inadequate base rents, or other specified factors. Some ordinances permit owners to increase rents on vacated units without applying the applicable rent control, and, once the unit is occupied again, that increased rent becomes the new base rent.⁴¹

2. *Restrictions on Landlord Terminations*

Many rent regulations also address the grounds on which a landlord may evict a tenant. As explored in more detail below,⁴² the typical “just cause” reasons range from a tenant violating a significant lease term or engaging in illegal activities to a landlord wanting to move into the premises. Also, in some jurisdictions, landlords may not withdraw rental units from the market or convert them to condominiums, while in other jurisdictions, owners may withdraw units after paying a tenant's relocation expenses or offering the tenant a buyout.⁴³

3. *Maintenance Obligations*

In many communities, a tenant may petition a board to decrease his or her rent if the landlord has not provided the agreed upon or legally required services.⁴⁴ Also, a

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See III.A.3.

⁴³ Lowry, *supra* note 37.

⁴⁴ See, e.g., San Francisco Tenants Union, *Rent Control* (Mar. 2016), <https://www.sftu.org/rentcontrol/>.

landlord may be required to perform additional maintenance in order to obtain a requested rent increase in communities where the board may not grant a rent increase unless the building complies with all applicable building regulations.⁴⁵

4. *Unregulated Increases when a Tenant Moves*

As a method of softening the harsh effects of strict rent control, many rent regulations now provide that a landlord may increase rents without restrictions when a tenant moves out of a regulated apartment. In fact, because of recent state law amendments, all rent-control schemes in California must now provide that a landlord may rent a unit at the market rate after one tenant moves out voluntarily or if the landlord terminates a tenancy for nonpayment of rent.⁴⁶

5. *Oversight*

As with other areas addressed by rent-regulation ordinances and laws, oversight and other administrative provisions vary greatly. For example, all of New York's various rent-regulation laws are administered by the state.⁴⁷ Cities in other states have local rent control boards that oversee the process and enforce the relevant provisions.⁴⁸ Administration costs can be high⁴⁹ and may act as a deterrent to communities considering adopting rent regulations.

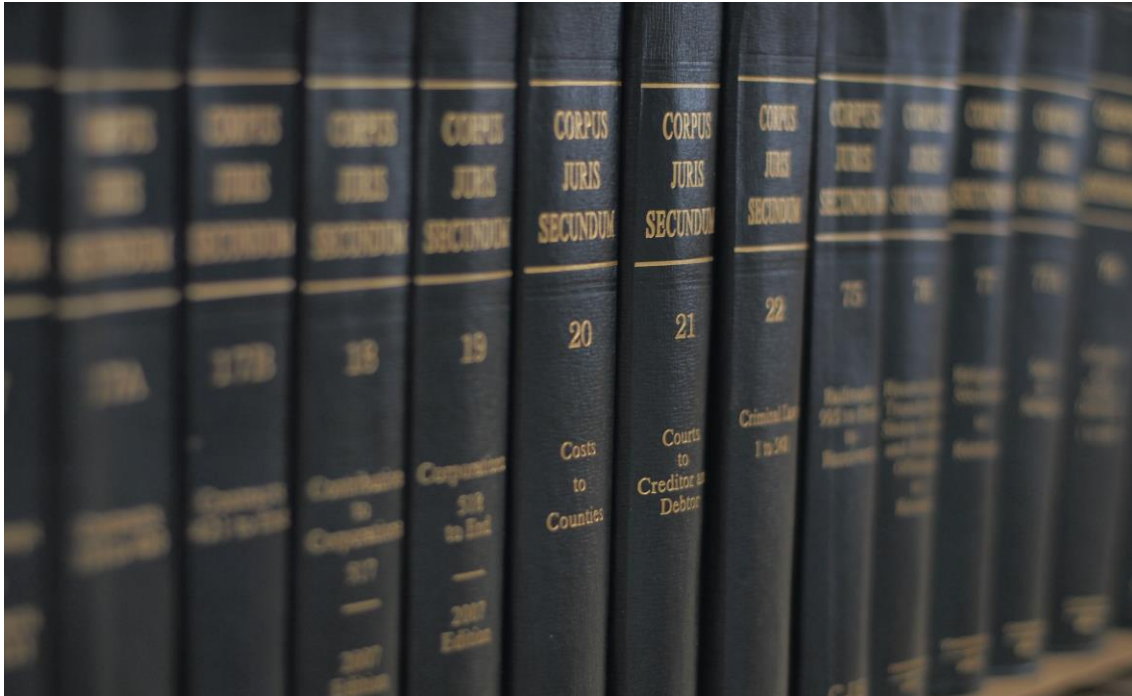
⁴⁵ Lowry, *supra* note 37.

⁴⁶ California Department of Consumer Affairs, *California Tenants: A Guide to Residential Tenants' and Landlords' Rights and Responsibilities*, Cal. Dep't of Consumer Affairs' website, at 27 (July 2012), <http://www.dca.ca.gov/publications/landlordbook/catenant.pdf>.

⁴⁷ Collins, *supra* note 8, at 13.

⁴⁸ See, e.g., California Department of Consumer Affairs, *supra* note 46, at 27.

⁴⁹ See National Multifamily Housing Council, *The High Cost of Rent Control*, <http://www.nmhc.org/News/The-High-Cost-of-Rent-Control/> (last visited Sept. 1, 2016).



II. STATE LAWS

A. Summary of State Laws

Statewide laws regarding rent regulation vary significantly, ranging from local control being explicitly prohibited to being expressly permitted, with a number of states not addressing the issue at all. The map below identifies each state's approach to rent regulation.

Rent-Regulation Laws by State

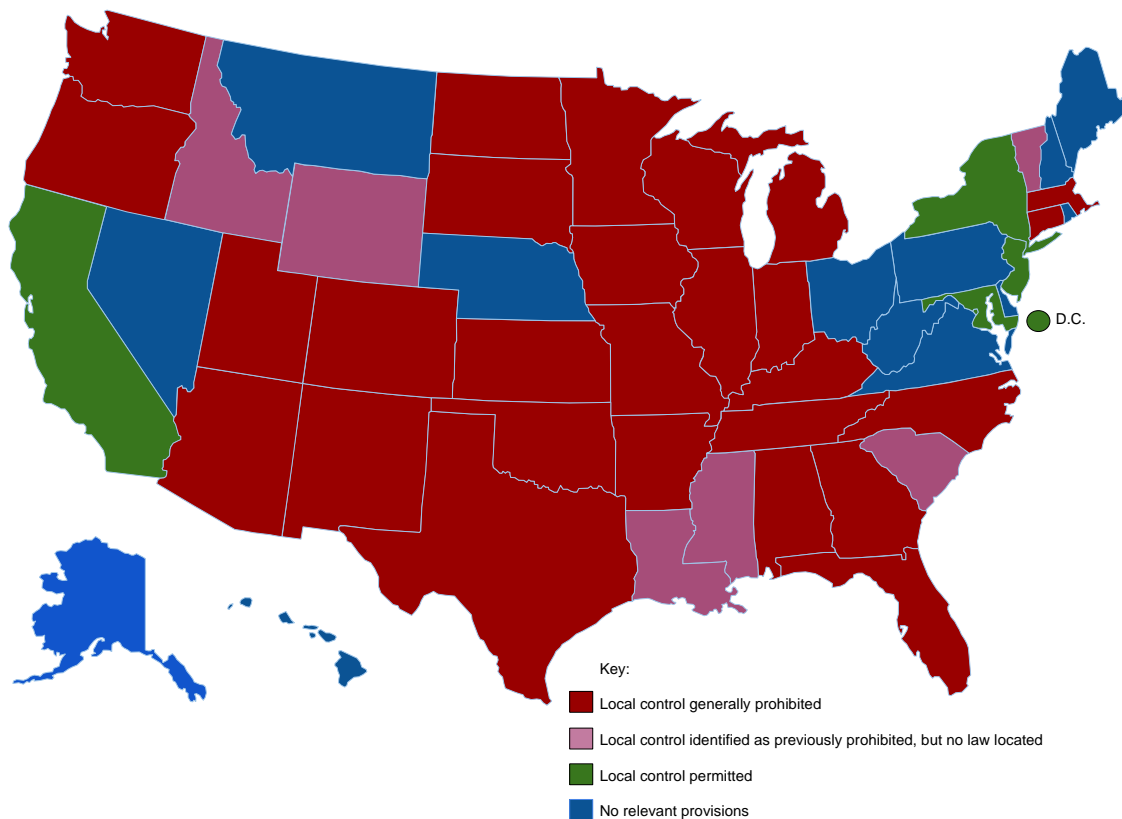


Figure 1. Map of Rent-Regulation Laws by State⁵⁰

1. States that Permit Rent Control

Only four states (California, Maryland, New Jersey, and New York) and the District of Columbia explicitly authorize local rent regulation. These laws typically identify the jurisdictions that are permitted to adopt rent controls, the method to be used to calculate rent, and the properties that must be exempt. Generally, local governmental units adopt their ordinances within the state's parameters.⁵¹

⁵⁰ Map prepared using information set forth in Appendix 1.

⁵¹ Julia Singer Bansal, *States Authorizing Rent Control*, Connecticut Office of Legislative Research (Jan. 30, 2015), <https://www.cga.ct.gov/2015/rpt/pdf/2015-R-0020.pdf>.

The approaches these states use vary significantly. For example, the laws in New York and California are comprehensive and establish extensive guidelines and requirements, including, in most cases, the purposes for which rent control may be established, the jurisdictions that may adopt rent controls, exempt property, tenant protections, program administration, rent-increase formulas, and remedies for violations.⁵²

New Jersey's laws are similar, but less comprehensive and restrictive. They address the types of apartments subject to rent controls, exempt property, maximum rent formulas, and the conditions under which a landlord may evict a tenant in a rent-controlled apartment.⁵³ The District of Columbia uses a different approach yet by creating a commission to implement rent control and giving the District of Columbia Council the discretion to determine the maximum rent calculations and exempt property.⁵⁴

Maryland is far on the other end of the control spectrum. Its laws do not set forth any parameters, restrictions, or guidelines for local governments. Instead, the law simply authorizes Frederick County and Washington County to enact ordinances or adopt regulations to control rent. Each of those counties appears to have full discretion regarding its rent-control policies.⁵⁵

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

2. *States that Prohibit Rent Control*

At least 27 states⁵⁶ have laws that prohibit local governmental units from adopting rent controls. Approximately 19 states⁵⁷ neither permit nor prohibit local rent control. In these states, local governments may be permitted to adopt rent control ordinances using their general police powers, or they may be prohibited from doing so pursuant to case law, as is the case in Connecticut.⁵⁸ A few states prohibit rent control because the ordinances have been successfully challenged as violating either the eminent domain, equal protection, or substantive due process provisions of the Constitution, with the state courts finding that a rent control ordinance is constitutional only if landlords are not deprived of a just and reasonable return on their rental property.⁵⁹

Connecticut is an interesting case. In prohibiting rent controls, the Connecticut Supreme Court reasoned that municipalities have only the powers that are expressly conferred upon them and that the legislature's 1956 repeal of a law authorizing municipalities to enact rent control made it clear that rent control was against the legislature's will.⁶⁰ However, Connecticut's local governments may still have some say in

⁵⁶ Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, and Wisconsin; see Appendix 1.

⁵⁷ Alaska, Delaware, Hawaii, Idaho, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and Wyoming; see Appendix 1.

⁵⁸ Bansal, *supra* note 51.

⁵⁹ *Id.*

⁶⁰ [*Old Colony Gardens, Inc. v. Stamford*](#), 147 Conn. 60 (1959).

rent increases: Connecticut law authorizes municipalities to establish fair rent commissions to control and eliminate excessive rental charges on housing accommodations. If a commission determines, after a hearing, that a rental charge or proposed increase is so excessive that it is harsh and unconscionable, it may order the rent to be limited to a fair and equitable amount.⁶¹

B. Examples of State Laws that Permit Rent Control

1. New York State

Rent regulation in New York State includes both rent control and rent stabilization. Among other significant changes, the Omnibus Housing Act of 1983 required all rent regulation to be consolidated in the New York State Division of Housing and Community Renewal.⁶² Thus, the state government now administers all of the state's rent-regulation laws.⁶³

New York State's *rent-control* program, the older of the two rent-regulation systems, generally applies to residential buildings built before February 1947 in municipalities that have not declared an end to the postwar rental-housing emergency.⁶⁴ Fifty-one New York municipalities have rent control, including New York City, Albany, and Buffalo.⁶⁵

⁶¹ [Conn. Gen. Stat. §§ 7-148b\(b\), -148d\(a\)](#); see also Bansal, *supra* note 51.

⁶² New York State Homes and Community Renewal, *About Office of Rent Administration Operations and Services*, nysgcr.org, <http://www.nyshcr.org/Rent/about.htm#rentcont> (last visited Sept. 12, 2016).

⁶³ Collins, *supra* note 8, at 13.

⁶⁴ New York State Homes and Community Renewal, *supra* note 62.

⁶⁵ New York City Rent Guidelines Board, *Rent Control FAQ*, *supra* note 1.

Several New York communities have *rent-stabilization* programs. In New York City, rent-stabilized apartments are generally located in buildings of six or more units built between February 1, 1947, and December 31, 1973, although tenants in buildings built before February 1, 1947, who moved in after June 30, 1971, are also covered.⁶⁶ Outside of New York City in communities that have adopted the Emergency Tenant Protection Act (Nassau, Westchester, and Rockland counties), rent-stabilization schemes may apply to non-rent-controlled apartments in buildings with six or more units that were built before January 1, 1974. Municipalities may limit their ordinances to buildings of a specific size, but never to buildings with fewer than six units.⁶⁷

In New York, rent stabilization protects tenants in more ways than just limiting rent increases. Tenants in rent-stabilized property are entitled to receive required services, to have their leases renewed, and not to be evicted except on specified grounds. A tenant's lease may be renewed for one- or two-year terms, at the tenant's option. Rent guidelines boards (New York City and Nassau, Westchester, and Rockland counties each have one) annually set permitted rates for rent increases in rent-stabilized apartments.⁶⁸

The New York legislature frequently revisits rent regulation. In 2011, the lawmakers increased protection for tenants, raising the rent ceiling to \$2,500 per month (up from \$2,000 per month) and increasing the annual income limit to \$200,000 for the tenant before an apartment may be deregulated.⁶⁹ In June 2015, New York's rent

⁶⁶ See Section III.B.1. for a more detailed discussion of rent stabilization in New York City.

⁶⁷ New York State Homes and Community Renewal, *supra* note 62.

⁶⁸ New York State Division of Housing and Community Renewal, Office of Rent Administration, *supra* note 5.

⁶⁹ Marc Santora, *Rent-Stabilized Apartments, Ever More Elusive*, N.Y. Times, July 5, 2012, available at http://www.nytimes.com/2012/07/08/realestate/rent-stabilized-apartments-ever-more-elusive.html?_r=0.

regulation laws expired, but, after a five-day temporary extension to allow time for negotiations,⁷⁰ the legislature amended the laws and extended them for four more years.

The amendments:

- increased the rent at which a vacant apartment can be deregulated from \$2,500 to \$2,700, and tied the rent amount to the one-year annual Rent Guidelines Board increases, beginning January 1, 2016;
- set limits on vacancy allowances in apartments with "preferential rents," which are rents charged below the legal rent;
- limited the rent landlords can charge tenants in order to receive reimbursement for major capital improvements by extending the period that landlords can recover those costs, which time period varies depending on the number of units in the building; and
- increased the civil penalties for landlords who harass tenants.⁷¹

2. *California*

California's Costa-Hawkins Rental Housing Act,⁷² which was enacted in 1995, sets statewide restrictions on rent controls. (Between January 1, 1996, and December 31, 1998, owners were permitted to set new rents within prescribed limits.) The law also includes "vacancy decontrol," which permits landlords to set a market rent for most

⁷⁰ Casey Seiler & Matthew Hamilton, *State Lawmakers OK Extender of NYC Rent Laws, but Talks Will Continue*, timesunion.com, June, 19, 2015, <http://www.timesunion.com/news/article/State-lawmakers-OK-extender-of-NYC-rent-laws-but-6336785.php>.

⁷¹ New York City, *2015 New Rent Regulations*, Official Website of the City of New York, <http://www1.nyc.gov/nyc-resources/service/5020/2015-new-rent-regulations> (last visited Sept. 12, 2016).

⁷² [Cal. Civ. Code § 1954.50, et seq.](#)

tenancies that begin on or after January 1, 1999, and that new rent becomes the new rent ceiling.⁷³ Therefore, a landlord can rent a unit at the market rate if a tenant moves out voluntarily or if the landlord terminates a tenancy for nonpayment of rent.⁷⁴ The law also prohibits cities and towns from updating ordinances passed before 1995 so that the ordinances apply to more units.⁷⁵ Property that was issued a certificate of occupancy after February 1995 is exempt from rent-control ordinances, and, as of January 1, 1999, tenancies in single-family homes and condominiums are exempt from rent control if the tenancy began after January 1, 1996.⁷⁶

Several California cities, primarily in the Los Angeles area or the Bay Area, have rent-control ordinances that limit or prohibit rent increases.⁷⁷ Although the California's ordinances vary significantly, they typically contain provisions that:

- allow landlords to evict tenants only for “just cause,” in which case a landlord must state and prove a valid reason for terminating a month- to-month tenancy;
- establish boards with the power to approve or deny rent increases⁷⁸ or permit a certain percentage increase in rent each year;

⁷³ Berkeley Rent Stabilization Board, *About the City of Berkeley Rent Stabilization Board and Program*, City of Berkeley, <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=10466> (last visited Sept. 6, 2016).

⁷⁴ California Department of Consumer Affairs' website, *California Tenants: A Guide to Residential Tenants' and Landlords' Rights and Responsibilities*, July 2012, <http://www.dca.ca.gov/publications/landlordbook/catenant.pdf>.

⁷⁵ Gabrielle Gurley, *Bay Area Voters Take On Rent Control*, The American Prospect, July 8, 2016, <http://prospect.org/article/bay-area-voters-take-rent-control>.

⁷⁶ California Department of Consumer Affairs, *supra* note 46.

⁷⁷ Berkeley, Beverly Hills, Campbell, East Palo Alto, Fremont, Hayward, Los Angeles, Los Gatos, Oakland, Palm Springs, San Francisco, San Jose, Santa Monica, Thousand Oaks, and West Hollywood. California Department of Consumer Affairs, *supra* note 46, app. 2.

⁷⁸ Rent stabilization boards exist in many California markets, including Berkeley, Los Angeles, San Francisco, Santa Monica, and West Hollywood. See U.S. Department of Housing and Urban

- control late fees or limit security-deposit increases; or
- make it more difficult for owners to convert rental units into condominiums.⁷⁹

A perusal of California rent control board websites reveals differences in the boards' recent decisions under their local ordinances. For example, the Santa Monica Rent Control Board announced on June 9, 2016, that the 2016 general adjustment would be 1.3 percent, with a \$25 ceiling for rents of \$1,885 and more.⁸⁰ Berkeley's Rent Stabilization Board adopted a similar annual adjustment that permits eligible landlords to increase their permanent rent ceilings by 1.5 percent,⁸¹ and San Francisco's annual current allowable rent increase is 1.6 percent.⁸² On the other hand, effective July 1, 2016, the annual allowable rent increase allowed pursuant to Los Angeles's Rent Stabilization Ordinance is three percent, with additional amounts permitted for gas and electric services that the landlord provides.⁸³

Development, *Tenant Rights, Laws and Protections: California*, HUD.gov, <http://portal.hud.gov/hudportal/HUD?src=/states/california/renting/tenantrights> (last visited Sept. 6, 2016).

⁷⁹ California Department of Consumer Affairs, *supra* note 46.

⁸⁰ Santa Monica Rent Control Board, *News & Announcements: Announcement of 2016 General Adjustment with \$25 Ceiling*, City of Santa Monica, <https://www.smgov.net/rentcontrol/> (last visited Sept. 6, 2016).

⁸¹ Berkeley Rent Stabilization Board, *Home*, City of Berkeley, <http://www.ci.berkeley.ca.us/rent/> (last visited Sept. 6, 2016).

⁸² San Francisco Rent Board, *Annual Rent Increase for 3/1/16-2/28/17 Announced*, City and County of San Francisco, Dec. 10, 2015, <http://sfrb.org/article/annual-rent-increase-3116-22817%C2%A0announced>.

⁸³ Los Angeles Housing Community Investment Department, *Announcing: 2016 RSO Allowable Rent Increase!*, City of Los Angeles, Aug. 18, 2016, <http://hcidla.lacity.org/blog/announcing-2016-rso-allowable-rent-increase>.

C. Recent Legislative Activity

Most of the recent activity regarding rent regulation appears to be at the local, grassroots level. A few states have considered adopting rent regulations, but the bills did not become law. For example, Connecticut's legislature considered a rent-stabilization bill⁸⁴ in 2015 that did not pass into law.

However, New York recently enacted The Rent Act of 2015, which extended its rent regulation until 2019 and enacted the other tenant-friendly changes noted above, including increasing the rent threshold for vacancy deregulation from \$2,500 to \$2,700.⁸⁵ Other recently enacted state-level residential rent-regulation legislation includes the following:

- Florida addressed rent control in the limited context of the state's Apartment Incentive Loan Program;⁸⁶
- The District of Columbia passed an emergency act that amends its provisions related to rent-control hardship petitions⁸⁷ and an act that creates a publicly accessible Rent Control Housing Clearinghouse;⁸⁸ and
- California passed a bill providing that, on and after January 1, 2016, certain rent certification requirements do not apply to tenancies for which a residential property owner may establish the initial rent under the Costa-Hawkins Rental

⁸⁴ [H.B. 6463, Conn. Gen. Assem., Reg. Sess. \(Conn. 2015\)](#) (bill simply provides that the "general statutes be amended to stabilize rent for formerly subsidized rental portfolios").

⁸⁵ Collins, *supra* note 8, at 14.

⁸⁶ [2016 Fla. Sess. Law ch. 210](#).

⁸⁷ [2016 D.C. Act 21-483](#).

⁸⁸ [2015 D.C. Act 21-148](#).

Housing Act, as specified; however, this provision does not apply to tenancies starting on or after January 1, 1999, for which the property owner has provided the local rent control agency with a written document stating that the tenancy's initial rent complies with the agency's requirements.⁸⁹

⁸⁹ [2016 Cal. Stat. ch. 83.](#)



III. LOCAL LAWS

A. Summary of Local Laws

Hundreds of local communities have rent-regulation schemes, and local rent-control and rent-stabilization ordinances vary greatly. Most are very complex. Some, such as those in effect in New York, “have real teeth,” while others, such as those in San Jose and Oakland, have been described as “practically useless.”⁹⁰ Because of the large number and great variation in local rent-control laws, a thorough description of each ordinance is not practical. However, the common themes described below appear in many regulatory schemes.

⁹⁰ Marcia Stewart, *Rent Control*, NOLO, <http://www.nolo.com/legal-encyclopedia/free-books/renters-rights-book/chapter12-1.html> (last visited Aug. 31, 2016).

1. *Subject Property*

Local rent-control and rent-stabilization laws do not apply to all rental housing within a regulated city. Typically, the ordinances exempt new buildings, owner-occupied buildings with no more than a specific number of residential units (frequently three or four), and single-family houses and luxury units that rent for more than a specified amount.⁹¹

2. *Rent Limits*

Local rent-control schemes generally either protect only the present tenant (“vacancy decontrol”) or regulate rent over the long-term regardless of turnover (“vacancy control”). With vacancy decontrol, the rent restrictions no longer apply when a new tenant moves in; with vacancy control, the rent restrictions remain in place when the unit is rented to a new tenant.⁹²

Vacancy-decontrol ordinances permit a landlord to increase the rent when one tenant moves out and a new one moves in. Thus, if a tenant voluntarily leaves or, in some cases, is evicted for a legal or just cause, the unit is not subject to rent control again until the landlord sets the new rent, so a new tenant should not expect to pay the same rent as the prior tenant.⁹³

Vacancy-control provisions, which control rent even when a new tenant moves in, protect future tenants. Typically, a rent board sets a base rent for each rental unit

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

considering several factors, including the rent that was charged before rent control took effect, the landlord's expenses, inflation, and housing supply and demand. The base rent may be increased during a tenancy under certain circumstances, but the landlord cannot increase the rent to market level when the tenant moves out.⁹⁴

Most local rent-control schemes also permit landlords to petition for a rent hike based on an increase in costs, such as higher taxes or certain capital improvements.⁹⁵

3. *Evictions*

Many rent-control ordinances, especially vacancy-control provisions, include restrictions on eviction. Without those provisions, a landlord could throw out current tenants in order to vacate an apartment and increase rents. Thus, many local ordinances require landlords to have a just cause for evicting a tenant. Typical acceptable reasons for eviction include:

- the tenant violated a significant term of the lease or rental agreement;
- the tenant engaged in specified illegal activities on the premises;
- the landlord wants to move into the rental unit or give it to an immediate family member; or
- a landlord plans to remodel the property substantially and in a manner that could not be accomplished with tenants living there (however, in some cases, a landlord must offer the tenant another similar unit or give the tenant the first chance to move back in after the remodeling).⁹⁶

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

Civil, and sometimes criminal, penalties may apply to landlords who violate the prescribed restrictions. Nevertheless, some landlords in areas with ordinances that allow rent increases in vacant units may try to turn trivial offenses into “just causes” so they can increase an apartment’s rent. To prevent unjustified evictions, some rent control ordinances require that the stated reason for eviction must be the landlord’s “dominant motive.” A tenant may be given the opportunity to prove at a hearing that a minor stated offense is not the landlord’s dominant motive and that the landlord’s desire to increase the unit’s rent is the true reason behind his or her eviction.⁹⁷

B. Examples of Local Laws

1. New York City



Photo credit: City of New York, *Home page* (2016)
<http://www1.nyc.gov>.

New York City’s rent-regulation laws are contained in several distinct regulatory schemes, including:

⁹⁷ *Id.*

- chapter 4 of Title 26 of the New York City Administrative Code, which is referred to as the “Rent Stabilization Law of 1969”;
- sections 8601 through 8617 of the Unconsolidated Laws of New York, which include the state-law provisions governing rent stabilization and the enabling legislation for local rent control and stabilization (referred to as the “Local Emergency Housing Rent Control Act of 1962”);
- New York Unconsolidated Laws, sections 8621 through 8634, which are referred to as the “Emergency Tenant Protection Act of 1974”; and
- subchapter B of the New York Rent Stabilization Regulations, which are located at N.Y. Comp. Codes R. & Regs, tit. 9, parts 2520-2530) and are the state regulations governing rent stabilization in New York City.⁹⁸

Each program applies to a different segment of the city’s housing stock. In 2014, a survey found that there were approximately 27,000 rent controlled apartments and about 1,030,000 rent stabilized apartments in New York City.⁹⁹ The programs also differ in the way they are administered. The New York City Rent Guidelines Board sets rent adjustments for rent-stabilized apartments, but not for rent-controlled apartments.¹⁰⁰

New York City’s rent regulations are complex, with many exceptions and qualifications. The diagram below, created by Trulia, provides a simplified description of the city’s rent regulations.

⁹⁸ Collins, *supra* note 8, at 1 n.2.

⁹⁹ New York City Rent Guidelines Board, *Rent Control FAQ*, *supra* note 1.

¹⁰⁰ New York City Rent Guidelines Board, *Rent Control FAQ*, *supra* note 1.

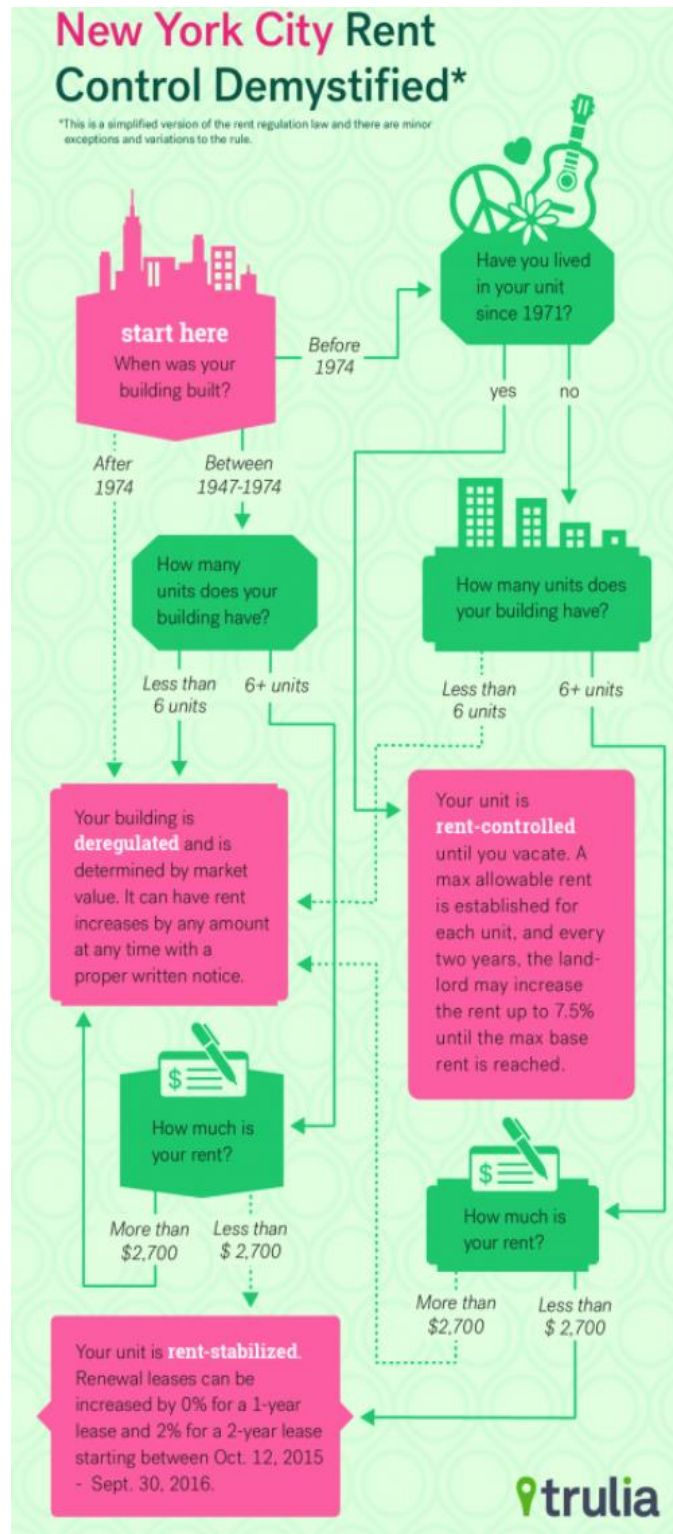


Figure 2. New York City Rent Control Demystified¹⁰¹

¹⁰¹ Diagram from Mark Uh, *A Tale of Two Rent-Controlled Cities*, Trulia, Aug. 20, 2015, <http://www.trulia.com/blog/trends/rent-control-sf-nyc/> and used by kind permission.

a. Property that Qualifies for Rent Control

New York City's rent-control program generally applies to residential buildings that were built before February 1947 and that have the same tenant or his or her lawful successor (such as a family member, spouse, or adult lifetime partner) living in the unit continuously since before July 1, 1971.¹⁰² When a rent-controlled apartment becomes vacant, it typically either becomes rent stabilized or is no longer regulated if it is in a building with fewer than six units.¹⁰³

In order for an apartment in a one- or two-family house to be subject to rent control in New York City, the apartment must have had a tenant in continuous occupancy since April 1, 1953. Once vacated after that date, the unit is no longer subject to regulation. Various other grounds may result in a controlled apartment being decontrolled, and on rare occasions, a decontrolled apartment may be ordered back under rent control as a penalty for a rent-law violation.¹⁰⁴

b. Other Terms Regulated by Rent-Control Provisions

In addition to limiting the rent an owner may charge for an apartment, rent-control laws in New York City restrict an owner's right to evict tenants, and also provide that tenants are entitled to receive essential services. Unlike in the city's rent-stabilization programs, owners are not required to offer renewal leases, since tenants are considered

¹⁰² Urban Justice Center, *supra* note 7.

¹⁰³ New York City Rent Guidelines Board, *Rent Control FAQ*, *supra* note 1.

¹⁰⁴ *Id.*

“statutory” tenants. Nor are landlords required to register rent-controlled apartments annually.¹⁰⁵

If a tenant's rights are violated, the New York State Division of Housing and Community Renewal may reduce rents and levy civil penalties against the owner. The Division may also reduce rents if services are not maintained, and in over-charge cases, establish the lawful collectible rent. In certain cases, the Division may order a landlord to refund any overcharge for a period of no more than two years before the date the tenant filed the complaint. If the landlord does not refund the overcharge, the tenant may ask a court to calculate the overcharge amount and enforce the order. Select provisions for rent reductions for decreases in services and harassment that apply to rent-stabilized property, as described below, may also apply to rent-controlled property.¹⁰⁶

c. Rent Calculations for Rent-Controlled Property

Rent control in New York City operates using a “maximum base rent” system. Each apartment’s maximum base rent is adjusted every two years to reflect changes in operating costs. Owners that are providing essential services and that have removed violations may increase rents up to 7.5 percent each year until they reach the unit’s maximum base rent. Tenants may challenge a proposed increase on the grounds that the building has violations or that the owner's expenses do not warrant an increase.¹⁰⁷

¹⁰⁵ New York State Division of Housing and Community Renewal, *supra* note 5.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

Landlords may also increase rents in rent-controlled units because of increased fuel costs, and in some cases, increased labor costs. Generally, the landlord may obtain rent increases in the following three ways:

- with the tenant's written consent, if the owner increases services, updates equipment, or improves an apartment;
- with the Division's approval, if the owner installs a building-wide major capital improvement; or
- in hardship cases, with the Division's approval.¹⁰⁸

d. Property that Qualifies for Rent Stabilization

New York City's rent-stabilization regulations were originally enacted in 1969 when rents were increasing rapidly in many post-war buildings. Tenants in rent-stabilized units are protected from sharp rent increases and have the right to renew their leases.¹⁰⁹

The city's rent stabilization program generally regulates:

- apartments in buildings with six or more units constructed between February 1, 1947, and January 1, 1974;
- tenants in buildings of six or more units built before February 1, 1947, who moved in after June 30, 1971; and
- buildings with three or more apartments constructed or extensively renovated since 1974 with special tax benefits.¹¹⁰

¹⁰⁸ *Id.*

¹⁰⁹ New York City Rent Guidelines Board, *Rent Stabilization FAQ*, June 1, 2016, <http://www.nycrgb.org/html/resources/faq/rentstab.html>.

¹¹⁰ New York City Rent Guidelines Board, *Rent Control FAQ*, *supra* note 1.

e. Other Terms Regulated by Rent-Stabilization Provisions

Rent stabilization protects New York City tenants in ways other than limiting rent increases. For example, a rent-stabilized tenant has the statutory right to renew his or her lease, with only a few exceptions. One significant exception is if the landlord or his or her family member wants to occupy the premises. In that case, the landlord must give the tenant 90 to 150 days' notice and must be able to prove that the apartment will be for family use.¹¹¹

New York's rent-stabilization scheme also includes significant provisions regarding the following:

- *Rent overcharges*: owners may be ordered to refund excess rent collected if the Division of Housing and Community Renewal finds a rent overage; if the Division finds a willful rent overcharge, it may charge the owner treble damages payable to the tenant (the Division is generally prohibited from investigating issues concerning rent overcharges for earlier than four years before the tenant files a rent-overcharge complaint);
- *Rent reductions for reduced services*: the Division may reduce rents if an owner fails to provide required services or make necessary repairs, and if a tenant receives a rent reduction, the owner may not collect rent increases until the services are restored;
- *Harassment*: New York's rent-stabilization laws prohibit harassment of rent-regulated tenants, and landlords guilty of intentional actions to force a tenant to vacate an apartment can be denied decontrol and lawful rent increases and

¹¹¹ New York City Rent Guidelines Board, *Rent Stabilization FAQ*, *supra* note 109.

may be subject to both civil and criminal penalties, including fines of up to \$5,000 for each violation; and

- *Rent Registration*: an owner must file both an initial registration within 90 days after an apartment becomes subject to rent stabilization and an annual registration statement stating the rent as of April 1 for each unit and provide each tenant with a copy of his or her apartment's registration form. Owners who do not file the requisite statements are not eligible for rent increases and are subject to additional penalties.¹¹²

A tenant who is at least 62 years of age or disabled has additional protections.¹¹³

f. Rent Calculations for Rent-Stabilized Property

Rent-stabilized apartments are strongly appealing to many tenants. Landlords of stabilized units may increase the rent by only a few percentage points, and tenants do not need to move out until their income exceeds the state limit.¹¹⁴ The New York City Rent Guidelines Board annually sets the permitted percentage increase for renewal leases in rent-stabilized apartments.¹¹⁵ The guideline rates are effective for leases beginning on or after October 1 each year. New York State Law also sets vacancy lease increases for new tenants signing vacancy leases. A landlord may increase rents during the lease

¹¹² New York State Division of Housing and Community Renewal, *supra* note 5. See Section III.B.1.g. for a more detailed description of these programs.

¹¹³ New York City Rent Guidelines Board, *Rent Stabilization FAQ*, *supra* note 109.

¹¹⁴ Santora, *supra* note 69.

¹¹⁵ New York City Rent Guidelines Board, *Rent Stabilization FAQ*, *supra* note 109.

period using the same three methods as with rent controls, if the lease provides for an increase during the lease term.¹¹⁶

g. Other New York City Rent-Regulation Programs

New York City also has two rent-freeze programs for eligible tenants—the Rent Freeze Program for Seniors (“SCRIE”) and the Disability Rent Increase Exemption (“DRIE”). Under these programs, a property tax credit covers the difference between the actual rent and the amount the tenant is responsible for paying at the frozen rate.¹¹⁷

To qualify for the city’s SCRIE program, a tenant must:

- be at least 62 years old;
- be the head of household as the primary tenant named on the lease or have been granted succession rights in a rent-controlled unit, a rent-stabilized unit, or a rent-regulated hotel apartment;
- have a household income of \$50,000 or less; and
- spend more than one-third of the household’s monthly income on rent.¹¹⁸

To qualify for the DRIE program, a tenant must:

- be at least 18 years old;
- be named on the lease or have been granted succession rights in a rent-controlled unit, a rent-stabilized unit, a rent-regulated hotel apartment, or an apartment located in certain other specified buildings;

¹¹⁶ New York State Division of Housing and Community Renewal, *supra* note 5.

¹¹⁷ NYC Rent Freeze Program, *Freeze Your Rent: What is the NYC Rent Freeze Program?*, New York City, <http://www1.nyc.gov/site/rentfreeze/index.page> (last visited Sept. 2, 2016).

¹¹⁸ NYC Rent Freeze Program, *Freeze Your Rent: Qualifications & Eligibility*, New York City, <http://www1.nyc.gov/site/rentfreeze/qualifications/qualifications.page> (last visited Sept. 2, 2016).

- have a household income of \$50,000 or less;
- spend more than one-third of the household's monthly income on rent; and
- have been awarded either federal Supplemental Security Income, federal Social Security Disability Insurance, a Veterans Affairs disability pension or compensation, or disability-related Medicaid (if the applicant has received either Supplemental Security Income or Social Security Disability Insurance in the past).¹¹⁹

The Department of Finance freezes the rent of qualified tenants at the greater of the tenant's prior rent amount or one-third of the tenant's monthly income.¹²⁰

h. Deregulation

New York's rent laws also address the deregulation of apartments based on either rent or the occupants' income. Once the unit's rent or the occupant's income reaches a specified level, the unit will be deregulated. Deregulation may occur only upon a written order issued by the Division of Housing and Community Renewal. The deregulation rent threshold is adjusted on January 1 of each year, based on the one-year renewal lease guideline percentage the local rent guidelines board issued during the previous year. The rent threshold for 2016 in New York City is \$2,700, and the deregulation income threshold, which is not adjusted annually, is \$200,000.¹²¹

¹¹⁹ *Id.*

¹²⁰ NYC Rent Freeze Program, *Freeze Your Rent: Calculating Your Frozen Rent*, New York City, <http://www1.nyc.gov/site/rentfreeze/freezing/calculating-your-frozen-rent.page> (last visited Sept. 2, 2016).

¹²¹ New York State Division of Housing and Community Renewal, *supra* note 5.

2. San Francisco

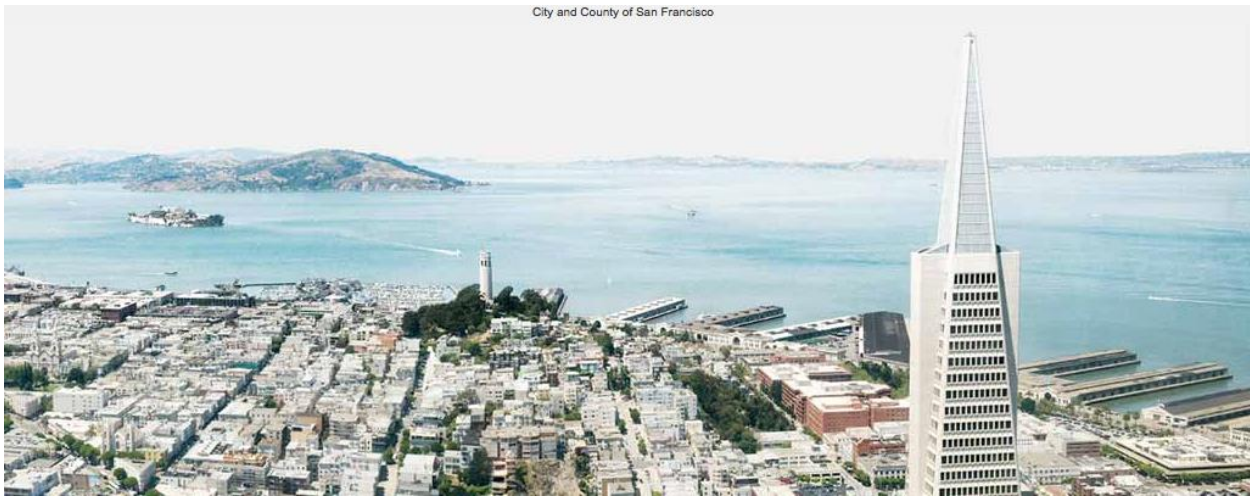


Photo credit: City and County of San Francisco Rent Board,
Fact Sheet 4 – Eviction Issues (April 2010), <http://sfrb.org/fact-sheet-4-eviction-issues>.

San Francisco reportedly has the highest rents of any large city in the United States.¹²² Built on a narrow 49-square-mile peninsula in northern California, San Francisco has no room to expand, a problem amplified by its strict development laws. Although San Francisco built approximately 30 percent more housing units per capita in 2014 than New York City, its housing crisis continues.¹²³

San Francisco's rent-control laws date back to 1979. Most tenants in San Francisco are covered by the ordinances.¹²⁴ The city, which has a population of 837,000, has more than 170,000 rent-controlled units, constituting almost 72 percent of the city's

¹²² Henry Grabar, *The Biggest Problem With San Francisco's Rent Crisis: The suburbs*, Slate, June 22, 2015, http://www.slate.com/articles/business/metropolis/2015/06/san_francisco_rent_crisis_the_solution_isn_t_in_the_city_it_s_in_the_suburbs.html.

¹²³ *Id.*

¹²⁴ San Francisco Tenants Union, *Rent Control*, *supra* note 44.

rental housing stock. In contrast, New York City, a city of 8.4 million, has only about 27,000 rent-controlled units remaining.¹²⁵

Like New York's rent regulations, San Francisco's regulations are complex, with many exceptions and qualifications. The diagram below, created by Trulia, provides a simplified description San Francisco's rent-control scheme.

¹²⁵ Seung Lee, *One Startup Wants to Speed Buyouts in San Francisco's Rent-Controlled Units*, Newsweek, Mar. 25, 2016, available at <http://www.newsweek.com/one-startup-wants-speed-buyouts-san-franciscos-rent-controlled-units-440630>.

a. Property that Qualifies for Rent Control

Although San Francisco's rent control ordinance covers most residential rental property in San Francisco, some property is exempt. The most significant exceptions are:

- most rental units with a certificate of occupancy dated after June 13, 1979;
- subsidized housing, although tenants with tenant-based assistance (such as Section 8 vouchers) are covered by the ordinance's eviction protection and are sometimes regulated by the rent-control provisions;
- residential hotels, if the tenant has fewer than 32 days of continuous tenancy;
- buildings such as dormitories, hospitals, and monasteries; and
- many single-family homes.¹²⁷

Single-family homes, including condominiums, have only limited rent-control coverage if the tenant moved in on or after January 1, 1996.¹²⁸ Although those units do not typically have protection from rent increases, they generally are subject to the ordinance's "just cause" eviction protection. However, full rent control may apply if the tenant:

- moves into a single-family home that was vacant because the previous tenant was evicted after a 60- or 30-day eviction notice (which is a no-fault eviction);
- moves into a single-family home or condominium that had cited housing-code violations that were uncorrected for at least six months before the vacancy; or

¹²⁷ San Francisco Tenants Union, *Rent Control*, *supra* note 44.

¹²⁸ *Id.*

- lives in a condominium where the building’s subdivider still owns the condos, unless the tenant lives in the last unsold unit and the subdivider lived in the unit for at least one year after the unit was subdivided.¹²⁹

Commercial units are generally exempt from the city’s rent ordinance.¹³⁰ However, commercial spaces that are used as residences with the landlord’s knowledge are not exempt from the city’s rent-control provisions unless the property is exempt for other reasons.¹³¹

b. Other Regulated Terms

In addition to limiting rent, San Francisco’s ordinance provides that tenants may be evicted only for specified “just causes.” Although most of the just causes are allegations that a tenant may be able to dispute, such as lease violations, others, such as the owner moving into the unit or an Ellis Act eviction (as described in III.B.2.d. below), do not involve fault and are not disputable.¹³² The most common just causes for eviction are:

- nonpayment or habitually late payment of rent;
- breach of a rental agreement or lease;
- occupancy by the owner or by a member of the landlord's immediate family;

¹²⁹ *Id.*

¹³⁰ San Francisco Residential Rent Stabilization and Arbitration Board, *Topic No. 017: Overview of Covered and Exempt Units*, City and County of San Francisco, Aug. 2006, <http://sfrb.org/topic-no-017-overview-covered-and-exempt-units>.

¹³¹ San Francisco Tenants Union, *Rent Control*, *supra* note 44.

¹³² *Id.*

- performance of capital improvements that will make the unit temporarily uninhabitable;
- substantial rehabilitation of a building that is at least 50 years old, provided the cost of the proposed work is at least 75 percent of the cost of new construction;
- withdrawal of the rental units from the rental market pursuant to the Ellis Act;
- creation of a nuisance;
- substantial interference with the landlord or other tenants in the building; or
- demolishing or permanently removing a rental unit from housing use.¹³³

c. Rent Calculations

The San Francisco Rent Board administers San Francisco's rent-control ordinances. Landlords generally may increase a tenant's rent by only the amount the Board sets each year¹³⁴ using a formula based on a percentage of the local consumer price index. From March 1, 2016, through February 28, 2017, the permitted annual increase is 1.6 percent.¹³⁵

Landlords may also petition for rent increases for other specified reasons. For example, a landlord may pass capital improvements through to his or her tenant for a maximum increase of 10 percent.¹³⁶ (Landlords must complete the capital improvement, petition the Rent Board, and obtain the board's approval before the landlord can pass on

¹³³ San Francisco Rent Board, *Fact Sheet 4 – Eviction Issues*, City and County of San Francisco, April 2010, <http://sfrb.org/fact-sheet-4-eviction-issues>. For a complete list of just causes for eviction, see San Francisco Tenants Union, *Just Causes for Eviction*, Sept. 7, 2016, <https://www.sftu.org/justcauses/>.

¹³⁴ San Francisco Tenants Union, *Rent Control*, *supra* note 44.

¹³⁵ San Francisco Rent Board, *Annual Rent Increase for 3/1/16-2/28/17 Announced*, *supra* note 82.

¹³⁶ San Francisco Tenants Union, *Rent Control*, *supra* note 44.

the expense.) Although tenants may contest increases on certain grounds, such as the work was never done, was not necessary, or was done to gentrify the building, it is difficult to stop an entire pass-through. Once the capital improvement has been paid for, the tenant's rent goes back to what it was before the improvements, plus any permitted interim increases.¹³⁷

Permitted rent increases for capital improvements differ based on the number of units in the building. Tenants in buildings with five or fewer apartments are required to pay 100 percent of the capital improvement's cost, with rent increases of five percent each year until the tenant has paid off the entire amount. Tenants in buildings with at least six units may either:

- pay for half of the capital improvement, with annual rent increases of 10 percent until the capital improvement is paid off; or
- pay for all of the capital improvement and get annual rent increases of five percent per year, up to maximum of 15 percent.¹³⁸

A landlord may also raise a tenant's rent for increased operating and maintenance costs, up to a maximum increase of seven percent. The Rent Board must approve both of these hikes before the landlord can impose them. Generally, a landlord may pass on to a tenant operating and maintenance expenses only if the landlord's increased expenses exceed the tenant's annual rent increase. If the landlord's expenses do exceed

¹³⁷ *Id.*

¹³⁸ *Id.*

the annual rent increase, the landlord may pass through only the amount that exceeds the annual increase.¹³⁹

A landlord may also pass on some costs to his or her tenants automatically, without petitioning the Rent Board. These costs include:

- 50 percent of recently adopted bond measures;
- certain increases in utility costs that the landlord pays;¹⁴⁰ and
- a portion of the annual rent board fee.¹⁴¹

As the San Francisco Tenants Union notes, these aspects of San Francisco's rent-control laws are often seen as unjust. For example, with increases based on capital improvements, the tenant is essentially paying for improvements to the landlord's investment, while the landlord can write-off the improvements' costs on his or her taxes. Similarly, some view the landlord's ability to pass through increased energy costs as unfair because the landlord is effectively being paid for that increase twice—once as an automatic pass-through and again through the effect increased energy costs have on the consumer price index, which is used to determine permitted rent increases.¹⁴²

A tenant may petition the Rent Board to decrease his or her rent if the landlord has not provided agreed upon or legally required services. This situation may occur if the

¹³⁹ *Id.*

¹⁴⁰ *Id.* Generally, if the landlord calculates the increase based on the previous two calendar years, the landlord must first file a petition with the Rent Board. However, if the landlord uses an earlier base year, the landlord needs to file only a calculation worksheet.

¹⁴¹ *Id.*

¹⁴² *See, e.g., id.*

landlord removes an amenity or fails to maintain a safe and habitable premises with housing code violations.¹⁴³

d. Ellis Act

The Ellis Act effectively permits landlords to empty out buildings and sell them. However, effective June 14, 2015, a landlord must pay the greater of the specified relocation payment amount set forth in the chart below or the “rental payment differential,” which is calculated using a formula based on the difference between the unit's monthly rental rate at the time the landlord files the notice of intent to withdraw the units and the monthly market rental rate for a unit in San Francisco.¹⁴⁴ However, on October 2, 2015, the San Francisco Superior Court enjoined San Francisco from enforcing the amended Ordinance until permitted by the court. The City of San Francisco has appealed that ruling to the California Court of Appeal.¹⁴⁵

Relocation Payments for Tenants Evicted Under the Ellis Act

Date of Service of Notice of Termination of Tenancy ("Eviction Notice")	Relocation Amount Due Per Tenant	Maximum Relocation Amount Due Per Unit	PLUS Additional Amount Due for Each Elderly (62 years or older) or Disabled Tenant
3/01/14 – 2/28/15	\$5,265.10	\$15,795.27	\$3,510.06
3/01/15 – 2/29/16	\$5,555.21	\$16,665.59	\$3,703.46
3/01/16 – 2/28/17	\$5,894.63	\$17,683.86	\$3,929.74

Table 1. Relocation Payments for Tenants Evicted under the Ellis Act¹⁴⁶

¹⁴³ *Id.*

¹⁴⁴ San Francisco Residential Rent Stabilization and Arbitration Board, *Relocation Payments for Tenants Evicted Under the Ellis Act*, City and County of San Francisco, Jan. 26, 2016, Note, <http://sfrb.org/sites/default/files/Document/Form/578%20v2%20Relocation%20Payments%2037.9A%2016-17%20281-26-16%29.pdf>.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

San Francisco also sets specific payments for evictions based on owner or relative move-ins, the demolition or permanent removal of a unit from the housing market, temporary capital improvement work, or substantial rehabilitation. Those amounts are currently \$5,890 per tenant, with a maximum of \$17,670 per unit. Additional amounts are due to each elderly or disabled tenant and each household with minor children.¹⁴⁷

3. *Washington, D.C.*



Photo credit: DC.gov, *Washington, DC: New Resident Resources*,
<http://dc.gov/page/new-resident-resources>

The District of Columbia Rental Accommodations Division administers the District's rent-regulation law, which is known as the Rental Housing Act of 1985.¹⁴⁸ All rental units must be registered with the Division as either subject to or exempt from rent control. Rent control automatically applies to any unregistered unit.¹⁴⁹

¹⁴⁷ *Id.*

¹⁴⁸ [D.C. Code § 42-3502.01 et seq.](#) (Rent-Stabilization Program)

¹⁴⁹ D.C. Department of Housing and Community Development, *Rent Control*, DC.gov, <http://dhcd.dc.gov/service/rent-control> (last visited Sept. 2, 2016).

a. Property that Qualifies for Rent Stabilization

The District's Rental Housing Act of 1985 generally applies to all rental-housing buildings or complexes in the District of Columbia. However, although the act's eviction protections apply to all tenants, the rent-stabilization provisions apply only to non-exempt rental units.¹⁵⁰ The District's rent regulations exempt, among others, units that:

- are federally subsidized or subsidized by the District;
- were built after 1975;
- are owned by a natural person who owns no more than four rental units in the District;
- were vacant when the Act took effect; or
- are under a building improvement plan that is receiving rehabilitation assistance through the Department of Housing and Community Development.¹⁵¹

¹⁵⁰ *Id.*

¹⁵¹ *Id.*; D.C. Department of Housing and Community Development, *What You Should Know About Rent Control in the District of Columbia*, Feb. 2014, <http://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Rent%20Control%20Fact%20Sheet%20%28amv%29%2005-22-2014.pdf>.

Summary of Rent Control Exclusions and Exemptions

	Properties	Units
Total rental properties	9,352	119,288
<i>Exclusions</i>		
Nontaxable	409	14,187
Foreign-owned	1	4
<i>Exemptions</i>		
Built 1978 or later	237	10,131
Built 1976–77 ^a	280	11,003
Owns fewer than 5 units ^b	3,940	11,903
Publicly assisted	166	15,343
Government-owned	183	5,760
Total with one or more exemptions	4,370	37,299
Potentially subject to rent control ^c	4,818	79,145
<i>Source:</i> Authors' calculations from rent-controlled properties database.		
<i>Notes:</i>		
a. Properties built 1976–77 are included in the database as possibly subject to rent control.		
b. Exemption only applies to properties owned by individuals (natural persons).		
c. Additional properties with only one housing unit and deemed not subject to rent control were removed from the database at the final stage. Such properties appear to have been improperly classified as multifamily rental in the OTR real property data.		

Table 2. Summary of Rent Control Exclusions and Exemptions in D.C. ¹⁵²

¹⁵² Peter A. Tatian and Ashley Williams, *A Rent Control Report for the District of Columbia* (Washington, D.C.: Urban Institute 2011), table 1, http://www.urban.org/research/publication/rent-control-report-district-columbia/view/full_report. Table used by kind permission of Peter Tatian.

b. Other Regulated Terms

The Rental Housing Act of 1985 contains additional tenant protections. A landlord may evict a tenant for only one of the specific reasons set forth in the Act, which include the following, subject to numerous exceptions, conditions, and notice requirements:

- the tenant does not pay the rent;
- the tenant violates “an obligation of tenancy” and fails to correct the violation within 30 days after receiving notice;
- a court determines that the tenant, or another person occupying the premises with or in addition to the tenant, has performed an illegal act in the unit or building, provided the tenant knew or should have known that the illegal act was occurring;
- the landlord wants to recover possession of the unit for his or her immediate and personal use as a dwelling;
- the landlord has contracted to sell the rental unit or apartment building for the immediate and personal use and occupancy by another person, as long as the landlord has notified the tenant in writing of the tenant’s right to purchase;
- the landlord wants to recover possession of a unit (a) to make immediate alterations or renovations that cannot safely or reasonably be accomplished while the rental unit is occupied, (b) to demolish the building immediately and replace it with new construction, (c) to perform substantial rehabilitation of the building, or (d) to discontinue using the unit as housing; or
- the landlord wants to recover possession to convert the unit or building to a condominium or cooperative.¹⁵³

¹⁵³ [D.C. Code § 42-3505.01](#).

(In no case may a landlord evict a tenant if the National Weather Service predicts that the temperature will fall below 32 degrees Fahrenheit within the next 24 hours.¹⁵⁴)

Therefore, a tenant may not be evicted just because the lease term expires or because a loan securing the property has been foreclosed. Furthermore, even if a valid reason exists for an eviction, the landlord may not use self-help methods such as cutting off utilities or changing locks, and must instead go through the judicial process. A landlord generally must give the tenant a written notice to vacate (unless the tenant is not paying rent and has waived the right to notice in the lease), an opportunity to cure the lease violation (if that is the basis for the action), and an opportunity to challenge the landlord's claims in court.¹⁵⁵

The act also provides specific disclosure requirements and ensures a tenant's rights to the comfort, safety, or enjoyment of a rental unit, without his or her landlord's interference. In addition, a landlord may not retaliate against a tenant for exercising any of his or her tenancy rights. Retaliation includes unlawfully recovering possession of the unit, increasing rent, decreasing services, increasing the tenant's obligations, violating a tenant's privacy, harassing the tenant, or refusing to honor a lease. Furthermore, a landlord may not interfere with a tenant's right to organize a tenant association. Tenants must be given the opportunity to purchase a unit before the landlord sells or demolishes, and a landlord may not convert a rental accommodation to a cooperative or condominium

¹⁵⁴ *Id.*

¹⁵⁵ D.C. Office of the Tenant Advocate, *District of Columbia Tenant Bill of Rights*, July 3, 2015, <http://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/2015%2007%2003%20OTA%20DC%20Tenant%20Bill%20of%20Rights%20ODAI-OTA%20FINAL.pdf>.

unless a majority of the tenants votes for the conversion. The act also provides for relocation assistance under certain circumstances.¹⁵⁶

c. Rent Calculations

The District of Columbia's laws limit the amount and frequency of rent increases on regulated rental units. The landlord may not raise the rent in a regulated unit unless the owner and manager are properly licensed and registered and the unit and common areas substantially comply with the District's housing code. The rent increases, which may not occur more frequently than once every 12 months, are generally limited to no more than the Consumer Price Index for an elderly tenant (at least age 62) or for a tenant with a disability, regardless of income. (To qualify as a person with a disability, the tenant must have a medically determined physical impairment that prohibits and incapacitates 75 percent of the tenant's ability to move about, assist him or herself, or engage in an occupation.¹⁵⁷) For all other tenants, the increase is generally limited to the Consumer Price Index plus two percent. A larger rent increase requires the government's approval of a landlord's petition, which a tenant may challenge. As of February 2014, the maximum increase for tenants who are elderly or disabled was five percent, and the maximum increase for all other tenants was 10 percent.¹⁵⁸

If a rental unit becomes vacant, the landlord may raise the rent charged upon a vacancy to:

- ten percent more than was charged to the former tenant; or

¹⁵⁶ *Id.*

¹⁵⁷ D.C. Office of the Tenant Advocate, *Rent Control*, <http://ota.dc.gov/page/rent-control> (last visited Sept. 2, 2016).

¹⁵⁸ D.C. Office of the Tenant Advocate, *District of Columbia Tenant Bill of Rights*, *supra* note 155; D.C. Department of Housing and Community Development, *What You Should Know About Rent Control in the District of Columbia*, *supra* note 151.

- the rent for a comparable unit, provided that rent results in no more than a 30-percent increase.

After a vacancy increase in rent, the landlord may not raise the rent again for 12 months, even if another vacancy occurs.¹⁵⁹

A landlord may seek larger increases in situations such as hardship, capital improvements, increased services and facilities, substantial rehabilitation, or the agreement of 70 percent of the tenants. To obtain these increases, the housing provider must petition or otherwise seek the Rent Administrator's consent. Tenants may choose to participate in the process, typically at hearings before an administrative judge. The permitted increase amounts vary in those situations. For example, in a hardship case, the landlord may be permitted to raise rents enough to earn a 12-percent return rate on the landlord's investment, but for capital improvements, the landlord may petition to raise rent only enough to cover the capital-improvement costs.¹⁶⁰

C. Select Communities without Rent Control

1. Boston and Neighboring Communities

Massachusetts and its neighboring communities of Cambridge and Brookline had rent control for almost 30 years. However, landlords' frustrations and stories of the wealthy living in cheap flats, eventually took their toll. In November 1994, voters

¹⁵⁹ D.C. Department of Housing and Community Development, *What You Should Know About Rent Control in the District of Columbia*, *supra* note 151.

¹⁶⁰ *Id.*

eliminated rent control by referendum, and residual protections for disabled, elderly, and low-income tenants expired a few years later.¹⁶¹

Reports from the area shortly after rent control was eliminated were mixed. Cambridge, which had approximately 16,000 rental units under strict regulations, reported in 1998 that almost 40 percent of the tenants in regulated units moved out after rent control ended. City officials estimated that rents in the decontrolled units increased by more than 50 percent between 1994 and 1997, exceeding market rates. During the same period, eviction complaints also increased by 33 percent, and Cambridge became a wealthier, but also more transient, community.¹⁶²

Two sides of Boston's just-cause proposal

"Any way you look at it, this is rent control."

***~Skip Schloming,
Executive Director of the Small Properties Owners Association***

"This proposal would just require property owners to provide a good reason to evict someone."

***~ Lisa Owens Pinto,
Executive Director of City Life/Vida Urbana***

*Quotes from [Rich Vetstein, *Raucous Boston City Council Hearing on Just Cause Eviction Proposal*, The Massachusetts Real Estate Law Blog, March 15, 2016.](http://www.economist.com/node/161526)

In Boston, which had 16,000 strictly regulated units and another 40,000 units under vacancy decontrol, evictions for nonpayment of rent increased by 20 percent in the four years immediately following the abolishment of rent control. Also, Boston's housing court

¹⁶¹ *The Morning After*, The Economist, Apr. 30, 1998, available at <http://www.economist.com/node/161526>.

¹⁶² *Id.*

handled more than 7,000 eviction complaints in 1997, compared to 5,000 in 1993 before rent control ended.¹⁶³

However, not all the news was bad. The Cambridge study also showed that investment in housing and repairs increased when rent control ended. It also showed that although many people left, most stayed in place, and the number of non-white tenants in formerly regulated units doubled between 1994 and 1997.¹⁶⁴

The deregulated communities tried to soften the effect of the end of rent control. Boston obtained federal rent subsidies for approximately 400 elderly, disabled, and low-income tenants. Brookline offered one-time relocation stipends to deregulated tenants, and Cambridge earmarked local taxes for affordable housing programs. However, many of the displaced tenants simply disappeared.¹⁶⁵

Interest in rent regulations has recently returned to Boston. On March 14, 2016, the Boston City Council held a public hearing on the hotly contested topic of a just-cause eviction ordinance for 60 to 70 percent of Boston's rental housing. Reports indicate that the hearing was "raucous."¹⁶⁶ The general issue at the hearing was an attempt to deal with rising rents, especially when developers purchase older housing, evict long-term tenants, rehabilitate the building, and then rent the newly renovated units at much higher rents or sell them as expensive condominiums.¹⁶⁷

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Skip Schloming, *Just-Cause Eviction: Rent Control by Another Name*, New Boston Post, Mar. 21, 2016, available at <http://newbostonpost.com/2016/03/21/just-cause-eviction-rent-control-by-another-name/>.

¹⁶⁷ *Id.*

More recently, the Greater Boston Real Estate Board issued a call to action to oppose the just-cause provision.¹⁶⁸ A hearing was scheduled for March 6, 2017. A comparison of the proposed change to existing law is available from the GBREB site.¹⁶⁹

2. *Silicon Valley and the Bay Area*

Silicon Valley, which is home to many large high-tech corporations and smaller start-up companies, is located in the southern portion of the San Francisco Bay Area and includes the Santa Clara Valley. As of 2015, seven cities in the Bay Area had rent regulations,¹⁷⁰ all of which were passed between 1980 and 1985, except San Francisco's, which was adopted back in 1970.¹⁷¹



The Bay Area's rent-regulation policies vary significantly. Most use a consumer price index as the basis for permitted rent increases, but others have a set increase, ranging from five to eight percent. All Bay Area rent regulations permit only one increase per year.¹⁷²

The existing regulatory schemes also cover different units, but they typically exempt units built after a specified date. For example, units built in San Francisco after

¹⁶⁸ The GBAR Informer, *Just Cause Eviction Hearing Set for March 6 in Boston*, 2017, available at <http://www.gbreb.com/gbareventdetails.aspx?id=9046>.

¹⁶⁹ Greater Boston Real Estate Board, *Current Law v. "Just-Cause"*, 2017, available at <http://www.gbreb.com/uploadedFiles/GBAR/Informer/2017/Just-Cause-Eviction-Comparison-of-Proposed-Bill-vs.-Current-Law.pdf>.

¹⁷⁰ Berkeley, East Palo Alto, Hayward, Los Gatos, Oakland, San Francisco, and San Jose.

¹⁷¹ Crispell, *supra* note 18.

¹⁷² See Appendix 2.

1979 are generally exempt. Except for Los Gatos and San Jose, the existing regulations in the Bay Area also contain just cause eviction laws.¹⁷³

The perceived effectiveness of the Bay Area's rent controls is mixed. In San Jose, one interested person has stated that "because there is high tenant turnover and no eviction protections, ...[rent control] has not been effective in keeping rents down overall." ¹⁷⁴ In Oakland, another person commented that although "there are weaknesses...at the end of the day, [rent regulation] is working."¹⁷⁵

Although some cities in Silicon Valley and the Bay Area have rent regulations in place, much of the area does not. Rents in both Silicon Valley and the greater Bay Area have been skyrocketing. A recent surge of activity by Silicon Valley residents who are outraged over the soaring housing prices and who fear the effect the increasing income gap will have on middle-class families are campaigning for rent regulations.¹⁷⁶ These efforts have resulted in several rent-control ballot initiatives.

Unlike earlier movements, California's current tenants' rights movements are primarily centered in the suburbs that line the peninsula south of San Francisco where new tech wealth has collided with decades of development measures that have slowed growth, causing rent prices to increase dramatically—approximately 50 percent over the

¹⁷³ Crispell, *supra* note 18.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Conor Dougherty, *In Silicon Valley Suburbs, Calls to Limit the Soaring Rents*, N.Y. Times, June 11, 2016, available at http://www.nytimes.com/2016/06/12/technology/in-silicon-valley-suburbs-calls-to-limit-the-soaring-rents.html?rref=collection%2Ftimestopic%2FRent%20Stabilization%20and%20Rent%20Control&action=click&contentCollection=timestopics®ion=stream&module=stream_unit&version=latest&contentPlacem ent=2&pgtype=collection.

past five years.¹⁷⁷ For example, the housing situation in San Mateo County is illustrative and striking. Almost 55,000 jobs have been added in the county since 2010, but only approximately 2,150 new housing units were built during that time.¹⁷⁸

3. 2016 Bay Area Initiatives

Alameda, Burlingame, East Palo Alto, Mountain View, Oakland, Richmond, and San Mateo all had rent-stabilization provisions on the ballot in November 2016.¹⁷⁹ Initiatives in Alameda, Burlingame, Mountain View, Richmond, and San Mateo would have enacted new rent control ordinances, while voters in East Palo Alto and Oakland considered amendments to those cities' existing ordinances.¹⁸⁰ If all of the initiatives had been successful, the efforts would have led to the greatest expansion of tenant laws since the 1970s.¹⁸¹ But the results of the elections were mixed, with three of the initiatives (Alameda, Burlingame, and San Mateo) being defeated by substantial margins.

¹⁷⁷ *Id.*

¹⁷⁸ Gurley, *supra* note 75.

¹⁷⁹ *Id.*; Austin Walsh, *Burlingame Rent Control Moves to November Ballot: Council Unanimously Approves Measure*, The Daily Journal (Aug. 2, 2016), <http://www.smdailyjournal.com/articles/news/2016-08-02/burlingame-rent-control-moves-to-november-ballot-council-unanimously-approves-measure/1776425166013.html>; Samantha Weigel, *Rent Control Heads to San Mateo Ballot: Elections Office Certified Citizens' Initiative Signatures for November*, The Daily Journal (July 20, 2016), <http://www.smdailyjournal.com/articles/news/2016-07-20/rent-control-heads-to-san-mateo-ballot-elections-office-certifies-citizens-initiative-signatures-for-november/1776425165323.html>.

¹⁸⁰ A rent stabilization measure approved by voters in Humboldt County was limited to mobile home rents. See, *Humboldt County, California, Mobilehome Rent Stabilization Measure V* (November 2016), Ballotpedia.org, *online at* [https://ballotpedia.org/Humboldt_County,_California,_Mobilehome_Rent_Stabilization_Measure_V_\(November_2016\)](https://ballotpedia.org/Humboldt_County,_California,_Mobilehome_Rent_Stabilization_Measure_V_(November_2016)).

¹⁸¹ Dougherty, *supra* note 176.

a. Alameda

The measure rejected in Alameda (Measure M1) contained three major provisions. The first provision would have created a Rent Control Board, consisting of five members. Members of the Board would have been elected by the voters. Landlords would have been assessed fees estimated at \$235 per unit to pay for the operation of the Board. The second major provision is that apartment rents would have been “rolled back” to the amount charged for a unit on May 5, 2015. Landlords would have been allowed to increase rents by no more than 65% of the percentage increase in the Consumer Price Index each year, but would also have been able to petition the Board for a larger rent increase. Finally, the ability of landlords to evict tenants would have been limited. The Alameda City Attorney noted that there were “potential legal issues” with the Measure that could have made “some or all” of its provisions void. These legal issues were not detailed in the City Attorney’s analysis.¹⁸²

Measure M1 was put on the ballot by a petition signed by nearly 8,000 voters. The Measure was defeated, with 66% of the voters opposed. Alameda voters were not, however, entirely hostile to the principle of rent regulation. A competing measure, Measure L1, was placed on the ballot by the Alameda City Council. That Measure passed with 55% of the vote. Measure L1 limits rent increases to one per year, and calls for compulsory mediation for residential rent increases greater than 5%. Restrictions on

¹⁸² See the Impartial Analysis prepared by the City Attorney, *online at* https://alamedaca.gov/sites/default/files/document-files/files-inserted/alameda_rent_control_initiative_-_impartial_analysis.pdf (accessed Feb. 20, 2017).

evictions were also enacted as a part of the Measure. Measure L1 will sunset on December 31, 2019.¹⁸³

b. San Mateo

Measure Q in San Mateo was similar to Alameda Measure M1. Measure Q would have limited annual rent increases equal to the increase in the Consumer Price Index. Increases would have been between one and four percent per year. The Measure would also have created a Rental Housing Commission, which would have the authority to allow landlords to petition for larger rent increases. Measure Q would also have required “just cause” before a tenant could be evicted.¹⁸⁴ “Just cause” would have been defined as failure to pay rent, breach of lease, nuisance, criminal activity, failure to grant reasonable access, necessary repairs, owner move-in, withdrawal of the unit from the rental market, or demolition. Measure Q was defeated by a vote of 60% opposed, 40% in favor.

c. Burlingame

The unsuccessful Burlingame measure was also placed on the ballot by voter petition. Measure R would have repealed the city ordinance prohibiting rent control. Rent increases would have been limited to one per year. The amount of each increase would have been tied to the Consumer Price Index, and could not be less than one percent, nor more than four percent, over the base rent. The base rent for tenancies starting on or before March 30, 2016, would have been the rent in effect on that date. For tenancies that started later, the base rent would generally have been the initial rent upon occupation.

¹⁸³ City Attorney’s Impartial Analysis, *online at* https://alamedaca.gov/sites/default/files/document-files/files-inserted/alameda_rent_stabilization_act_-_impartial_analysis.pdf (accessed Feb. 20, 2017).

¹⁸⁴ San Mateo City Attorney’s Impartial Analysis, *online at* https://shapethefuture.org/elections/2016/nov/candidates_measures/documents/MQ_ImpartialAnalysis.pdf (accessed Feb. 21, 2017).

A Rental Housing Commission would have been established to implement the measure. The power to evict tenants from rent controlled residents would have been limited.¹⁸⁵ Measure R failed. Nearly 67% of the voters voted against the Measure.

d. Richmond

In Richmond, Measure L establishes a rent board, and also sets a maximum allowable rent for rent controlled residential units. The maximum allowable annual rent is based on the rent in effect on July 21, 2015, subject to annual increases based on the percentage increase in the Consumer Price Index. The maximum allowable annual rent is subject to a petition and hearing procedure for adjustments. Measure L also limits the reasons for termination of a tenancy.¹⁸⁶ The Measure passed with 65% of the vote in favor.

The California Apartment Association brought a lawsuit to block enforcement of the Richmond Measure. The Association's lawsuit challenged the measure on equal protection grounds: the five-member Rent Board established by the measure may have no more than two members who are landlords or real estate licensees, but does not limit the number of members who may be tenants. The Superior Court denied the Association's motion for a preliminary injunction barring enforcement, saying that the economic injury that was alleged did not amount to "irreparable harm."¹⁸⁷

¹⁸⁵ Burlingame City Attorney's Impartial Analysis, *online at* <https://www.burlingame.org/modules/showdocument.aspx?documentid=13699> (accessed Feb. 20, 2017).

¹⁸⁶ Richmond City Attorney's Impartial Analysis, *online at* <http://www.ci.richmond.ca.us/DocumentCenter/View/39719>.

¹⁸⁷ Kathleen Pender, *Judge Says Richmond Rent Control Can Remain in Effect, for Now*, San Francisco Chronicle, Feb. 15, 2017, *online at* <http://www.sfchronicle.com/business/networth/article/Judge-says-Richmond-rent-control-can-remain-in-10935668.php>.

e. Mountain View

The Mountain View measure—Measure V—passed by a very close margin (54% to 46%). That measure ties rent increases to the Consumer Price Index, and sets a maximum increase of 5% per year. A landlord will be able to "bank" rent increases. This allows a landlord who does not increase rent as high as legally permitted in a particular year to accumulate and impose unimplemented rent increases. The rent increase in any 12-month period may not exceed 10%.¹⁸⁸

Measure V was on the same ballot as a competing measure, Measure W. Measure W would have required rent increases of more than 5% per year to be submitted to binding arbitration. The prior city ordinance required non-binding arbitration of rent increases of more than 7.2% per year.¹⁸⁹ Measure V failed, 51% opposed to 49% in favor.

f. Oakland and Palo Alto

Two of the other measures on local ballots that dealt with rent control did not enact new ordinances, but modified what was already in place. The Oakland measure was an expansion of that city's existing rent control ordinance. Measure JJ requires landlords to obtain advance approval from the City Rent Adjustment Program¹⁹⁰ before imposing a

¹⁸⁸ Mountain View City Attorney's Impartial Analysis, *online at* <https://www.sccgov.org/sites/rov/Info/Nov2016Info/Documents/E110%20-%20Measure%20V.pdf> (accessed Feb. 21, 2017).

¹⁸⁹ Mountain View City Attorney's Impartial Analysis, *online at* <https://www.sccgov.org/sites/rov/Info/Nov2016Info/Documents/E110%20-%20Measure%20W.pdf> (accessed Feb. 21, 2017).

¹⁹⁰ The Rent Adjustment Program was created in 1980, see <http://rapwp.oaklandnet.com/about/rap/>. The Program is financed by an annual Rent Program Service fee per unit, paid by owners of residential rental property.

rent increase greater than the cost-of-living adjustment based on the Consumer Price Index. The prior version of the ordinance did not require advance approval for such rent increases, but allowed tenants to file a petition objecting to the increase.¹⁹¹

The successful measure in East Palo Alto was presented as being an amendment to “simplify and clarify various processes and procedures” in the city’s existing Rent Stabilization and Just Cause for Eviction ordinance. It was placed on the ballot by the City Council, and made largely technical corrections.¹⁹² The measure passed with 80% of the vote.

4. *2016 Initiatives and Realtor® Advocacy*

The effectiveness of advocacy efforts by local Realtor® associations was shown in three of the Bay Area rent control elections. The San Mateo County and Silicon Valley associations, with the assistance and support of the National Association of REALTORS®, helped influence the debate and played an important role in the outcomes.

The San Mateo and Burlingame proposals faced strong opposition from local Realtors® and property owners. Gina Zari, Government Affairs Director of the San Mateo County Association of Realtors®, says that this opposition faced an uphill fight. Landlords had been subject to vilification in the press by one local reporter for the previous two years. In August 2016, when the measures were first announced, polling showed that 70% of the respondents favored them. The Association decided to fight. The first step was to create a coalition between Realtors® and property owners. This coalition became

¹⁹¹ League of Women Voters of California, Voters Edge Ballot Information on Measure JJ, *online at* <http://votersedge.org/ca/en/ballot/election/42-8b01e0/address/null/zip/94705/measures/measure/2486>.

¹⁹² East Palo Alto City Attorney’s Impartial Analysis, *online at* https://shapethefuture.org/elections/2016/nov/candidates_measures/documents/MJ_ImpartialAnalysis.pdf (accessed Feb. 21, 2017).

“massive,” growing to include roughly 1800 members, most of whom were property owners. The growth in membership was driven by owners who were asked to find like-minded property owners with concerns about property rights. The coalition held weekly meetings to keep members updated. Members were involved in all aspects of the campaign.

One different aspect of this campaign was the number of yard signs that were put up. Five thousand signs per city were distributed. They went quickly—500 signs were delivered on Wednesday, and all of them had been distributed by Friday.¹⁹³

The yard signs were just one part of the campaign communications employed. The campaign against the rent control proposals also employed a great deal of direct mail pieces. Some of these were pieces supplied by the National Association of REALTORS®, and some were authored by local consultants. Opponents also took out several full page ads in local newspapers. One of these ads was an incredibly effective open letter, signed by 25 of our most respected community leaders. Ms. Zari adds that campaigners “walked precincts and handed out walk pieces, had many coalition members write letters to the editor of our local paper, mailed letters to local property owners, had members distribute flyers to their clients, ran an email campaign and online ads, had a team of volunteers monitoring and commenting on social media, had Facebook pages and websites for each measure, put up over 5,000 signs in each city, and did over 100 sign waving mini-rallies on street corners.”¹⁹⁴

¹⁹³ Telephone conversation with Gina Zari, Feb. 22, 2017.

¹⁹⁴ E-mail from Gina Zari, Mar. 9, 2017.

The number of members in the coalition made the opposition to the campaign look like a grassroots uprising—and it was. Mini-rallies were held simultaneously, and precinct walkers talked with potential voters.

Proponents were extremely organized, but had little funding. The coalition opposed to the measures received generous cash contributions from NAR, the California Realtors® Association, and contributions from individual property owners. The coalition published an article signed by 20 prominent community leaders, including former mayors of both parties, opposing the measures. The size of the coalition, as well as the support of the leaders, led the local newspaper to issue an editorial opposing the measures, despite the prior negative news coverage. The Measures were defeated by substantial margins, with 67% opposed in San Mateo, and 61% opposed in Burlingame.

Ms. Zari says that the victory was made possible by two things. One was the large, and effective, coalition put together early in the campaign. The second was that the coalition was able to hire local consultants to guide the campaign. These consultants were able to tailor the campaign's message to the area, and helped guide the message from the NAR.¹⁹⁵

Although the voters in Mountain View approved the rent control ordinance, some who were involved in the campaign against Measure V do not regard the election as being a complete loss. Jessica Epstein, Government Affairs Director of the Silicon Valley Association of Realtors®, calls the result of the election a success “through losing.”¹⁹⁶ She notes that the population of Mountain View is made up of around 60% renters, the highest

¹⁹⁵ Telephone conversation with Gina Zari, Feb. 22, 2017.

¹⁹⁶ Telephone conversation with Jessica Epstein, Feb. 22, 2017.

proportion of renters in cities in the area. Most of those renters (approximately 90%) live in units that will be covered by the measure. Local media were “wildly” in favor of the Measure, making the campaign against it an uphill struggle. In addition, the opposition to Measure V was split by the presence on the ballot of the competing Measure W, placed on the ballot by the City Council against the advice of the Realtors® Association.

The Realtors® Association, aided by the National Association of REALTORS® and coordinated with the California Apartment Association, mounted a full-fledged campaign against the Measure. The campaign involved targeted mailings, door hangers, and online advertising. While on the opposition side on the campaign, tenant organizations, such as the Mountain View Tenants Coalition¹⁹⁷ mounted a homegrown campaign of going door-to-door, and combined a voter registration drive with a get-out-the-vote campaign. The Measure, however, passed by a relatively small margin of 53%.

Enforcement of the Mountain View ordinance has been stalled, for the time being. In December of 2016, the California Apartment Association brought a lawsuit to bar enforcement of the measure. The lawsuit alleges that the Measure is an unlawful taking of private property that violates both the California and U.S. Constitutions. The suit alleges that the rent control part of the Measure do not allow landlords a fair rate of return, and represent an “arbitrary and capricious windfall for tenants.”¹⁹⁸ The lawsuit also alleged that the eviction protections transferred the value of the property from landlords to

¹⁹⁷ See <https://mvtenantscoalition.org/f-a-q-s/>.

¹⁹⁸ Mark Noack, *Update: Landlords Sue Over Measure V; Judge Temporarily Halts Law*, Mountain View Voice, Dec. 22, 2016, online at <http://www.mv-voice.com/news/2016/12/21/landlords-take-measure-v-to-court>.

tenants.¹⁹⁹ A hearing on an action against the measure is scheduled for April 2017. The arguments at the hearing will be on the legal merits of the case, rather than on the underlying cited facts. The City of Mountain View has stipulated a temporary restraining order, agreeing not to enforce the rent control provisions of Measure V. If the litigation over the Measure goes on too long, the City Council will likely take some action on the issue.²⁰⁰

The real value of the Measure and the campaign against it has been containment. New rent control measures have passed only in two other cities. A “blow out” victory for proponents of rent control in Mountain View would have made things more difficult for rent control opponents. As it is, the narrowness of the margin by which rent control passed in Mountain View has “stemmed the tide” of rent control, and has shifted the terms of the discussion. The conversation is now focused on ways to promote affordable housing measures, rather than on rent control.²⁰¹

5. *Rent Control in 2017*

Rent control is largely a state or local matter, rather than a federal concern. There is little that federal policymakers can do in this area, apart from encouraging or discouraging local initiatives. There does not seem to be any strong interest in this kind of encouragement or discouragement in the near future. Although President Trump has said in the past that he believes rent control is a “disaster,” he has also said that he did

¹⁹⁹ *Id.*

²⁰⁰ See <https://mvtenantscoalition.org/f-a-q-s/>.

²⁰¹ *Id.*

not advocate eliminating it.²⁰² It was not an issue during his presidential campaign. At his hearing before the Senate Banking Committee on his nomination to be HUD Secretary, Ben Carson reportedly was asked his position on rent control, but that topic does not appear to have been a significant part of the discussion.²⁰³ Federal action regarding rent control would thus appear to be unlikely.

Rent control efforts will most likely be focused on cities. The Right to the City Alliance, a New York based urban activist group, plans to pursue a “trans-local” strategy. Such a strategy will focus on local policymakers, and will push for rent control, among other issues. Tony Romano, the Organizing Director of Right to the City, says that he is “hopeful” this year.²⁰⁴

Local efforts for rent control have begun, starting on opposite sides of the country. In South Portland, Maine, the City Council is set to discuss a proposed rent control ordinance at a workshop.²⁰⁵ The proposed ordinance was drafted and submitted by Pine Tree Legal, a statewide legal assistance group. The ordinance would prohibit rent increases prior to the expiration of a lease term, or during the first year of a tenancy.

²⁰² “Rent control is a disaster for all but the privileged minority who are protected by it. As much as any other single factor, rent control is responsible for the desperate housing crisis that has plagued NYC for the past 20 years . . . Unlike most developers, I don’t advocate eliminating rent control. I just think there ought to be a means test for anyone living in a rent-controlled apartment.” Donald Trump, *The Art of the Deal*, pp. 167-69 (1987).

²⁰³ Katherine Keane, *Ben Carson Questioned in HUD Secretary Confirmation Hearing*, ARCHITECT, Jan. 12, 2017, online at http://www.architectmagazine.com/practice/ben-carson-questioned-in-hud-secretary-confirmation-hearing_o.

²⁰⁴ Abigail Savitch-Lew, *10 Housing Policies to Watch Under President Trump*, City Limits, Jan. 19, 2017 online at <http://citylimits.org/2017/01/19/10-housing-policies-to-watch-under-president-trump/>.

²⁰⁵ Kelly Bouchard, *Rent Control, Marijuana Business Rules on South Portland Council Agenda*, Portland Press Herald, Feb. 10, 2017, online at <http://www.pressherald.com/2017/02/10/rent-control-marijuana-business-rules-on-south-portland-council-agenda/>. The article notes that the workshop was scheduled for February 13, but according to the South Portland City Council, that meeting was cancelled due to inclement weather.

Landlords would also be required to provide 90 days' notice of any rent increase. The proposed ordinance would not limit the amount of rent increases, but would restrict any increases to no more than one per calendar year.²⁰⁶

On the Pacific Coast, the Portland, Oregon, City Council has passed a measure that will require landlords to pay the relocation costs of any tenants who move because of a rent increase of 10% or more in one year.²⁰⁷ Proponents of the Ordinance claim that it is not rent control, because it does not prohibit or cap rent increases.²⁰⁸ Multifamily NW, an association of residential rental property managers and vendors, disagrees with that description. The group argues that the Ordinance violates the Oregon prohibition against local rent control ordinances.²⁰⁹ Multifamily NW has promised to bring a lawsuit to block enforcement of the Ordinance.²¹⁰

The bar against local rent control measures is the subject of legislation now pending in the Oregon House of Representatives. Three bills, HB 2001²¹¹, 2003,²¹² and 2004,²¹³ would repeal that prohibition. HB 2001 goes further than the other two bills, and

²⁰⁶ The text of the proposed ordinance is online at http://www.southportland.org/files/6514/8676/0727/01_-_Renter_Protection_Policies.pdf.

²⁰⁷ Portland, Ore. Ordinance No. 188219, as amended, *online at* <http://efiles.portlandoregon.gov/record/10623592>.

²⁰⁸ Comm. Chloe Eudaly, *Relocation Assistance Fact Sheet*, *online at* <https://www.portlandoregon.gov/eudaly/article/627469> (accessed Feb. 23, 2017).

²⁰⁹ Ore. Rev. Stat. § 91.225.

²¹⁰ Jessica Floum, *Landlords Promise Lawsuit Over Proposed Portland Tenant Protections*, OregonLive, Jan. 31, 2017, *online at* http://www.oregonlive.com/portland/index.ssf/2017/01/landlords_promise_lawsuit_over.html. As of February 23, 2017, no such lawsuit had been filed.

²¹¹ *Online at* <https://olis.leg.state.or.us/liz/2017R1/Measures/Overview/HB2001>.

²¹² *Online at* <https://olis.leg.state.or.us/liz/2017R1/Measures/Overview/HB2003>.

would impose a temporary statewide moratorium on rent increases of more than five percent.

The sponsor of HB 2001, Rep. Tina Kotek (D-Portland), characterizes her bill as “second-generation rent stabilization,” rather than the type of rent control “that began right after World War II where properties had hard, fast caps on rents.”²¹⁴ HB 2001 states that any local rent “stabilization law” would be required to provide landlords with a “fair rate of return over the operating costs for the dwelling unit, as determined by the city or county,” as well as a way for landlords to petition for permission to increase rent by more than the amount allowed under the rent stabilization program. Owner-occupied residential structures with no more than two dwelling units would be exempt.²¹⁵

Rep. Kotek acknowledges that her bill would do nothing to increase the supply of rental housing. She says that the arguments against rent control are based on “misperceptions,” and do not relate to the kind of control she is advocating. Rep Kotek also says that “rent stabilization is not about supply. It's about making the market more predictable and reducing displacement. I have not seen one report that specifically says rent stabilization reduces housing supply.”²¹⁶

Rep. Kotek’s measure, and the similar bills, have support in larger cities with large populations of renters, especially Portland. The prospects for passage of rent

²¹³ Online at <https://olis.leg.state.or.us/liz/2017R1/Measures/Overview/HB2004>.

²¹⁴ Gordon R. Friedman, *Portland’s Tina Kotek Explains Her Rent Control Plans – and Landlord Pains*, OregonLive, Feb. 4, 2017, online at http://www.oregonlive.com/politics/index.ssf/2017/02/portlands_tina_kotek_explains.html.

²¹⁵ HB 2003 and 2004 would repeal the prohibition against local rent control ordinances without imposing any limitations on local laws.

²¹⁶ Friedman, *supra* n. 29.

control legislation in Oregon are, however, dim. While there may be sufficient support for a bill to pass the House of Representatives, there is likely to be more opposition to the idea of rent control in the Senate. Shawn Cleave, Government Affairs Director for the Oregon Association of Realtors®, says that “a majority of legislators in both chambers understand that having local governments and politicians set rates on rentals is unfortunately likely to have the opposite effect of what the proponents hope to accomplish.”²¹⁷ The three bills are pending in the House Committee on Human Services and Housing.

In California, a bill introduced in the Assembly on February 17 would repeal the Costa-Hawkins Rental Housing Act. The bill, AB 1506,²¹⁸ was introduced by Assembly Members Bloom (D-Santa Monica), Chiu (D-San Francisco), and Bonta (D-Oakland). Senator Benjamin Allen (D-Redondo Beach) is listed on the bill as a co-author. As of February 28, the bill has not been referred to committee.

A bill to repeal the Illinois Rent Control Preemption Act was introduced on February 8. The bill, HB 2430,²¹⁹ would apply statewide. As of February 28, the bill is in the Real & Personal Property Law Subcommittee of the House Judiciary – Civil Committee. The deadline for the bill to be reported out of committee is March 31.²²⁰

²¹⁷ Rachel Monahan, *Portland’s Dream of Rent Control Faces a Wake-Up Call in Salem*, Willamette Week, Feb. 8, 2017, online at <http://www.wweek.com/news/state/2017/02/08/portlands-dream-of-rent-control-faces-a-wake-up-call-in-salem/>.

²¹⁸ Online at http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1506.

²¹⁹ Online at <http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=91&GA=100&DocTypeId=HB&DocNum=2430&GAID=14&LegID=103158&SpecSess=&Session=>.

²²⁰ Once the bill receives a referral, it may be heard in committee on or after March 21, 2017.

Rent control legislation has also been introduced in Hawaii. HB 1267,²²¹ introduced on January 24 by Representative Kaniela Ing (D-South Maui), would have established a rent-controlled housing “pilot project.” The project would have limited the amount of rent that could be charged for housing constructed under the project to 30% of the area median income. Increases in the rent would have been limited to some percentage not set out in the original version of the bill. HB 1267 was heard by the House Committee on Housing on February 14, and the Committee recommended that the measure be deferred. Passage of the bill in 2017 seems to be unlikely.

Two bills in Washington to declare that local ordinances may not regulate the rent that is charged for commercial property. HB 1082,²²² and its Senate companion bill, SB 5286²²³ would declare that the state preempts the field of rent control. Local controls on the rents charged for would be prohibited. Washington law already prohibits local rent control, but these bills would extend the prohibition to limits on the rent for “properties in public ownership or public management, properties providing low income rental housing under joint public-private agreements, or floating home moorage sites.”²²⁴ HB 1082 was heard in the House Committee on Local Government on January 17, and SB 5286 passed to the Senate Rules Committee for Second Reading on February 2.

²²¹ Online at http://capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=1267&year=2017.

²²² Online at <http://lawfilesexxt.leg.wa.gov/biennium/2017-18/Pdf/Bills/House%20Bills/1082.pdf>.

²²³ Online at <http://lawfilesexxt.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Bills/5286-S.pdf>.

²²⁴ Senate Bill Report, SB 5286, online at <http://lawfilesexxt.leg.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/Senate/5286%20SBR%20FI%2017.pdf>.

Finally, two New York bills would make adjustments to the New York City rent stabilization law. AB 5700²²⁵/SB 3643²²⁶ would require landlords to provide access to an apartment building to a licensed professional engineer or licensed registered architect hired by any tenant or tenant association. Access would be permitted to allow the engineer or architect to conduct an inspection of a major capital improvement for which an application for a maximum rent adjustment has been filed by the landlord. Any such inspection would be conducted after notice to the landlord and during normal business hours, and inspection reports would be filed by the tenants with the New York City rent agency for consideration with the application. The current rent stabilization law allows tenants to contest a rent increase due to a major capital improvement, but does not require that an engineer or architect hired by the tenants be given access to inspect such an improvement.²²⁷

6. *Looking Forward*

Despite the fact that passing new rent control ordinances is politically challenging, one California policy expert predicted the Bay Area passages, in part because “the crisis is so sharp and happened so quickly.”²²⁸ But the momentum for rent control in the San Francisco Bay Area seems to have stalled for now. Even given the seemingly fertile climate for such measures—a large population of renters paying very high rents—advocacy efforts by Realtors® and property owners has stemmed the tide, and limited the

²²⁵ Online at http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A05700&term=2017&Summary=Y.

²²⁶ Online at http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S03643&term=2017&Summary=Y.

²²⁷ Memorandum in Support of AB 5700, online at http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A05700&term=2017&Summary=Y&Memo=Y.

²²⁸ Crispell, *supra* note 18.

spread of rent control. These advocacy efforts have succeeded in changing the conversation from market controls to affordable housing efforts.

Nationally, the prospects for rent control do not seem to be very good. State legislative efforts to permit or encourage rent control have been stalled. Concerns for federalism, as well as a general free-market inclination, make it unlikely that the Trump administration will be supportive of federal rent control efforts. It is safe to say that the efforts for rent control will be concentrated in local areas.



IV. IMPACTS OF RENT CONTROL

A. Positive Impacts

1. Overview

The stated mission of the New York City Rent Guidelines Board perhaps summarizes the intended positive impacts of rent regulation best:

The Board's essential mission might best be described as an attempt to construct or simulate "normal" or "fair" rent levels in a market driven by chronic scarcity and instability. The housing emergency hinges on the statutory recognition that a vacancy rate of less than 5% creates abnormal market conditions. The City Council and State legislature have recognized that such conditions cause "severe hardship to tenants" and force the "uprooting [of] long-time city residents from their communities."²²⁹

²²⁹ Collins, *supra* note 8, at 1 (quoting Rent Stabilization Law of 1969 (N.Y.C. Admin. Code 26-501), Findings and Declaration of Emergency).

However, even the New York Board recognizes the arguments and complaints from both sides. Owners allege that low rent guidelines have led to deferred maintenance, abandonment, lost tax revenues, and widely disparate rents for similar apartments.

“The real goal of rent control is protecting the moral rights of occupancy. Long-term tenants who contributed to this being a desirable place to live have a legitimate interest in staying in their apartments.”

~Joshua Mason, economics professor, Roosevelt University

Tenants assert that a market or quasi-market solution to the housing shortage results in increased rents and evictions, homelessness, gentrification, or severe economic hardship. As a result, the Rent Guidelines Board, admits that it has “never been able to resolve this housing dilemma” to both sides’ satisfaction.

Accepting that even a normal rental market produces hardship for some owners and some tenants, the

Board acts as mandated to establish fair rents, using a “guideline setting process with credibility, integrity and a measure of public respect” as an attainable objective.²³⁰

Rent-regulation supporters, while acknowledging economists’ arguments against rent regulation, assert that rent regulation is a necessity and a “lifeline” in high-rent markets.²³¹ For example, Matthew Losak, executive director of Renters Alliance (a nonprofit that protects renters’ rights in Montgomery County, Maryland), believes that rent control is crucial, especially for seniors, low-income families, and residents whose salaries do not keep pace with rising rents.²³² Mr. Losak notes, “Right now in Montgomery

²³⁰ *Id.* at 2-3.

²³¹ Gurley, *supra* note 75.

²³² Erin Bylander, *Lucky Few Get Prized Housing*, The Washington Post, Feb. 15, 2013, available at <https://www.washingtonpost.com/express/wp/2013/02/15/lucky-few-get-prized-housing/>.

County, landlords can raise rents as high as they want each year” and “renters live in uncertainty from year to year.”²³³

Some commentators assert that much of the negative press is attributable to landlords and real estate developers who hate the laws and are “largely responsible for organizing the political efforts that have precipitated their decline,” but even those commentators acknowledge that rent regulations are also unpopular among economists, opinion columnists, and “armchair urbanists.”²³⁴

Others focus on the larger picture. Joshua Mason, an economics professor at Roosevelt University, believes that the argument for rent control “should be distinguished from the argument for affordability per-se.”²³⁵ Focusing on the moral rights of occupancy, Mr. Mason argues that the societal goal of preserving income-diverse and stable neighborhoods where people are not forced to move every few years justifies a collective interest in stabilizing neighborhoods, which can be achieved through rent regulations.²³⁶

2. Protects from Excessive Rent Increases

The most obvious benefit, and the stated reason for the existence of most rent regulations, is to protect tenants in regulated property from experiencing huge rent hikes. Although rents are typically permitted to rise, the increase is at a more measured pace. However, there are two sides to even this most basic premise. While the tenants in rent-

²³³ *Id.* Note that Montgomery County has a voluntary rent guideline for landlords, which changes annually based on inflation, but those guidelines are not very stringent.

²³⁴ Jake Blumgart, *In Defense of Rent Control*, Pacific Standard, April 1, 2015, <https://psmag.com/in-defense-of-rent-control-3cb453119116#.9fv4lvmmc>.

²³⁵ *Id.*

²³⁶ *Id.*

stabilized apartments may be paying lower rents, studies have shown that tenants *not* in controlled units are paying higher rents than they would be paying without the rent regulations.²³⁷ Another interesting study found that New York City tenants in rent-controlled units had higher initial rents because they were willing to pay more to get into a rent-controlled unit with the promise of having smaller rent increases in the future.²³⁸

Nevertheless, it appears that rent regulations do regulate rent in most cases. As noted in Section III.D.1. above, studies in the 1990s found that although deleting rent control in Boston did not immediately generate a measurable effect on the availability of apartments, the median price for a two-bedroom apartment doubled.²³⁹ Others analyzing rent control in Cambridge at that time found that 40 percent of the regulated tenants moved out of their apartments after rent regulations ended in the city and rents increased by 50 percent.²⁴⁰

3. *Reduces Displacement in Booming Economies*

Some scholars argue that rent regulations contribute to tenant security in the face of displacement pressures. Although limited mobility is often mentioned as an argument against rent regulation, that limited mobility may be a reasonable trade-off in gentrifying areas because it allows vulnerable residents to stay in their neighborhoods by controlling their rent.²⁴¹ Statistics appear to support this argument. For example, 35.2 percent of

²³⁷ Peter A. Tatian, *Is Rent Control Good Policy?*, Urban Wire, Urban Institute, Jan. 2, 2013, <http://www.urban.org/urban-wire/rent-control-good-policy>.

²³⁸ *Id.*

²³⁹ Blumgart, *supra* note 234.

²⁴⁰ *Id.*

²⁴¹ Crispell, *supra* note 18.

renting households in New York stayed in the same unit from 1990 to 2000, while nationally, only 13.6 percent of the renting households stayed in the same place.²⁴²

4. *Eliminates Retaliatory Rent Increases*

Regulatory schemes that require “just cause” for eviction effectively eliminate the risk of retaliatory rent increases.²⁴³ By setting specific permitted rent increases and delineating the limited circumstances that permit a landlord to increase rents, many rent-regulation schemes attempt to eliminate retaliatory rent increases, even if the applicable rent regulations do not directly address the topic. Citizens in cities such as San Jose recognize the importance of including anti-retaliation measures to protect tenants from eviction if they ask for improvements or report a problem regarding code violations.²⁴⁴

5. *Balances Landlords’ Tax Benefits*

Although some states, such as California, provide some income tax relief to renters,²⁴⁵ most income tax benefits, such as those providing depreciation deductions, benefit landlords. By limiting the extent to which landlords can raise rent on property that they depreciate, some argue that rent control restores some balance to the tax benefits that would otherwise be concentrated primarily in landlords’ hands.²⁴⁶ (Note that although

²⁴² *Id.*

²⁴³ Chappie Jones, *Rent Control*, City of San Jose District 1, <http://sjdistrict1.com/2016/06/rent-control-update/> (last visited Sept. 13, 2016).

²⁴⁴ Jennifer Wadsworth, *San Jose City Council Lowers Rent Control Cap to 5 Percent*, San Jose Inside, April 20, 2016, <http://www.sanjoseinside.com/2016/04/20/san-jose-city-council-lowers-rent-control-cap-to-5-percent/>.

²⁴⁵ See, e.g., California Franchise Tax Board, *Nonrefundable Renter’s Credit*, <https://www.ftb.ca.gov/individuals/faq/ivr/203.shtml> (last visited Feb. 13, 2017).

²⁴⁶ See Wikipedia, *Rent Control in the United States*, https://en.wikipedia.org/wiki/Rent_control_in_the_United_States.

this argument has been presented in various contexts, research located no hard studies to support the position.)

6. *Encourages Tenants to Improve Their Apartments*

In some cases, rent control may increase long-term tenants' incentives to renovate individual units. Common sense says that a tenant who knows he or she will be in the premises for a longer term is more likely to be willing to invest sweat equity and their own money into improving a unit. Some analysts, such as Joshua Mason, an economics professor at Roosevelt University, specifically note that although tenants are often criticized for not investing in their dwellings, rent regulations give tenants a greater stake in their community and provide them with an incentive to put time, energy, and money into their homes.²⁴⁷

As a side note, a 1988 study found no basis whatsoever for economists' assertions that rent control leads to worse maintenance. Instead, in addition to providing an incentive for tenants, vacancy decontrol may provide landlords with the financial incentive to renovate vacant units because they may then re-rent them at a higher rent.²⁴⁸

7. *Improves Neighborhood Stability*

Although renters are frequently maligned for not investing in their communities, some argue that rent regulations give tenants a greater stake in their community, improving neighborhood stability. Some look to the Bay Area for statistics that support the position that rent control can contribute to greater residential stability—in 2015, the Bay

²⁴⁷ See Blumgart, *supra* note 234.

²⁴⁸ *Id.* (referencing Edgar O. Olsen, *What Do Economists Know About the Effect of Rent Control on Housing Maintenance?*, 1 J. of Real Est. Fin. & Econ. 295 (Jan. 1988), abstract available at <http://link.springer.com/article/10.1007%2FBF00658922#page-1>.)

Area cities with rent regulations had a percentage of renters living in the same place for at least a year that rivaled, or in some cases exceeded, the state's overall percentage.²⁴⁹

Without the security of rent regulations, tenants receive little in return for contributing to their neighborhood and building relationships in the community.²⁵⁰ Also, many cities' rent regulations require a landlord to renew a tenant's lease either annually or every two years, and many provide that a tenant may not be evicted except on specified grounds.²⁵¹ Both of these provisions improve the stability of neighborhoods with a significant percentage of rent-regulated units. However, there is some good news, and some bad news regarding this argument: some scholars have argued that although rent regulations contribute to population stability, it is primarily at the cost of limited mobility.²⁵²

8. *Reduces Vacancies*

Proponents of rent regulations assert that rent regulations reduce vacancies. However, the number of apartments experts expected to open up was not supported by data when rent control was removed in Boston. Census data showed that Boston's vacancy rate was four percent before the regulations were phased out and 2.9 percent four years after they were gone. Thus, deleting rent control had not generated a measurable effect on the availability of apartments (although the median price for a two-bedroom apartment doubled).²⁵³

²⁴⁹ Crispell, *supra* note 18.

²⁵⁰ Blumgart, *supra* note 234.

²⁵¹ Michelle Cohen, *Rent Stabilization Demystified: Know the Rules, Your Rights, and if You're Getting Cheated*, 6sqft (Mar. 24, 2015), <https://www.6sqft.com/rent-stabilization-demystified-know-the-rules-and-your-rights/>.

²⁵² Crispell, *supra* note 18.

²⁵³ Blumgart, *supra* note 234.

9. *Encourages New Construction and Other Positive Effects*

Many rent-regulation schemes exempt new construction. As a result, at least historically, significant increases in new housing units typically occurred during periods when rents were regulated. For example, New York City experienced housing construction booms during the 1920s and again after World War II, both of which were periods when strict rent controls were imposed on existing rental units. Unfortunately, despite similar policies during the past four decades, the city has not experienced a similar new housing boom and vacancy rates remain below the desired five percent, possibly because of the loss of inexpensive building sites, more restrictive zoning laws and building codes, and the increase in relative housing costs in the surrounding suburbs.²⁵⁴

Timothy Collins, a New York housing lawyer, has studied rent-regulation literature in depth. After his comprehensive review of the literature, he found that the often-stated wisdom regarding rent regulations is overly simplistic, in part because most rent regulations do not have a hard ceiling on rents. (The reality is more frequently a more measured approach intended to discourage landlords from raising rents dramatically and displacing tenants.) Citing New York's two largest building booms that occurred while strict rent controls were in place, Mr. Collins, while not arguing that the regulations provoked the building, emphasizes that the regulations did not restrain building like strict zoning codes did in the mid-1960s.²⁵⁵

²⁵⁴ Collins, *supra* note 8, at 23.

²⁵⁵ Blumgart, *supra* note 234.

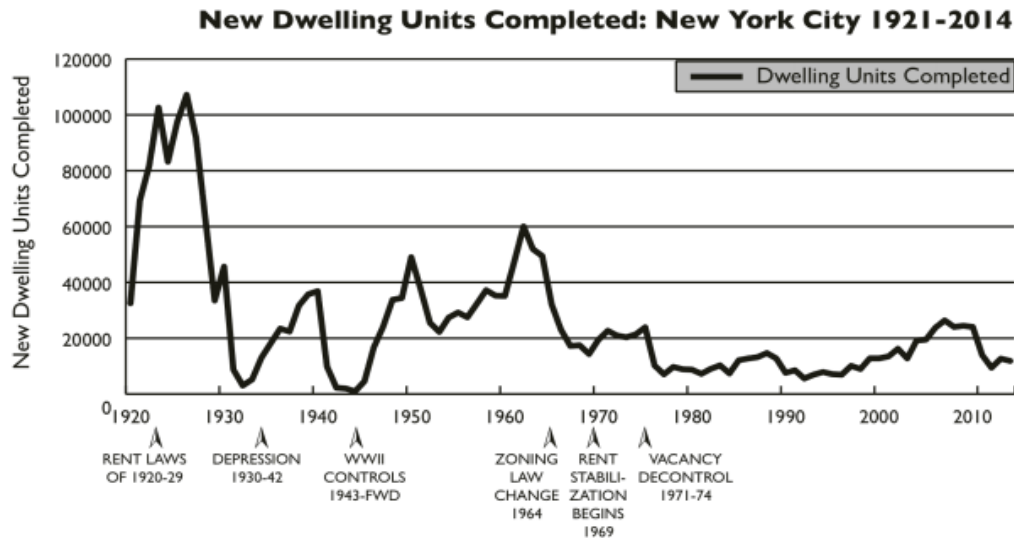


Figure 4. New Dwelling Units Completed: New York City, 1921-2014²⁵⁶

Others have noted similar trends in other communities. For instance, one economist found that although housing construction in New Jersey fell by 52 percent in cities that enacted rent-control regulations in the early 1970s, it fell 88 percent in cities that did not regulate rents.²⁵⁷

Other positive effects of rent-regulation schemes result from non-rent provisions:

- tenants in many rent-controlled buildings are entitled to receive specified required services;²⁵⁸ and
- in some markets, such as New York City, a bankrupt rent-controlled tenant may not be evicted from his or her rent-controlled apartment.²⁵⁹

²⁵⁶ Chart from Collins, *supra* note 8, at 23, reproduced by kind permission of Andrew McLaughlin, Exec. Director, NYC Rent Guidelines Board.

²⁵⁷ Blumgart, *supra* note 234 (citing Michael J. Mandel, *Response: Does Rent Control Hurt Tenants?: A Reply to Epstein*, 54 Brooklyn L. Rev. 1267 (1989)).

²⁵⁸ Cohen, *supra* note 251.

²⁵⁹ Diane Pham, *New Ruling: Landlords Can't Kick a Bankrupt Tenant Out of Their Rent-Controlled Apartment*, 6sqft (Mar. 3, 2015), <https://www.6sqft.com/new-ruling-landlords-cant-kick-a-bankrupt-tenant-out-of-their-rent-controlled-apartment/>.

10. *Supports Affordable Housing*

The stated goal of many rent-regulation supporters is to preserve affordable housing for low- and middle-income families.²⁶⁰ In fact, preserving and creating affordable housing through rent stabilization is a stated priority of Mayor de Blasio's current administration.²⁶¹ However, whether rent regulations achieve that goal is hotly debated.

Several federal and state programs assist low-income individuals and families, but few apply to middle-income families. Most of New York City's affordable housing programs, such as the Mitchell-Lama co-ops, the 80/20 rentals, and Section 8 vouchers, have income restrictions. However, rent-stabilization generally does not consider income, at least not until the tenant is making more than \$200,000 per year for two years in a row. In New York, even much of the new construction is rent-stabilized since many developers are building affordable housing in exchange for tax breaks, bringing their units under the city's rent regulations.²⁶² Rent-regulated apartments often permit people to live long-term in neighborhoods they could not otherwise afford, even if their incomes are not low enough to qualify for other housing assistance.²⁶³ In fact, some argue that rent stabilization "is currently the main form of rent regulation allowing the middle- and working-class the ability to afford to live in New York City by prohibiting unjustified

²⁶⁰ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

²⁶¹ Leigh Kamping-Carder, *The Insider's Guide to Rent Stabilized Apartments: Essential Knowledge for New York Renters*, Brick Underground (Aug. 29, 2016), http://www.brickunderground.com/blog/2015/01/rent_stabilization_misconceptions.

²⁶² *Id.*

²⁶³ *Id.*

evictions and ensuring limits on rent hikes.”²⁶⁴ Others note, “rent regulations have been the single greatest source of affordable housing for middle- and low-income households.”²⁶⁵

Several analysts and commentators have opposed economics’ majority view that rent controls do not support affordable housing. For example, in response to an article condemning rent control as bad public policy with no justification, Michael J. Mandel asserts that “moderate rent control provides a mix of regulation and free markets that protects a substantial group of tenants from rising rents without suppressing new construction. Thus, moderate rent control is a relatively effective tool for transferring the gains from rising housing prices from landlords to tenants.”²⁶⁶

Another legal commentator challenges the economic arguments against rent control by reviewing the impact of rent control in a gentrifying market. He concludes that gentrification in many cities has created an urban housing market of rising rents and a decreasing supply of homes for poorer urban residents, resulting in greater poverty, displacement, and sometimes homelessness. In this market a complete rent-control proposal can serve as an important partial solution to the plight of the poor. He then concludes that although critics have attacked rent control housing policy on economic grounds, their economic efficiency arguments do not provide a compelling basis for

²⁶⁴ Justin R. La Mort, *The Theft of Affordable Housing: How Rent-Stabilized Apartments Are Disappearing from Fraudulent Individual Apartment Improvements and What Can Be Done to Save Them*, 40 N.Y.U. Rev. of L. & Soc. Change, 351, 351, available at <https://socialchangenyu.com/the-theft-of-affordable-housing-how-rent-stabilized-apartments-are-disappearing-from-fraudulent-individual-apartment-improvements-and-what-can-be-done-to-save-them/>.

²⁶⁵ Blumgart, *supra* note 234 (quoting Timothy Collins).

²⁶⁶ Michael J. Mandel, *Response: Does Rent Control Hurt Tenants?: A Reply to Epstein*, 54 Brooklyn L. Rev. 1267, 1274 (1989).

rejecting current rent regulations. He notes that most of those criticisms are mistaken or accurate only with regard to the rudimentary forms of rent control or to rent control in a non-gentrifying market.²⁶⁷

In a gentrifying market, however, Rent Control will not lead to abandonment, conversion, or inadequate maintenance. Nor will it lead to a decrease in future construction. Whether Rent Control's allocation of space and capital is more or less efficient than in the non-rent-controlled market is impossible to determine, given the inefficiency of both markets. Which housing regime maximizes wealth is also indeterminate without further empirical work.²⁶⁸

Despite these uncertainties, rent control in a gentrifying market may increase the supply of low-income housing, reduce “shelter impoverishment,” and prevent the “further degradation of the urban poor.”²⁶⁹

Similarly and as noted above, after his comprehensive review of literature, Timothy Collins concluded that New York’s moderate rent regulations had few, if any, of the predicted negative side effects and that rent regulations have been the single greatest source of affordable housing for both middle- and low-income tenants.²⁷⁰

²⁶⁷ See also Edgar O. Olsen, *Abstract: What Do Economists Know About the Effect of Rent Control on Housing Maintenance?*, 1 J. of Real Est. Fin. & Econ. 295 (Jan. 1988), abstract available at <http://link.springer.com/article/10.1007%2F00658922#page-1>. (Complete article available for a fee.) Mr. Olsen, as reflected in his abstract of an article in the Journal of Real Estate Finance and Economics, also asserts that economists’ views concerning the effect of rent control are based on extremely simple models, and that they ignore “essential features of actual rent control ordinances and important responses to them.”

²⁶⁸ Note, *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, 101 Harv. L. Rev. 1835, 1855 (June 1988).

²⁶⁹ *Id.*

²⁷⁰ Blumgart, *supra* note 234.

B. Negative Impacts

1. Overview

Numerous organizations and economists vehemently oppose rent control, citing both the negative economic and the detrimental social effects they believe rent regulation has on a community. For example, the National Multifamily Housing Council asserts that rent controls exacerbate housing shortages, cause existing buildings to deteriorate, and disproportionately benefit higher-income households.²⁷¹ Although many communities around the country continue to impose rent controls, typically in an attempt to preserve affordable housing for low- and middle-income families, many argue that rent control instead reduces both the quality and quantity of available housing.²⁷²

Economists on both the left and the right tend to disagree with tenant activists' contention that rent regulation creates a fairer housing market. For instance, Paul Krugman, alluding to economists' disapproval of rent control, wrote in the New York Times that rent control is "among the best-understood issues in all of economics, and – among economists, anyway – one of the least controversial."²⁷³ This condemnation of rent control is almost unanimous among economists. In a survey of American Economic Association economists, 93 percent agreed that a rent ceiling reduces the quality and quantity of available housing.²⁷⁴

²⁷¹ National Multifamily Housing Council, *Rent Control Laws by State*, last visited Aug. 31, 2016, <http://www.nmhc.org/Research-Insight/Rent-Control-Laws-by-State/>.

²⁷² See National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

²⁷³ E.H., *The Economist Explains: Do Rent Controls Work?*, *supra* note 4.

²⁷⁴ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49 (citing R.M. Alston, J.R. Kearl, and M.B. Vaughan, *Is There a Consensus Among Economists in the 1990s?*, Am.

The arguments against rent regulation encompass both economic and social effects, some of which are fairly obvious or intuitive and some of which are less so. The list below addresses several of the most frequently cited arguments against rent regulation.

2. *Reduces Quantity of Available Housing*

Most economists assert that setting a price ceiling on housing reduces the housing supply in a market. With maximum prices set, people have less incentive to fix up and rent spaces in their homes or to build new rental property. This slowed growth in supply intensifies any existing price crunch.²⁷⁵

The standard reasoning is that without an artificial ceiling on rents, any housing shortage resolves on its own. Rents will generally rise in the short-term as consumers compete for the limited available units. However, over time, the higher rents will encourage new investment in rental housing, resulting in new construction, rehabilitation of existing units, and conversion of buildings from nonresidential to residential use, ultimately eliminating the housing shortage. In a rent-regulated market without the increased rents required to attract new investment, new housing construction is limited and no long-term solution resolves the housing shortage. In other words, if a community adopts rent control, it sends the market a false message, so that rent control ultimately reduces, rather than expands, the housing supply. In some cases, even existing rental housing may even be converted to other uses.²⁷⁶

Econ. Rev., May 1992, at 2013-209, available at <http://www.weber.edu/wsuiimages/AcademicAffairs/ProvostItems/global.pdf>).

²⁷⁵ E.H., *The Economist Explains: Do Rent Controls Work?*, *supra* note 4.

²⁷⁶ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

Several studies have supported this position, especially in markets with strict rent controls. For example, the number of total rental units in Cambridge and Brookline, Massachusetts, fell by eight percent and 12 percent respectively in the 1980s, after those cities imposed stringent rent controls, while the number of rental units in most nearby communities increased during the same period.²⁷⁷ In Berkeley and Santa Monica, California, the total supply of rental units dropped 14 percent and eight percent, respectively, between 1978 and 1990. Again, the rental supply rose in most nearby cities during the same time period.²⁷⁸

In rent-stabilized markets, such as New York City, the larger stabilized units rarely turn over. If a tenant does vacate a unit, the landlord often finds it in his or her best interest to do extensive renovations, frequently significant enough to pull the unit into the destabilized market.²⁷⁹ The reduced quantity of available housing is also accentuated in some markets when open units are passed among friends or family members and never even reach the public market.²⁸⁰ Landlords may also convert unprofitable property to condominiums or cooperatives, or abandon it all together, further reducing the stock of available housing.²⁸¹

²⁷⁷ *Id.* (citing Rolf Goetze, *Rent Control: Affordable Housing for the Privileged, Not the Poor*, Small Property Owners Association of Cambridge (1994)).

²⁷⁸ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49 (citing St. John and Associates, *Rent Control in Perspective -- Impacts on Citizens and housing in Berkeley and Santa Monica Twelve Years Later* (Berkeley: Pacific Legal Foundation, 1993)).

²⁷⁹ Santora, *supra* note 69.

²⁸⁰ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

²⁸¹ *Id.*

3. *Reduces Quality of Available Housing*

Because rent control also reduces the return on rental housing investments, it can lead to a decline in the existing rental stock's quality as housing providers faced with decreasing revenues may be forced to reduce the amount they invest in maintaining and repairing existing housing.²⁸² Studies of Los Angeles' rent-controlled market are illustrative. Researchers have found that 63 percent of the benefit to consumers of lowered rents was offset by the loss of available housing because of deterioration and other disinvestment forms.²⁸³ Similar studies of rent-controlled markets in New York and Boston found significant differences in the housing quality and amount spent on maintenance and repair between rent-controlled and market-rate units.²⁸⁴

Another study found a similar effect on housing quality in "tenancy rent control" programs, which include regulatory schemes in which rent is regulated within a tenancy but not between tenancies. The researchers supported their theory with empirical evidence showing that because a landlord's discounted revenue received over a tenancy depends on the unit's starting rent, the landlord has a great incentive to improve a unit between tenancies, but little incentive to maintain the same unit well during the tenancy.

²⁸² *Id.*

²⁸³ *Id.* (citing C.P. Rydell, et al., *The Impact of Rent Control on the Los Angeles Housing Market*, Report N-1747-LA (The Rand Corporation 1981)).

²⁸⁴ *Id.* (citing M. Lett, *Rent Control: Concepts, Realities, and Mechanisms* (Center for Urban Policy Research, Rutgers University 1976)).

This effectively leads to the reduction and postponement of unit maintenance during a tenancy.²⁸⁵

4. *Raises Concerns Regarding New Construction*

Some claim that rent regulations force rents below the market rate, thereby reducing the profitability of rental housing.²⁸⁶ If true, then investors would have an incentive to move out of the rental market, which could possibly reduce new housing construction. However, all rent regulations reviewed contain terms that exempt new construction, negating any such effect.

5. *Forces Removal of Long-Term Tenants*

Another challenging aspect of some rent regulations is that landlords are tempted to force the removal of long-term tenants in order to bump up the rent for a new tenant. Communities and states have responded to the concern by including “just cause” eviction requirements. As discussed in detail above (for example, see III.2.b. for a discussion of “just cause” in San Francisco), just-cause requirements typically limit a landlord’s ability to evict a tenant, requiring the landlord to prove a specified reason for the eviction. Typical just causes include a tenant violating a significant term of the lease or engaging in certain illegal activities or a landlord wanting to move into the premises.²⁸⁷

Even though landlords who violate restrictions on evicting tenants often face stiff civil or criminal penalties, some landlords in vacancy-decontrol areas have been known to devise creative “just causes” to evict tenants so that the landlord can increase the rent

²⁸⁵ Richard Arnott & Elizaveta Shevyakhova, *Tenancy Rent Control and Credible Commitment in Maintenance* (Sept. 2008), <http://economics.ucr.edu/papers/papers08/08-12.pdf>.

²⁸⁶ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

²⁸⁷ See, e.g., San Francisco Tenants Union, *Just Causes for Eviction*, *supra* note 133.

in the vacant unit to market rates. Sometimes it is easy for a landlord to find a valid reason to justify the eviction, but some landlords try to turn a trivial offense into a just cause for the eviction.²⁸⁸

California's Ellis Act is often criticized for a similar reason. In San Francisco in the late 1990s as the first dot-com boom hit the Bay Area, hundreds of tenants were evicted pursuant to the Ellis Act, which effectively permits landlords to empty out buildings and sell them. Although the act does not permit landlords to offer those apartments for rent later at a higher price, it does permit them to sell shares of the building to new buyers. Tenants' rights advocates argue that the Ellis Act allows real estate speculators to purchase rent-controlled buildings, evict long-time tenants, and sell shares to investors, effectively allowing speculators to empty out neighborhoods for richer new residents.²⁸⁹ Supporting this position is the fact that although these evictions subsided when the dot-com bubble burst in the early 2000s, by 2005, the number of Ellis evictions tripled, and in 2013, Ellis evictions grew 175 percent from the number in 2012.²⁹⁰

6. *Increases Rent for Unprotected Tenants*

Another typical argument against rent control is that it increases the rent for unprotected tenants. Although this is difficult to prove, studies often cite to price gaps in rent-regulated markets. For example, the price gap between a rent-stabilized and a market-rate apartment in Manhattan is significant. In 2011, even before the recent spike

²⁸⁸ Marcia Stewart, *supra* note 90.

²⁸⁹ Joe Kloc, *Tech Boom Forces a Ruthless Gentrification in San Francisco*, Newsweek, Apr. 14, 2014, available at <http://www.newsweek.com/2014/04/25/tech-boom-forces-ruthless-gentrification-san-francisco-248135.html>.

²⁹⁰ *Id.*

in market-rent rates, rent-stabilized rates averaged \$1245 per month cheaper than market rents.²⁹¹

7. *Reduces Landlord Incentive to Maintain Controlled Property*

Economists also allege that rent controls discourage landlords from maintaining their property. In addition to the effects on housing quality based on limited funds (as discussed above in IV.B.3.), other social forces may affect a landlord's incentive to maintain rent-controlled property. For instance, when rent ceilings limit supply and turnover, landlords are less motivated to maintain properties in order to compete to attract tenants.²⁹²

8. *Decreases Landlord's Ability to Meet Expenses*

a. Loss of Revenue and Lower Profits

Because rent control and rent stabilization both force rents below the market price, the programs reduce the potential profitability of rental housing. This loss of revenue may make it difficult for a landlord to meet routine expenses, and, as previously mentioned, may force landlords to substantially reduce the amount spent on maintaining and repairing their rental housing units.²⁹³

Although profits are undoubtedly lower than expected in *rent-controlled* units, some studies have indicated that that is not necessarily true in *rent-stabilized* markets. For example, New York's rent-stabilization system considers a landlord's reasonable profit margin when setting permitted rent increases, and some argue that the Rent

²⁹¹ Santora, *supra* note 69.

²⁹² E.H., *The Economist Explains: Do Rent Controls Work?*, *supra* note 4.

²⁹³ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

Guidelines Board has historically granted increases that are high enough to maintain a reasonable profit.²⁹⁴ In a 1997 study, one researcher calculated the cumulative impact of the rent increases granted to landlords over the previous 22 years and the rent increases that would have been expected based on the actual increase in costs for landlords to maintain their apartments. The study concluded that the Board's permitted increases were almost always more generous to landlords than the amount that would have resulted from a calculation based only on increased costs. However, the study also acknowledges landlords' arguments that the standard formula used at the time did not consider that more repairs are required as buildings age, the number of two-year lease renewals, and the erosion in landlords' income caused by inflation.²⁹⁵

b. Unfair Burden on Landlords

The question of whether landlords should bear the burden of providing subsidized housing to the poor and middle class is an unresolved social dilemma. Many commentators question why that “uniquely public burden” is borne solely by rental housing providers. Instead, they propose that society should rely on broader, more equitable means of subsidizing housing for the poor.²⁹⁶

²⁹⁴ Mark Green, *Rent Destabilization Study II: An Analysis of the Fairness to Landlords of Rent Increases Granted by the Rent Guidelines Board for Stabilized Apartments*, New York City Office of Public Advocate (May 18, 1997), http://www.nycrgb.org/downloads/research/pdf_reports/greenrentstudy.pdf.

²⁹⁵ *Id.*

²⁹⁶ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

9. *Creates Challenges to Finding Housing*

a. Difficulty Finding Economical Housing

In some markets, such as on Manhattan, finding a rent-stabilized apartment is extremely difficult, so much so that newcomers may think that rent-stabilized apartments “have gone the way of subway tokens and Automats.”²⁹⁷ Although New York City’s Department of Housing Preservation and Development maintains a list of building with stabilized apartments, it does not provide data regarding the number of regulated apartment in each building, and the Department is not a listing service. Furthermore, few of the city’s major brokerages keep track of stabilized units. As a result, the search for rent-stabilized housing is like looking for “a needle in a haystack.”²⁹⁸

Similar problems exist in the District of Columbia. Although a majority of the rental units in the District are regulated, it is difficult for prospective tenants to determine whether any particular unit is covered.²⁹⁹

Rules that strengthened tenant protections by raising rent ceilings and annual incomes before a landlord may deregulate an apartment have arguably made it even more difficult to find rent-stabilized apartments as people stay in their existing units longer.³⁰⁰ Also, with the overall low vacancy rates in Manhattan (approximately one percent in 2012), prospective tenants were likely to find themselves “facing nearly the

²⁹⁷ Santora, *supra* note 69.

²⁹⁸ *Id.* (quoting Alexis Fleming, a broker at Citi Habitats, who noted that as of 2012, she had rented only seven stabilized apartments during the preceding seven years).

²⁹⁹ Bylander, *supra* note 232.

³⁰⁰ Santora, *supra* note 69.

same level of scrutiny as condo or co-op buyers.”³⁰¹ As Yuval Grenblatt, a vice president of Prudential Douglas Elliman noted in 2012, “The competition for a \$4,000 one-bedroom is now fierce.... So you can imagine how strong competition is for something below market value.”³⁰²

The situation is exacerbated by some landlords’ sometimes-manipulative efforts to get their regulated units deregulated. According to a Furman Center study, 231,000 units have been released from rent regulation in New York City over the past 30 years.³⁰³ Between 2002 and 2014, the number of rental units that were affordable by the working poor fell by 27 percent.³⁰⁴ Some landlords seek to push individual apartments into the luxury rental market, while others work to empty a building of all renters.³⁰⁵ One anonymous landlord in Brooklyn explained, “We don’t usually buy buildings with tenants.... They actually bring down the value of the property almost 60 or 70 percent.”³⁰⁶

In New York City, landlords may even legally offer low-paying tenants money simply to leave.³⁰⁷ Unidentified landlords have reportedly paid from \$2,000 to \$100,000 or more to buy out low-paying tenants, and some landlords are even reported to have physically destroyed buildings to force tenants out overnight.³⁰⁸

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ D.W. Gibson, *How to Dump Tenants and Make a Fortune*, The Nation, June 11, 2015, available at <https://www.thenation.com/article/how-to-dump-tenants-and-make-a-fortune-2/>.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

Net Loss of Rent Stabilized Units, 1994 – 2012

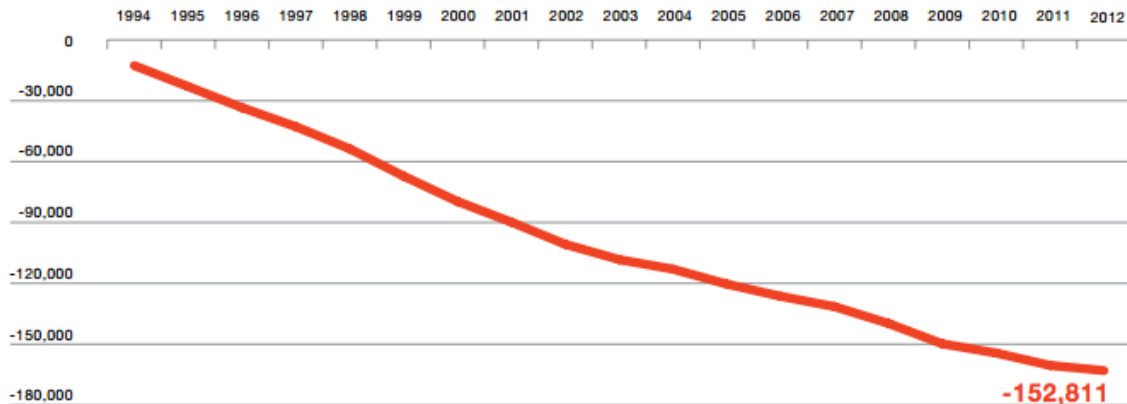


Figure 5. Net Loss of Rent-Stabilized Units in New York City, 1994-2012³⁰⁹

b. Higher Finder Fees

Consumers in search of rental housing in a rent-regulated community frequently must pay significant entry costs during their search for rental housing. For example, in many rent-controlled markets, tenants must pay substantial finder's fees to obtain an apartment because of the scarcity of available housing. In some markets, new consumers may also need to pay "key money" or make other payments to current tenants or providers in order to obtain regulated housing. Poor families, single consumers, and young adults entering the market are hit especially hard by these costs.³¹⁰

³⁰⁹ Image credited to nyc.gov, as reproduced in Leigh Kamping-Carder, *supra* note 261.

³¹⁰ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

10. *Distributes Benefits Inequitably*

a. The Rich and Connected Reap More Benefits

Although most rent-control proponents justify the regulations as an anti-poverty strategy, some evidence indicates that higher income households are actually the primary beneficiaries of many rent regulations. For example, there is evidence that tenants living in rent-controlled units in New York tend to have higher median incomes than tenants who rent market-rate apartments, possibly because wealthier individuals are in a better position to locate and secure rent-stabilized apartments.³¹¹ For example,

- one New York City study found that rent-controlled households with incomes of more than \$75,000 received almost twice the average subsidy of rent-controlled households with incomes below \$10,000;³¹²
- another New York City study found that rent control had the greatest effect on rents in Manhattan, which is the borough with the highest average income;³¹³
- a study focused on rent control in Berkeley and Santa Monica concluded that the beneficiaries of rent regulations in those two communities were "predominately white, well-educated, young professionally employed and affluent," and that rent

³¹¹ E.H., *The Economist Explains: Do Rent Controls Work?*, *supra* note 4.

³¹² National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49 (citing Citizens Budget Commission, *Reforming Residential Rent Regulations* (New York City 1991)).

³¹³ *Id.* (citing H. Pollakowski, *An Examination of Subsidies Generated by Rent Stabilization in New York City* (Cambridge: Joint Center for Housing Studies of Harvard University 1989)).

control had substantially increased the disposable income of those tenants while worsening low-income families' situations³¹⁴; and

- a review of rent-controlled tenants in Cambridge, Massachusetts, showed that they had, on the average, higher incomes and occupations with a higher status than other Cambridge residents, including homeowners.³¹⁵

A 2012 study by the Furman Center for Real Estate and Urban Policy at New York University similarly found that, despite the generally accepted impression that stabilized apartments are intended to provide affordable housing, many of the tenants fortunate enough to locate a rent-stabilized unit in recent years have been relatively wealthy.³¹⁶ For example, while the median income of all renters of stabilized apartments in the Manhattan core (housing below 96th Street) was \$57,780, the median income of those moving into the area during the same period was been closer to the average Manhattan income of approximately \$100,000.³¹⁷ Outside the Manhattan core, the median income of stabilized tenants is \$8,000 less than the income of market-rate tenants.³¹⁸ The report concludes, "Some people who enjoy the benefits of rent stabilization are not low-income households."³¹⁹

³¹⁴ *Id.* (quoting R. Devine, *Who Benefits from Rent Controls?* (Oakland: Center for Community Change 1986)).

³¹⁵ *Id.* (citing Rolf Goetze, *Rent Control: Affordable Housing for the Privileged, Not the Poor* (Small Property Owners Association of Cambridge 1994)).

³¹⁶ Santora, *supra* note 69.

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

Rumors of extremely wealthy people reaping rent-control benefits abound. For example, reports surfaced in 2013 of an Afghan princess living in a two-bedroom apartment on Manhattan's Upper East Side for \$390 per month.³²⁰

b. The Poor Are at a Substantial Disadvantage

Many of the economic and social costs of rent control disproportionately hit the poor, especially the decrease in the quality and maintenance of existing rental housing and the reduced access to new housing. The middle class can more easily move out when the housing quality declines, but the poor are less likely to be able to make a move.³²¹

It is also more difficult for poor families to find new housing. Many cheap units never hit the market and are instead located by word-of-mouth among those with connections.³²² In addition, landlords have more discretion in a tight market when choosing among potential tenants. In an unregulated market, rent governs a landlord's selection process. If rent is restricted, landlords look at other factors, such as income and credit history, to choose tenants. These factors tend to bias a landlord's selection against low-income families, especially single-parent households.³²³

In fairness to landlords, it is in their best interest as they sort through numerous well-qualified potential tenants to be even more selective than market-rate landlords. As

³²⁰ Aaron Wiener, *Losing Control*, Washington City Paper (Dec. 12, 2014), <http://www.washingtoncitypaper.com/news/article/13046333/losing-control-dcs-rent-control-laws-are-supposed-to-keep>.

³²¹ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

³²² Santora, *supra* note 69.

³²³ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

Jack Freund, the executive vice president of the Rent Stabilization Association, noted in 2012, “In the free market, you get a tenant in, and if it turns out bad, you simply do not renew that lease.... As a rent-regulated landlord, the owner does not have that option.”³²⁴ As a result, a potential tenant must come prepared with a check to cover the application fee and deposit, an annual income of 45 to 50 times the monthly rent for the preceding three years, and a credit score of over 700. If a guarantor is involved, a landlord generally requires the guarantor to have at least 100 times the monthly rent in income. Although some landlords in smaller buildings may focus more on the type of tenant the applicant may be, these unstated requirements effectively push out most low-income applicants.

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11. *Reduces Tenant Mobility*

Tenants lucky enough to find a rent-controlled unit are the primary beneficiaries of rent control, but even the effects on those tenants are not all positive. For example, tenant mobility is substantially reduced if renters are reluctant to part with their rent control subsidies. A study of New York City tenants found that rent control tripled the expected duration of a tenancy.³²⁶ The effects on the groups described below are even more profound.

³²⁴ Santora, *supra* note 69.

³²⁵ *Id.*

³²⁶ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49 (citing R. Ault et. al., *The Effect of Long-Term Rent Control on Tenant Mobility*, 35 J. of Urb. Econ. 140-158 (1994)).

a. Elderly and Empty Nesters

Tenants may stay in rent-controlled property longer than what would otherwise make sense.³²⁷ For example, elderly tenants, who might be better off in other living situations, such as assisted living, stay put because they do not want to lose their subsidy. The same is true for empty nesters, who are reluctant to move to smaller places if the rent on their current place is regulated.³²⁸

b. Upward Mobility

The converse is also true in some cases. Rent control may discourage families from upgrading their apartments, even when they have legitimate reasons for wanting to do so. Tenants who would otherwise move to larger homes do not do so because they do not want to lose their subsidy. This loss of mobility is especially costly to families whose job opportunities are geographically or otherwise limited and who may need to travel long distances to reach the jobs that are available to them.³²⁹

12. *Reduces Property Tax Revenues*

Rent control reduces both the actual and relative market value of rent-controlled rental property.³³⁰ As the taxable assessed rental property values decline, the resulting property tax income also declines. A study of rent control in New York City in the late 1980s estimated the loss in taxable assessed property values attributable to rent control

³²⁷ E.H., *The Economist Explains: Do Rent Controls Work?*, *supra* note 4.

³²⁸ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

³²⁹ *Id.*

³³⁰ *Id.*

to be approximately \$4 billion, costing the city about \$370 million in property tax revenues per year.³³¹

Berkeley similarly estimates that it has experienced a significant loss in property tax revenue due to the city's rent control.³³² A study conducted in 1988 concluded that the amount lost in property tax revenues would be sufficient to provide a monthly housing subsidy of \$250 to more than 1900 rental units. At that time, the federal government under its Section 8 program subsidized only 1600 units in Berkeley, so eliminating rent control could provide Berkeley with enough additional revenue to double the low-income housing subsidy program without increasing taxes.³³³

13. *Generates Significant Administrative Costs*

The costs of administering rent control can be substantial, requiring elaborate bureaucratic systems. Typically, a local governmental unit registers the property, collects detailed information on the rental property, and establishes complicated systems to set rents and hear complaints and appeals. In Santa Monica, the Rent Control Board in 1996 had a budget in excess of \$4 million a year to control rents on only 28,000 apartments.³³⁴ Moreover, the necessary processes cost more than money—they also consume the time of both consumers and municipal authorities.³³⁵

³³¹ *Id.* (citing Peat Marwick, *A Financial Analysis of Rent Regulation in New York City: Costs and Opportunities* (1988)).

³³² *Id.* (citing Berkeley Community Development Department, *Rent Control in the City of Berkeley, 1978 to 1994: A Background Report for Updating the City of Berkeley's General Plan Housing Element* (Berkeley 1994)).

³³³ California Association of Realtors®, *Pernicious Effects of Rent Control*, <http://www.car.org/media/pdf/102929/> (last visited Sept. 9, 2016).

³³⁴ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

³³⁵ *Id.*



V. ENFORCEMENT OF RENT CONTROL LAWS

Rent control enforcement provisions vary greatly from city to city, depending, primarily, on how strictly the provisions are enforced and how they are maintained. A common criticism of rent regulations is that either a program does not have strong enough controls or the program's controls are too costly. Fundamentally, effective rent control requires "costly enforcement procedures and a specialized bureaucracy." Hiring more officials to enforce the rent-control laws is expensive and ultimately uses funds that could be used for alternate programs.³³⁶

Not surprisingly, rent regulations that do not have strong enforcement provisions are less effective. For example, Oakland's regulations lack a registry of rent-controlled

³³⁶ California Association of Realtors®, *supra* note 333.

units, making it difficult to track controlled units and ensure compliance with the city's regulations.³³⁷

Many jurisdictions collect a fee on each regulated unit to cover administrative expenses. These fees are frequently passed on, at least in part, to the tenants. Thus, tenants and landlords with unoccupied units bear much of many rent-regulation boards' administration expenses.³³⁸

³³⁷ Mitchell Crispell, *supra* note 18.

³³⁸ California Association of Realtors®, *supra* note 333.



VI. CURRENT TRENDS

A. Overview

Rent control has lost political favor over the past few decades.³³⁹ The National Multifamily Housing Council states that the position that “rent control is an ineffective and often counterproductive housing policy is no longer open to serious question,” noting that study after study over the past 25 years has documented the “profound economic and social consequences of government intervention in the nation’s housing markets.”³⁴⁰ Many local groups also vocally oppose rent controls. For instance, the California Apartment Association, which has aggressively opposed at least two rent-regulation ballot

³³⁹ Stewart, *supra* note 90.

³⁴⁰ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

initiatives in the state, argues that “rent control is as damaging to renters as it is to rental property owners.”³⁴¹

In response, many states and numerous local jurisdictions from Massachusetts to California have banned or constrained rent control.³⁴² Although the timeframe is unknown, the long-term trend in New York City has been described as moving “towards zero rent-controlled apartments.”³⁴³ A similar trend is occurring in the District of Columbia, with the District’s controls generally applying to units built before 1975 and some older building being torn down or becoming exempt for other reasons.³⁴⁴

Nevertheless, although many believe that rent regulations are no longer likely to be a serious part of the housing policy discussion at this time and that their return “faces significant headwinds,” the popularity of rent regulations may be on the rise.³⁴⁵ Depending on the political climate, some believe that rent control and rent stabilization are more likely to make a comeback than policies like public housing because they don’t require massive federal expenditures. Thus, communities in densely developed areas with crowded housing markets in which working class families face a serious threat of being displaced may find rent regulation worth consideration.³⁴⁶

³⁴¹ Gurley, *supra* note 75.

³⁴² National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

³⁴³ New York City Rent Guidelines Board, *supra* note 1.

³⁴⁴ Bylander, *supra* note 232.

³⁴⁵ Blumgart, *supra* note 234.

³⁴⁶ *Id.*

That possible reversal in public opinion may explain the number of local rent-stabilization provisions on Bay Area ballots in November. Silicon Valley tenant activists, who are outraged over the soaring housing prices and who fear the effect the increasing income gap will have on middle-class families, have been campaigning fiercely for these rent regulations. If successful, their efforts would lead to the greatest expansion of tenant laws since the 1970s.³⁴⁷ These initiatives could also indicate a trend: California is frequently at the “forefront of populist uprisings,” and that could be what is happening with its local communities’ renewed interest in rent regulations.³⁴⁸ As Michelle Wilde Anderson, a Stanford law professor has noted, “California is starting to wake up, and it may lead to national change.”³⁴⁹

B. Recent Regulations

Some say true rent control is “basically dead,” citing both the declining number of controlled units in New York City and the unpopularity of existing rent-control schemes.³⁵⁰ Generally speaking, the more recent rent regulations are less harsh and include more provisions that give a landlord additional incentives both to stay in the housing market and to add new housing.

Early rent-control schemes were essentially simple price ceilings. New York City’s rent regulation history is a poster child for the trend toward softer controls. In the 1950s,

³⁴⁷ Dougherty, *supra* note 173.

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ Blumgart, *supra* note 234.

rents for many of the pre-war apartments in New York remained frozen or very close to earlier rates. In 1969, the city enacted a milder rent-stabilization that permitted the rents on regulated apartments to increase every year.³⁵¹

Most systems being proposed these days are more similar to New York's rent-stabilization laws than to its strict rent controls. For example, the rent-regulation initiative on the 2016 ballot for Mountain View, California, includes several provisions that proponents hope will protect more than 14,000 renting households, while being fair to landlords. Some of the highlighted provisions include:

- annual increases of two to five percent, depending on the inflation rate;
- larger rent increases for higher maintenance costs or property taxes;
- larger rent increases if a landlord skips an annual increase;
- evictions limited to specific evictions to prevent evictions solely to increase rent (a "just cause" clause);
- protections against retaliatory eviction;
- exemptions for units built after February 1, 1995, single-family homes, duplexes, condominiums, in-law units, and new housing to encourage growth;
- rent roll-backs to the levels they were in October 2015;
- creation of an independent committee to administer and enforce the law; and
- permission to provide similar protections for mobile home residents.³⁵²

³⁵¹ See III.B.1.

³⁵² Daniel DeBolt, *Our Ballot Statement Is In. Vote YES on V*, Mountain View Tenants Coalition (Aug. 17, 2016), <https://mvtenantscoalition.org/2016/08/17/our-ballot-statement-is-in-vote-yes-on-v/>.

The goal of the regulations in Mountain View and the other communities attempting to pass rent-regulation measures this fall appears to be about gaining broader acceptance by protecting hard-working families and stopping opportunistic rent increases by making housing costs more predictable and stable, while giving landlords at least a few benefits. Some describe the goal as balancing the city's job growth with adequate housing growth. For example, in his support of the Mountain View measure, Lenny Siegel, a City Council member and founder of the Campaign for a Balanced Mountain View, states:

Everyone seems to agree that Mountain View and surrounding communities are suffering through a crisis of housing availability and affordability. Rapidly rising rents are the norm, and no-cause evictions are all too common. The continuing displacement of an unacceptable fraction of our population is destroying the fabric of our community, as we lose service workers, moderate income employees such as teachers, long-time civic volunteers, and students working for upward mobility.

Mountain View is approaching consensus on the long-term solution to our housing crisis: building more housing near employment centers and transit. However, unless we limit the rate of rent increases and protect tenants against arbitrary evictions, it will be too little, too late.³⁵³

Mountain View passed a new rent control measure in late 2016.

C. Possible Long-Term Solutions and Alternatives

1. Landlord Buyouts

Although not popular among many analysts, some see buyouts as a solution. Landlords are already able to buy out tenants in some jurisdictions. For example, as mentioned above, unidentified landlords in New York City have reportedly paid from

³⁵³ Daniel DeBolt, *Balanced Growth Advocates Endorse MV's Rent Control Measure*, Mountain View Tenants Coalition (May 31, 2016), <https://mvtenantscoalition.org/2016/05/31/balanced-growth-advocates-endorse-mvs-rent-control-measure/>.

\$2,000 to \$100,000 to low-paying tenants in exchange for them moving.³⁵⁴ In another case, a developer who wanted to move future condominium units on 220 Central Park South reportedly paid at least fifteen residents buyouts of more than \$1 million.³⁵⁵ The largest buyout in history may be to a longtime resident of 15 Central Park West, who waited until all other rent-stabilized tenants had vacated, at which time the luxury condo's developers allegedly offered him \$17 million to move.³⁵⁶

Similar behaviors have been reported on the opposite coast. For example, in San Francisco's Mission neighborhood in 2013, a single mother who paid \$1,600 per month for a two-bedroom apartment accepted a \$50,000 offer to leave her rent-controlled apartment. That apartment now rents for more than \$3,200, which is close to the market rate.³⁵⁷ (The average buyout price in San Francisco is approximately \$43,000.³⁵⁸)

Until recently, buyouts had little oversight in California. However, since 2015, San Francisco requires landlords to document buyouts of tenants in rent-controlled units, with the hope that the documentation will hold landlords accountable and enable displacements to be measured more accurately.³⁵⁹ One Silicon Valley startup has noticed the trend, and started a business to assist tenants in these buyout situations. Seeing buyouts as mutually beneficial to landlords and tenants, the company, for either a flat fee

³⁵⁴ Gibson, *supra* note 258.

³⁵⁵ Cohen, *supra* note 251.

³⁵⁶ *Id.*

³⁵⁷ Lee, *supra* note 125.

³⁵⁸ *Id.*

³⁵⁹ *Id.*

or a percentage of the buyout, consults with the tenant and negotiates with the landlord in an attempt to get the best buyout price.³⁶⁰

Encouraging buyouts has its critics. Deepa Varma, the executive director of the San Francisco Tenants Union, which is a nonprofit that provides tenants with legal assistance, asserts that buyouts are “not the point of rent-controlled housing.”³⁶¹ She believes that buyouts are speeding displacement and not helping provide funds for the displaced tenants to find new housing in the city.³⁶²

Buyouts may result in other unintended consequences. For example, low-income families who lived in San Francisco before the tech boom may lose their food-stamp privileges and other welfare rights when they receive a buyout payment. In addition, lower-income individuals may find themselves rapidly spending their buyout cash on moving costs and covering the rent differentials at their new dwelling in a different community, with little long-term advantage.³⁶³

2. *Eliminate Strict Rent Controls*

Economists agree that the first-generation of strict rent controls containing rent ceilings after World War II were counterproductive, and that “long-term rent freezes are undoubtedly harmful to economies.”³⁶⁴ Not surprisingly, the most universally criticized rent-regulation programs appear to be those that involve strict rent control.

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ Blair Jenkins, *Rent Control: Do Economists Agree?*, 6 Econ. J. Watch 73, 75 (Jan. 2009), available at https://econjwatch.org/file_download/238/2009-01-jenkins-reach_concl.pdf.

Rent-stabilization provisions and other later regulatory schemes “are so different that they should be judged largely independently” of the earlier programs.³⁶⁵ “[T]he case against second-generation rent controls is so weak that economists should at least soften their opposition to them.”³⁶⁶ The current push for rent regulations in California is illustrative. All of the current California initiatives contain rent-stabilization terms and just-cause eviction protections, not strict rent control.

3. *Encourage Increased Housing Supply*

Many analysts and commentators assert that a better answer to the problem of scarce housing and increasing rents is to increase the housing supply, rather than control prices, which discourages investment in housing.³⁶⁷ Especially in areas that have a rapidly increasing demand for urban housing, a more effective policy is simply to build more housing.³⁶⁸ Many claim that more housing production results in more affordable housing. However, where there is a strong market demand for luxury housing, it is likely that only luxury housing will be built, given the higher profit margins on high-end housing.

One approach to stimulate the affordable-housing supply is to use direct financial assistance to low-income renters (described in more detail in 4. below). Such assistance increases the tenants’ purchasing power, which results in an increase in the quantity and quality of housing in the market.³⁶⁹ Several federal and state programs are already in

³⁶⁵ *Id.* at 76.

³⁶⁶ *Id.* at 77 (quoting Richard Arnott, *Time for Revisionism on Rent Control?*, 9 J. of Econ. Persp. 99, 118 (1995)).

³⁶⁷ See, e.g., National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49; E.H., *The Economist Explains: Do Rent Controls Work?*, *supra* note 4.

³⁶⁸ E.H., *The Economist Explains: Do Rent Controls Work?*, *supra* note 4.

³⁶⁹ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

place that could be expanded to implement this strategy. Another approach is to enact programs targeted at subsidizing the construction or rehabilitation of affordable housing.³⁷⁰

Other related changes, such as loosening restrictive zoning laws in rent-controlled cities such as San Francisco, could also encourage growth in the housing supply, although this change may not be popular with the general population.³⁷¹ Strict zoning regulations in California have been fairly successful in controlling increased density, limiting the number of rental units, and reducing other perceived community threats with ordinances that discourage or prohibit the construction of affordable housing.³⁷² However, removal of inappropriate regulatory barriers to housing construction would increase the housing supply and thereby promote housing affordability for both renters and homeowners if measures are in place to achieve affordable housing goals.³⁷³

4. *Voucher-Based Rental Assistance*

Many rent-regulation opponents believe that providing vouchers to lower-income residents would be a better approach for helping those who need help the most.³⁷⁴ For instance, the National Multifamily Housing Council is urging lawmakers to pursue voucher-based rental assistance instead of rent controls to address critical affordable

³⁷⁰ *Id.*

³⁷¹ E.H., *The Economist Explains: Do Rent Controls Work?*, *supra* note 4.

³⁷² Gurley, *supra* note 75.

³⁷³ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

³⁷⁴ Bylander, *supra* note 232.

housing shortages.³⁷⁵ Direct financial assistance to needy renters would stimulate the supply of affordable housing, as their increased purchasing power would create an expansion of the quantity and quality of housing in the local market. The group cites to several federal and state programs as examples of such "demand-side" strategies.³⁷⁶

5. Inclusionary Zoning

Another tool for creating affordable housing is inclusionary zoning, which requires developers to offer a specified percentage of their new apartments as affordable housing.³⁷⁷ But inclusionary zoning programs, which exist to varying degrees in over 300 jurisdictions, are controversial.³⁷⁸ Supporters argue that the programs require less direct



public subsidy than traditional housing programs and promote economic and racial integration. And although supporters acknowledge that developers may lose money on the affordable units, they believe that the developers can recoup those lost profits through incentives.³⁷⁹

Photo credit: D.C. Department of Housing and Community Development, *DC Housing Preservation Strike Force* (2016), <http://dhcd.dc.gov/service/dc-housing-preservation-strike-force>

³⁷⁵ National Multifamily Housing Council, *Rent Control Laws by State*, *supra* note 271.

³⁷⁶ National Multifamily Housing Council, *The High Cost of Rent Control*, *supra* note 49.

³⁷⁷ Blumgart, *supra* note 234.

³⁷⁸ Amy Armstrong, Vicki Been, Rachel Meltzer, & Jenny Schuetz, *The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas*, Furman Center for Real Estate & Urban Policy, New York University School of Law (Mar. 2008), <http://furmancenter.org/files/publications/IZPolicyBrief.pdf>.

³⁷⁹ *Id.*

On the other hand, critics argue that inclusionary-zoning programs constrict the development of market-rate housing by discouraging developers from building any housing in those jurisdictions. They also assert that by tightening the housing supply, market-rate housing prices will rise, ultimately causing housing units to be less affordable. Opponents also argue that it is unfair to put the burden of providing affordable units on the developers and buyers of new market-rate units, and assert that “to the extent the community believes affordable housing is an important good, the whole community ought to pay for it.”³⁸⁰

Furthermore, this form of obtaining stability and a mix of incomes is not always reliable. Inclusionary zoning requires a number of new buildings if a substantial number of affordable units are going to be created.³⁸¹ The program also takes a lot of time, so families who need immediate access to good schools, convenient mass transit, and longtime community connections may be displaced before the new housing is available.³⁸²

6. *Means Testing*

Many criticize the failure of rent-regulation programs to provide assistance where it is needed the most. For instance, Shaun Pharr of the Apartment and Office Building Association of Metropolitan Washington, D.C., states that it’s “a terribly inefficient means of providing economic assistance to renters in need.”³⁸³ He elaborates that without

³⁸⁰ *Id.*

³⁸¹ Blumgart, *supra* note 234.

³⁸² *Id.*

³⁸³ Bylander, *supra* note 232.

income eligibility requirements, there is no guarantee that the more needy people will get the rent-controlled units.³⁸⁴

Means testing, which involves using a family's financial means as a method for determining whether the family qualifies for a financial-assistance program, is a corollary to a voucher program. Several groups have recently proposed means testing as a method of ensuring that regulated-rent benefits inure to the families that need them the most. For example, in California, Henry Karnilowicz, the president of the Small Property Owners of San Francisco Institute, a volunteer organization that advocates for "small-time landlords," criticizes the unintended consequences of rent control that result in people of relatively modest means subsidizing the housing of the wealthy. He proposes that rent control should be abolished, or at least reformed to include means testing.³⁸⁵

Proponents of means testing generally argue that rent regulations should be treated more like food stamps and that tenants should be required to qualify for rent subsidies just like people need to qualify for any other form of public assistance. They believe that rent regulation is a form of public assistance, paid for by the increasing number of non-regulated residents and by an increased tax burden, and argue that public assistance, in the form of rent subsidies, is being provided to hundreds of thousands of New York City residents who "simply do not need it."³⁸⁶

³⁸⁴ *Id.*

³⁸⁵ Scott James, *How Rent Control Subsidizes San Francisco's Super-Rich*, The Bay Citizen (Feb. 16, 2012), <https://www.baycitizen.org/columns/scott-james/how-rent-control-subsidizes-super-rich/> (also published as Scott James, *How the Rich Get Richer*, N.Y. Times, Feb. 17, 2012, available at http://www.nytimes.com/2012/02/17/us/san-francisco-rent-control-and-unintended-consequences.html?_r=0).

³⁸⁶ Robert Knakal, *A Call for Means Testing in Rent Regulation*, Observer (Mar. 10, 2011), <http://observer.com/2011/03/a-call-for-means-testing-in-rent-regulation/>.

However, not everyone agrees. For example, in 2012, both Ted Gullicksen, the executive director of the San Francisco Tenants Union, and Sara Shortt, the executive director of the Housing Rights Committee of San Francisco, opposed means testing, citing privacy concerns.³⁸⁷ Other tenant advocates argue the means testing is not appropriate because it is the unit itself that is regulated, not the unit's occupant, and that means testing would be too complicated and too cumbersome.³⁸⁸ This opposition has been successful at times. In the District of Columbia, for example, the D.C. Tenants Advocacy Coalition has defeated efforts to add means testing to the District's rent regulations. The group considered it "a great victory," citing concerns that means testing would turn the District into a city for only the very rich or the very poor.³⁸⁹

Means testing is not new. Many federal and state welfare and other benefit programs apply a means test. In fact, New York City's rent regulations currently include a means test of sorts, known as "luxury decontrol"—regulated units become deregulated if the renter reaches a specified income level. (The Rent Law of 2015 did not change the income levels associated with this high-income decontrol, so the trigger level remains at \$200,000 per year for two consecutive years.³⁹⁰) Applying this approach more generally—and at lower incomes—could create an interesting trend toward significantly changing the way rent regulations are distributed.

³⁸⁷ James, *supra* note 385.

³⁸⁸ See Knakal, *supra* note 386.

³⁸⁹ D.C. Tenants Advocacy Coalition, *Help TENAC Help! We Defeated Means Testing for Rent Control*, <http://www.tenac.org/content/help-tenac-help-we-defeated-means-testing-rent-control> (last visited Sept. 14, 2016).

³⁹⁰ Adam Leitman Bailey, *The Rent Law of 2015*, The Huffington Post, July 13, 2015, available at http://www.huffingtonpost.com/adam-leitman-bailey/the-rent-law-of-2015_b_7772956.html.



CONCLUSION

Rent regulation, whether by rent control or rent stabilization, limits the amount of rent private landlords may charge tenants, either by establishing a specified rent, allowing rent to increase annually by a specified percentage often tied to a consumer price index, or having a rent control board set permitted increases annually. Many of the policies, especially those enacted more recently, include eviction restrictions and specific processes for landlords or tenants to petition for rent increases or decreases, respectively.

Many people, especially economists, argue strongly against rent control, often basing their arguments on results focused on the older and stricter regulations. As rent regulations have been revised by adding vacancy decontrol and exempting new construction, these negative effects may be less pronounced.

In any event, a review of the myriad of literature on the topic reveals both that rent regulations elicit strong intellectual and emotional responses from actors in the housing market and that the effects of rent regulations are far-reaching and difficult to quantify. Some commentators note that despite the fact that rent control is frequently criticized for creating artificial impacts on housing markets, arguments for and against rent regulations “curiously suffer from a lack of concrete data.”³⁹¹ Although rent regulations continue to have a large number of high profile and highly educated critics, tenants in markets with rapidly rising rents still see the regulations as their only savior in the short term. Thus, rent regulations will continue to be a hot topic as long as the supply of affordable housing fails to meet the rising demand in rapidly growing markets.

³⁹¹ Alexis Stephens, *How 3 Cities Are Dancing with Rent Control*, Next City (Mar. 6, 2015), <https://nextcity.org/daily/entry/cities-rent-control-affordable-housing>.

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For primary and illustrative references and hyperlinks, refer to specific footnotes.

APPENDIX 1: SURVEY OF STATE LAWS^{392 393}

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
Alabama	Local rent control prohibited. Ala. Code § 11-80-8.1(b) .	Private property. Ala. Code § 11-80-8.1(b) .	A local governmental unit may manage and control property in which the local governmental unit has a property interest. Ala. Code § 11-80-8.1(b) .	N/A	None
Alaska	No relevant provisions were located.	N/A	N/A	N/A	None
Arizona	Preempted by the state; local rent control prohibited. Ariz. Rev. Stat. § 33-1329(A) .	Private residential housing units. Ariz. Rev. Stat. § 33-1329(A) .	Preemption does not apply to residential property owned, financed, insured, or subsidized by any state agency or city. Ariz. Rev. Stat. § 33-1329(B) .	N/A	None
Arkansas	Local rent control prohibited. Ark. Code § 14-16-601(b).	Private residential or commercial property. Ark. Code § 14-16-601(b).	A local governmental unit may manage and control residential property in which it has a property interest. Ark. Code § 14-16-601(c).	N/A	None
California	Local rent control permitted. See Cal.Civ.Code §§ 1947.7—.15; 1954.52, .53 .	Residential real property. See Cal.Civ.Code §§ 1947.7—.15; 1954.52, .53 .	Generally, a residential real property owner may establish both the initial and all subsequent rental rates for a dwelling or a unit if: (a) it has a certificate of occupancy issued after February 1, 1995;	N/A	Approx. 20.

³⁹² Relevant code sections identified by independent research; states formerly identified as having relevant laws are as noted by Landlord.com, *supra* note 38.

³⁹³ Approximate number of cities with rent control derived from combining lists at Landlord.com, *supra* note 38, and NOLO, *Paying Rent*, 2016, <http://www.nolo.com/legal-encyclopedia/paying-rent>.

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
			<p>(b) it has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units; or</p> <p>(c) it is “alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision.”</p> <p>Also exempt are tenancies for single-family homes, if the tenancy began after January 1, 1996. Cal. Civ. Code § 1954.52.</p>		
Colorado	Preempted by the state; local rent control prohibited. Colo. Rev. Stat. § 38-12-301(1).	Private residential property or a private residential housing unit. Colo. Rev. Stat. § 38-12-301(1).	The rent-control restriction does not prohibit a state agency, county, or municipality from managing and controlling any property in which it has an interest through a housing authority or similar agency. Colo. Rev. Stat. § 38-12-301(5).	<p>An ordinance or resolution that would control rent on private residential property or a private residential housing unit may not include:</p> <p>(a) a “voluntary agreement between a county or municipality and a permit applicant or property owner to limit rent on the property or unit or that is otherwise designed to</p>	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
				<p>provide affordable housing stock”; or</p> <p>(b) placement on the title of “a deed restriction that limits rent on the property or unit or that is otherwise designed to provide affordable housing stock pursuant to a voluntary agreement between a county or municipality and a permit applicant or property owner to place the deed restriction on the title.” Colo. Rev. Stat. § 38-12-301(2).</p>	
Connecticut	<p>Preempted by case law. Old Colony Gardens, Inc. v. Stamford, 147 Conn. 60 (1959).</p> <p>Connecticut law authorizes municipalities to establish fair rent commissions to “control and eliminate excessive rental charges” on housing</p>	<p>Fair rent commission provisions apply to housing accommodations. Conn. Gen. Stat. §§ 7-148b(b).</p>	N/A	<p>The Connecticut Supreme Court has held that:</p> <p>(a) the power to adopt rent control is not within the general delegation of police power, and municipalities have only the powers that are expressly conferred upon them; and</p>	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
	accommodations. If a commission determines, after a hearing, that a rental charge or proposed increase is so excessive that it is harsh and unconscionable, it may order the rent to be limited to a fair and equitable amount. Conn. Gen. Stat. §§ 7-148b(b), -148d(a) .			(b) the legislature's 1956 repeal of laws authorizing municipalities to enact rent control made it clear that rent control is against to the legislature's will. Old Colony Gardens, Inc. v. Stamford, 147 Conn. 60 (1959) .	
Delaware	No generally applicable rent control provisions were located.	N/A	N/A	In some situations, Delaware limits the amount an owner of manufactured-home lots may increase rent. Del. Code Ann. tit. 25, § 7042 .	None
District of Columbia	Local rent control permitted. See D.C. Code § 42-3502.05 .	All rental units in the District of Columbia, unless exempt. D.C. Code § 42-3502.05(a) .	Numerous exemptions apply, including: (a) a rental unit in a federally or District-owned building, or a building with federally or District-subsidized rent, except certain subsidized units; (b) certain rental units in a newly constructed building for which the building permit was issued after December 31, 1975;	Chapter 35, regarding rental housing, does not apply to the following: (a) a unit operated by a foreign government as a residence for diplomatic personnel; (b) a unit in an establishment that has as its primary purpose providing diagnostic care	District of Columbia

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
			<p>(c) a rental unit in a building with 4 or fewer rental units, provided other conditions are met;</p> <p>(d) a building that has been continuously vacant and not subject to a rental agreement since January 1, 1985;</p> <p>(e) a unit in a structure owned by a cooperative housing association, if specified conditions are met;</p> <p>(f) housing accommodations for which a building improvement plan has been executed under the apartment improvement program and housing accommodations that receive rehabilitation assistance under other multi-family assistance programs, if additional conditions are met. D.C. Code § 42-3502.05(a).</p>	<p>and treatment of diseases;</p> <p>(c) a dormitory; or</p> <p>(d) a unit or building for long-term temporary family housing, if one or more of the family members meet specified low income requirements, the unit is provided by a nonprofit charitable organization that operates the unit or building on a strictly not-for-profit basis (and that meets other requirements), and the housing provider offers a comprehensive social services program to resident families. D.C. Code § 42-3502.05(e).</p>	
Florida	Local control prohibited, unless otherwise permitted by law and the controls are necessary and proper to eliminate an	Notwithstanding other statutory provisions, no controls may be imposed on rents for any accommodation used or	Local governmental entities may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted to increase the supply of affordable housing using	Any law, ordinance, or other measure that imposes rent controls must terminate and expire within one year and may not be extended or	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
	existing housing emergency that is “so grave as to constitute a serious menace to the general public.” Fla. Stat. § 125.0103(2) .	offered for residential purposes as a seasonal or tourist unit or as a second housing unit, or on rents for dwelling units located in luxury apartment buildings. Fla. Stat. § 125.0103(4) .	mechanisms such as inclusionary housing ordinances. Fla. Stat. § 125.0103(7) .	<p>renewed except by adopting a new measure that meets all statutory requirements. Fla. Stat. § 125.0103(3).</p> <p>A local governmental entity may not adopt or maintain in effect any law, ordinance, rule, or other measure that imposes rent controls unless:</p> <p>(a) the measure is duly adopted by the local government’s governing body, after notice and public hearing;</p> <p>(b) the governing body makes and recites in the measure its findings establishing the existence of a “grave housing emergency” and stating that the controls are necessary and proper to eliminate the emergency; and</p>	

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
				(c) the voters approve the measure. Fla. Stat. § 125.0103(5) .	
Georgia	Local rent control prohibited. Ga. Code § 44-7-19 .	Privately owned, single-family or multiple-unit residential rental property. Ga. Code § 44-7-19 .	A county, municipal corporation, or local authority may: (a) regulate property belonging to the county, municipal corporation, or local authority; or (b) enter into agreements with private persons that regulate the amount of rent to be charged for rental properties. Ga. Code § 44-7-19 .	N/A	None
Hawaii	No relevant provisions were located.	N/A	N/A	Although Hawaii laws reference rent control ordinances, both of the statutes indicated as granting the power to control rents have been repealed. See Haw. Rev. Stat. § 666-20 note .	None
Idaho	No relevant provisions were located, but the state has been identified as preempting rent control.	N/A	N/A	N/A	None
Illinois	Local control prohibited. 50 Ill. Comp. Stat. 825/5(a) .	Private residential or commercial property. 50 Ill. Comp. Stat. 825/5(a) .	A local governmental unit may manage and control residential property in which it has a property interest. 50 Ill.	A home rule unit may not regulate or control the amount of rent charged for leasing private residential or	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
			Comp. Stat. 825/5(b).	commercial property. 50 Ill. Comp. Stat. 825/10.	
Indiana	Preempted by the state. Ind. Code § 32-31-1-20(b).	Privately owned real property. Ind. Code § 32-31-1-20(b).	Rent-control prohibition does not apply to privately owned real property for which government funds or benefits have been allocated for the express purpose of providing reduced rents to low or moderate income tenants. Ind. Code § 32-31-1-20(a).	N/A	None
Iowa	Local control prohibited. Iowa Code §§ 331.304(10), 364.3(9).	Private residential or commercial property. Iowa Code §§ 331.304(10), 364.3(9).	Rent-control prohibition does not restrict a city's or a county's right to manage and control residential property in which the city or county has a property interest. Iowa Code §§ 331.304(10), 364.3(9).	N/A	None
Kansas	Local control prohibited. Kan. Stat. § 12-16,120(a).	Private residential or commercial property. Kan. Stat. § 12-16,120(a).	A local unit of government may manage and control residential property in which the governmental unit has a property interest. Kan. Stat. § 12-16,120(b).	N/A	None
Kentucky	Preempted by the state. Ky. Rev. Stat. § 65.875.	Private property. Ky. Rev. Stat. § 65.875.	A city, county, or urban-county may manage and control any property in which it has an interest through a housing authority or similar agency that provides housing assistance. Ky. Rev. Stat. § 65.875.	The state's rent-control prohibition does not include programs operated by a city, county, or urban-county pursuant to federal grant programs. Ky.	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
				Rev. Stat. § 65.875.	
Louisiana	No relevant provisions were located, but the state has been identified as preempting rent control.	N/A	N/A	N/A	None
Maine	No relevant provisions were located.	N/A	N/A	N/A	None
Maryland	Local control authorized in specified counties. Md. Code, Local Gov't, §§ 13-923 (Washington County), -922 (Frederick County).	N/A	N/A	Maryland's state law does not establish any guidelines or parameters for local governments.	Approximately 4.
Massachusetts	Preempted by the state in most cases; local rent control is generally prohibited. Mass. Gen. Laws ch. 40P, §§ 2, 4.	Residential property. Mass. Gen. Laws ch. 40P, § 3.	Definition of "rent control" does not include the regulation of publicly owned housing, publicly subsidized housing, federally assisted housing, or mobile homes. Mass. Gen. Laws ch. 40P, § 3.	Local control is permitted where, following an initial six-month period, compliance with the scheme is voluntary and not coerced on the part of property owners. "Even when voluntary, rent control should be severely restricted in scope." Mass. Gen. Laws ch. 40P, §§ 2, 4.	None
Michigan	Local rent control prohibited. Mich. Comp.	Private residential property. Mich. Comp.	A local governmental unit may manage and control residential property in which it	N/A	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
	Laws § 123.411(2).	Laws § 123.411(2).	has a property interest. Mich. Comp. Laws § 123.411(2).		
Minnesota	Local rent control is generally prohibited. Minn. Stat. § 471.9996, subd. 1.	Private residential property. Minn. Stat. § 471.9996, subd. 1.	<p>A charter city, county, or town may:</p> <p>(a) manage or control property in which it has a financial interest through a housing authority or similar agency;</p> <p>(b) contract with a property owner;</p> <p>(c) act as required or authorized by federal or state law; or</p> <p>(d) mediate between property owners and tenants to negotiate rents. Minn. Stat. § 471.9996, subd. 1.</p>	<p>Minnesota's rent-control prohibition does not:</p> <p>(a) preclude a charter city, county, or town from controlling rents on private residential property to the extent that the governmental entity has the power to adopt an ordinance, charter amendment, or law to control the rents, provided the provision is approved in a general election; or</p> <p>(b) limit voters' power or authority to petition for an ordinance or charter amendment to control rents on private residential property to the extent that law otherwise provides for the power or authority, if the provision is approved in a general election. Minn.</p>	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
				Stat. 471.9996, subd. 2.	
Mississippi	No relevant provisions were located, but the state has been identified as preempting rent control.	N/A	N/A	N/A	None
Missouri	Local rent control prohibited. Mo. Rev. Stat. § 441.043.	Privately owned, single-family or multiple-unit residential or commercial rental property. Mo. Rev. Stat. § 441.043.	A county, city, or local authority may: (a) regulate property belonging to it; (b) enter into agreements with private persons that regulate the rent charged for subsidized rental properties; or (c) enact ordinances or resolutions restricting rent for properties assisted with community development block grant funds. Mo. Rev. Stat. § 441.043.	N/A	None
Montana	No relevant provisions were located.	N/A	N/A	N/A	None
Nebraska	No relevant provisions were located.	N/A	N/A	N/A	None
Nevada	No relevant provisions were located.	N/A	N/A	N/A	None
New Hampshire	No relevant provisions were located.	N/A	N/A	N/A	None
New Jersey	Local rent control permitted. N.J. Stat. § 2A:42-84.2.	N/A	New construction of rental multiple dwelling units are generally exempt from municipal rent	N/A	More than 100.

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
			control for the lesser of any initial mortgage loan's amortization period or 30 years following completion of construction. N.J. Stat. § 2A:42-84.2.		
New Mexico	Local rent control prohibited. N.M. Stat. § 47-8A-1.	Privately owned real property. N.M. Stat. § 47-8A-1.	<p>A state agency, county, or municipality may manage or control its property.</p> <p>New Mexico's rent-control prohibition does not apply to privately owned real property for which benefits or funding have been provided under contract by federal, state, or local governments or a governmental instrumentality for the express purpose of providing reduced rents to low- or moderate-income tenants. N.M. Stat. § 47-8A-1.</p>	N/A	None
New York	Local rent control and rent stabilization is permitted by cities with populations of one million or more. N.Y. Unconsol. Laws §§ 8602, 8605.	Residential property. N.Y. Unconsol. Laws § 8605.	<p>Numerous exemptions exist, including, among others:</p> <p>(a) housing accommodations that were exempt from regulation and control at the time the law was enacted;</p> <p>(b) housing accommodations that were "decontrolled either by operation of law or by a city housing</p>	Several additional laws, including those for New York City, may also apply. See, e.g., the Emergency Tenant Protection Act of 1974 (N.Y. Unconsol. Laws § 8621 <i>et seq.</i>), the New York City Rent and Rehabilitation Law (N.Y. Unconsol.	New York City and approximately 68 other communities have rent controls or rent stabilization. Additional communities have SCRIE or DRIE.

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
			rent agency, by order or otherwise”; or (c) housing accommodations that are not occupied by the tenant in possession as his or her primary residence, unless specified conditions are met. N.Y. Unconsol. Laws § 8605.	Laws § 26-401 <i>et seq.</i>), and the New York City Rent Stabilization Law (N.Y. Unconsol. Laws § 26-501 <i>et seq.</i>).	
North Carolina	Local rent control prohibited. N.C. Gen. Stat. § 42-14.1.	Privately owned, single-family or multiple-unit residential or commercial rental property. N.C. Gen. Stat. § 42-14.1.	A county, city, or local authority may: (a) regulate property belonging to it; (b) enter into agreements with private persons that regulate the rent charged for subsidized rental properties; or (c) enact ordinances or resolutions restricting rent for properties assisted with Community Development Block Grant Funds. N.C. Gen. Stat. § 42-14.1.	N/A	None
North Dakota	Local rent control prohibited. N.D. Cent Code § 47-16-02.1.	Private residential or commercial property. N.D. Cent Code § 47-16-02.1.	A political subdivision may manage and control residential property in which it has a fee title interest. N.D. Cent Code § 47-16-02.1.	N/A	None
Ohio	No relevant provisions were located.	N/A	N/A	N/A	None
Oklahoma	Local rent control	Privately owned,	A municipality or local authority may:	N/A	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
	prohibited. Okla. Stat. tit. 11, § 14-101.1(A) .	single-family or multiple-unit residential or commercial rental property. Okla. Stat. tit. 11, § 14-101.1(A) .	(a) regulate property belonging to it; (b) enter into agreements with private persons that regulate the rent charged for subsidized rental properties; or (c) enact ordinances or resolutions restricting rent for properties assisted with federal Community Development Block Grant Funds. Okla. Stat. tit. 11, § 14-101.1(B) .		
Oregon	Rent control preempted by the state. Or. Rev. Stat § 91.225(1) .	Any dwelling unit. Or. Rev. Stat § 91.225(2) .	A state agency, city, county, or urban renewal agency may reserve the right to approve rent increases, establish base rents, or establish rent limitations on any residential property for which it has entered into a contract under which benefits provide reduced rents for low-income tenants. Or. Rev. Stat § 91.225(3) .	Cities and counties may include in condominium-conversion ordinances a requirement that, during the applicable notification period, the owner or developer may not “raise the rents of any affected tenant except by an amount established by ordinance that does not exceed the imposed limit.” Or. Rev. Stat § 91.225(4) . Local governmental entities may	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
				impose temporary rent controls when a natural or man-made disaster materially eliminates a significant portion of the rental housing supply. Or. Rev. Stat. § 91.225(5) .	
Pennsylvania	No generally relevant provisions were located.	N/A	N/A	<p>Rent increases are limited for:</p> <p>(a) condominium conversion units leased to senior citizens or disabled persons, 68 Pa. Stat. and Cons. Stat. § 3410(f)(3);</p> <p>(b) units in cooperatives containing conversion buildings, if leased to senior citizens or blind or disabled persons, 68 Pa. Stat. and Cons. Stat. § 4412(f)(3); and</p> <p>(c) units in planned communities containing conversion buildings, if leased to senior citizens or disabled</p>	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
				persons. 68 Pa. Stat. and Cons. Stat. § 5410(f)(3).	
Rhode Island	No generally relevant provisions were located.	N/A	N/A	<p>If a homeowner or certain homeowners' associations believe that a lot rent increase is excessive, the homeowner or homeowners' association may submit the matter to binding arbitration. 34 R.I. Gen. Laws § 18.2-5(b).</p> <p>If a majority of the mobile home owners of a mobile home park believe a rent increase is excessive, they may request binding arbitration between the park owner or operator and the mobile home owners. 31 R.I. Gen. Laws § 44.1-2(b).</p>	None
South Carolina	No relevant provisions were located, but the state has been identified as preempting rent control.	N/A	N/A	N/A	None
South Dakota	Local rent control	Private residential	Residential property in which the local	N/A	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
	prohibited. S.D. Codified Laws § 6-1-13.	property. S.D. Codified Laws § 6-1-13.	governmental unit has a property interest. S.D. Codified Laws § 6-1-13.		
Tennessee	Local rent control prohibited. Tenn. Code Ann. § 66-35-102(a).	Private residential or commercial property. Tenn. Code Ann. § 66-35-102(a).	N/A	N/A	None
Texas	Local rent control generally prohibited. See Tex. Local Gov't Code § 214.902.	N/A	N/A	A municipality may establish rent control by ordinance if: (a) the governing body finds that a housing emergency exists due to a disaster; and (b) the governor approves the ordinance. Tex. Loc. Gov't Code § 214.902.	None
Utah	Local rent control prohibited. Utah Code § 57-20-1(1).	Private residential property. Utah Code § 57-20-1(1).	N/A	A local governmental entity may control rents if it has the Legislature's express approval. Utah Code § 57-20-1(1).	None
Vermont	No generally applicable provisions were located, but the state has been identified as preempting rent control.	N/A	N/A	In mobile home parks, if the percentage of a proposed lot rent increase is more than one percentage point above the specified	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
				<p>consumer price index and if a majority of the affected leaseholders timely disputes the proposed lot rent increase, the issue may go to mediation. Vt. Stat. tit. 10, § 6252.</p> <p>If the parties are unable to resolve the disputed proposed mobile-home lot rent increase by mediation, a majority of the affected leaseholders may initiate an action for abatement of some or all of the proposed lot rent increase based on a claim that the increase is “clearly excessive.” Vt. Stat. tit. 10, § 6253.</p>	
Virginia	No relevant provisions were located.	N/A	N/A	Va. Code § 55-248.1, which previously addressed federal rent control, was repealed in 2010. 2010 Va. Acts ch. 92.	None
Washington	Local rent control prohibited;	Single-family or multiple-unit	Properties in public ownership, under public management,	This restriction does not prohibit “any	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
	preempted by the state. Wash. Rev. Code § 35.21.830.	residential rental structures or sites. Wash. Rev. Code § 35.21.830.	or providing low-income rental housing under joint public-private agreements to finance or provide the low-income rental housing are excluded from the prohibition. Wash. Rev. Code § 35.21.830.	city or town from entering into agreements with private persons which regulate or control the amount of rent to be charged for rental properties.” Wash. Rev. Code § 35.21.830.	
West Virginia	No relevant provisions were located.	N/A	N/A	N/A	None
Wisconsin	Local rent control prohibited. Wis. Stat. § 66.1015(1).	Residential rental dwelling units. Wis. Stat. § 66.1015(1).	N/A	A city, village, town, county, or housing authority or the Wisconsin Housing and Economic Development Authority may: (a) enter into a rental agreement that regulates rent for a residential rental dwelling unit it owns or operates; or (b) enter into an agreement with a private person who regulates the rent for a residential rental dwelling unit. Wis. Stat. § 66.1015(2).	None
Wyoming	No relevant provisions were located, but the state	N/A	N/A	N/A	None

State	Is Local Rent Control Permitted, Prohibited, or Preempted?	Property Covered by Rent Regulations	Property Exempt from Rent-Regulation Restrictions	Other Relevant Provisions	Approximate Number of Cities with Rent Regulations
	has been identified as preempting rent control.				

APPENDIX 2: SELECT COMMUNITIES WITH RENT REGULATIONS³⁹⁴

City	Year Last Modified	Permitted Rent Increases	Type ³⁹⁵
Berkeley	2005	65% of the Consumer Price Index. Once per year.	Strict, according to California Tenants' Rights Guide
District of Columbia	2016	Generally, the Consumer Price Index plus 2%, but not more than 10%. (For elderly or disabled tenants, the Consumer Price Index, but not more than 5%.)	Moderate to strict
East Palo Alto	2016	80% of the Consumer Price Index, but not exceeding 10%. Once a year.	Strict, according to California Tenants' Rights Guide
Hayward	2003	5% maximum annual increase.	Weak, according to California Tenants' Rights Guide
Los Gatos	2004	5% maximum annual increase or 70% of the increase in the consumer price index, whichever is greater. Once a year.	Weak, according to California Tenants' Rights Guide
New York rent control	2015	7.5% increase until the maximum base rent is reached.	Stricter than rent stabilization
New York rent stabilization	2015	Determined by the rent guidelines board	Weaker than rent control
Oakland	2016	Consumer price index; more if landlords have "banked" their rent increases or receive permission. Once a year.	Weak, according to California Tenants' Rights Guide
San Francisco	1970	60% of consumer price index, not exceeding 7%.	Strict, according to California Tenants' Rights Guide
San Jose	1985	8% increase; 21% if the last increase was more than 24 months ago. Once a year.	Weak, according to California Tenants' Rights Guide

³⁹⁴ California city information from Crispell, *supra* note 18 (citing information from UC-Berkeley Internal Analysis (Portman and Brown 2013)).

³⁹⁵ California city information from Crispell, *supra* note 18 (citing information from UC-Berkeley Internal Analysis (Portman and Brown 2013)). For California cities, as classified by the California Tenants' Rights guide, "weak" rent regulations permit landlords to raise the rent generously and generally do not require landlords to register their units; "moderate-to-strict" rent controls require the landlord to "bear the burden of petitioning the rent board for an above-formula rent increase and of justifying the need for such an increase based on certain cost factors listed in the ordinance." The same standard was applied to other listed cities.