SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1620 (Zbur)
Version: May 26, 2023
Hearing Date: July 11, 2023
Fiscal: No
Urgency: No
ME

SUBJECT

Costa-Hawkins Rental Housing Act: permanent disabilities: comparable or smaller units

DIGEST

This bill gives local jurisdictions the option to allow disabled tenants to move into available accessible units when they become vacant, as specified.

EXECUTIVE SUMMARY

Rent control refers to government limits on how much landlords can raise their tenants' rent each year. The California Supreme Court ruled that rent control is a constitutionally valid exercise of local police powers in 1976. By 1995, a growing number of local California jurisdictions had enacted some form of residential rent control. In response, opponents of rent control sought help from state government and received it in the form of the Costa-Hawkins Rental Housing Act.

While Costa-Hawkins did not prohibit local jurisdictions from enacting rent control measures altogether, the Act preempted locals from applying rent control in specified circumstances.

California and federal civil rights laws require that landlords provide reasonable accommodations to tenants with disabilities. This includes allowing tenants with physical mobility disabilities to move into available accessible units. This bill would allow local jurisdictions to pass ordinances, notwithstanding Costa-Hawkins, requiring property owners to allow mobility disabled tenants to move into vacant comparable or smaller units and pay the same amount of rent as they are paying in their unit that was not accessible.

The bill is sponsored by the City of Santa Monica and the City of West Hollywood. Support comes from tenant and disability rights organization, who want to protect disabled tenants from having to choose between leaving a rent protected unit and living with a diminished quality of life and suffering in an inaccessible rental. Opposition

comes from the California Realtors Association, who points to the current mechanism to process reasonable accommodation requests in rental housing that in limited circumstances allows for the denial of a reasonable accommodation request by a small housing provider due to undue financial burdens.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Holds that rent control laws are a constitutional use of local government powers, provided that those laws do not prevent landlords from achieving a reasonable return on their investment. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129.)

2) Provides that, notwithstanding any other provision of law, an owner of residential real property may establish the *initial* rental rate for a dwelling or unit, with specified exceptions. (Civ. Code 1954.53.)

3) Provides that, notwithstanding any other law, an owner of residential real property may establish the initial *and all subsequent* rental rates for:
   a) any unit that was issued a certificate of occupancy after February 1, 1995;
   b) any unit that was already 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. (Civ. Code § 1954.2(a).)

4) Provides that, notwithstanding any other law, an owner of residential real property may establish the initial *and all subsequent* rental rates for a dwelling or a unit if it is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision, as defined and with specified exceptions. (Civ. Code § 1954.2(a)(3).)

5) Exempts newly constructed residential rental housing from statewide rent control laws for a period of 15 years from the issuance of the certificate of occupancy. (Civ. Code § 1946.2(e)(7).)

6) Provides that any person renting or leasing or otherwise providing real property for compensation shall not refuse to make reasonable accommodations in rules, policies, practices or services, when those accommodations may be necessary to afford individuals with a disability equal opportunity to use and enjoy a dwelling and the person providing the rental property is charged with the expense of making reasonable modifications to the existing premises, subject to a possible condition that the individual with the disability agree to restore the premises to their original state at the end of the tenancy. (Civ. Code §§ 54.1(b)(3)(A), (B).)
7) Provides, pursuant to the Unruh Civil Rights Act, that all persons within the jurisdiction of the state are free and equal, and no matter what characteristics they have, including disability, they are entitled to the full and equal accommodations,

advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civ. Code § 51(b).)

8) Requires individuals with disabilities to be entitled to full and equal access to all housing accommodations offered for rent, lease, or compensation in this state. Prohibits a person renting, leasing, or otherwise providing real property for compensation from refusing to permit an individual with a disability to make reasonable modifications of an existing rented premises if the modifications are necessary to afford the person full enjoyment of the premises, and from refusing to make reasonable accommodations in rules, policies, practices, or services, when those accommodations may be necessary to afford equal opportunity to use and enjoy the premises. (Civ. Code § 54.1(b)(1).)

9) Establishes procedures and rules for requesting reasonable accommodations and reasonable modifications in housing accommodations pursuant to Section 12176 of Title 2 of the California Code of Regulations (CCR). Provides "interactive process" requirements for requesting reasonable accommodations and modifications pursuant to 2 CCR § 12177.

10) Establishes the state Fair Employment and Housing Act (FEHA), which:
    a) Prohibits the owner of any housing accommodation to discriminate against or harass any person because of a number of characteristics, including disability. (Gov. Code § 12955(a).)

    b) Defines "physical disability" to include, but not be limited to, all of the following:

        i) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more of specified body systems and limits a major life activity;

        ii) Any health impairment that requires special education or related services; or

        iii) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that meets the criteria of i) and ii) and is known to the employer or other entity covered by FEHA, or certain limited additional circumstances. (Gov. Code § 12926(m).)

    c) Defines "discrimination" to include the refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the disabled person, if the modifications may be necessary to afford the disabled person full enjoyment of the premises, and the refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a

disabled person equal opportunity to use and enjoy a dwelling. (Gov. Code § 12927(c)(1).)

d) Provides that proof of an intentional violation of FEHA includes, but is not limited to, an act or failure to act that is otherwise covered by FEHA and that demonstrates an intent to discriminate in any manner in violation of FEHA. A person intends to discriminate if one or more of any number of characteristics, including disability, is a motivating factor in committing a discriminatory housing practice even though other factors may have also motivated the practice. (Gov. Code § 12955.8(a).)

e) Provides that proof of a violation causing a discriminatory effect is shown if an act or failure to act that is otherwise covered by FEHA has the effect, regardless of intent, of unlawfully discriminating on the basis of one or more of any number of characteristics, including disability. (Gov. Code § 12955.8(b).)

This bill:

1) Provides that notwithstanding any other law, for a dwelling or unit subject to an ordinance or charter provision that controls the rental rate of the dwelling or unit, the jurisdiction that adopted the ordinance or charter provision may require the owner of the residential real property to permit a tenant who is not subject to eviction for nonpayment and who has a permanent physical disability as defined in subdivision (m) of Section 12926 of the Government Code and that is related to mobility to move to an available comparable or smaller unit located on an accessible floor of the property.

2) Provides that an owner that is subject to a requirement established pursuant to 1) above that is required to grant a tenant's request for a reasonable accommodation relating to the tenant's physical disability, after complying with any requirement to engage in an interactive process with the tenant, including Section 12177 of Title 2 of the California Code of Regulations, shall allow the tenant to retain their lease at the same rental rate and terms of the existing lease if all of the following apply:
   (a) the move is determined to be necessary to accommodate the tenant's physical disability related to mobility;
   (b) there is no operational elevator that serves the floor of the tenant's current dwelling or unit;
   (c) the new dwelling or unit is in the same building or on the same parcel with at least three other units and shares the same owner;
   (d) the new dwelling or unit does not require renovation to comply with applicable requirements of the Health and Safety Code;
   (e) the applicable rent control board or authority determines that the owner will continue to receive a fair rate of return or offers an administrative procedure ensuring a fair rate of return for the new unit; and

(f) the tenant, who is not subject to eviction for nonpayment and who has a permanent physical disability as defined in Government Code section 12926 (m) and that is related to mobility, provides the owner a written request to move into an available comparable or smaller unit located on an accessible floor of the property prior to that unit becoming available.

3) Specifies that any security deposit paid by the tenant in connection with their rental of the dwelling or unit being vacated shall be handled in accordance with Section 1950.5 upon the tenant's move pursuant to this paragraph.

4) Specifies that the provisions of this bill do not apply unless all of the tenants on the lease agree to move to the available comparable or smaller unit.

5) Defines "comparable or smaller unit" as a dwelling or unit that has the same or less than the number of bedrooms and bathrooms, square footage, and parking spaces as the unit being vacated.

6) Provides that the owner does not need to provide the unit to the mobility disabled tenant if the owner, or their spouse, domestic partner, children, grandchildren, parents, or grandparents, intend to occupy the available comparable or smaller unit.

7) Specifies that the requirements of this bill are in addition to those of any other fair housing law and any implementing regulations.

8) Specifies that this bill shall not be construed to prevent owners of residential real property from granting reasonable accommodations to change housing units and retain the existing lease at the same rental rate and terms in order to accommodate any disability, as defined in subdivision (m) of Section 12926 of the Government Code.

COMMENTS

1. Background on the Costa-Hawkins Rental Housing Act

The phrase "rent control" refers to government limitations on how much landlords can raise their tenants' rent. Rent control first appeared in California in connection with World Wars I and II, as part of broader price controls associated with the war effort. Later, during the second half of the 20th century, a second generation of rent control measures began to appear in a few local jurisdictions scattered throughout California, but mostly found in the Bay Area and Los Angeles. Rather than setting rents, these

second generation measures typically capped annual rent increases at a certain percentage.[1]

As these second generation rent control measures began to proliferate, opposition grew among some landlords and proponents of free markets. A pitched legal battle over the constitutionality of rent control raged in the courts until, in 1976, the California Supreme Court handed down its ruling in *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129. In *Birkenfeld*, the state high court held that rent control is a proper exercise of local government police powers and constitutional, provided that the mechanism does not make it impossible for landlords to achieve a reasonable return on their investment.

By the 1990s, approximately 20 California jurisdictions had some form of local rent control on their books. These local rent control ordinances varied greatly. Almost all made some exception for new construction so as to avoid dis-incentivizing rental housing production. Some applied to single-family homes as well as apartments. The strictest local rent control measures included provisions tying the rental rate for a new tenant to the amount that the former tenant paid; so-called "vacancy control."

Apparently spurred by the threat that San Francisco might adopt vacancy control, in 1995 rent control opponents successfully lobbied the Legislature to restrict what kinds of rent control local governments could enact. The result was the Costa-Hawkins Rental Housing Act.

Costa-Hawkins, as it is generally known in housing circles, did not prohibit locals from imposing rent control altogether, but it effectively stripped locals of the authority to apply rent control in three particular ways. First, Costa-Hawkins preempted local governments from applying rent control to rental units that are alienable separately from other units. In practice, that legalistic jargon boils down to single-family homes and condominiums. Second, Costa-Hawkins preempted locals from enacting vacancy control. Instead, local rent control ordinances have to include vacancy decontrol, meaning that landlords are free to re-set the rent to whatever the market will bear after each vacancy. Finally, Costa Hawkins prohibited local governments from applying rent control to housing built after February 1, 1995, as well as any units that were already exempted from local rent control laws based on being "new construction."

2. <u>The bill does not require local jurisdictions to provide this option to those with mobility disabilities</u>

This bill proposes to permit local jurisdictions to adopt an ordinance or charter provision to allow disabled tenants to move into accessible units that become available and are comparable or smaller than the unit they would be moving out of. The tenant

[1] *See, generally, History of the Rent Control Debate in California*. No Place Like Home, University of California, Santa Cruz. https://noplacelikehome.ucsc.edu/history-of-the-rent-control-debate-in-california/ (as of July 5, 2023).

would be allowed to retain their lease at the same rental rate and with the same terms of the lease as long as specified requirements are met, including that: the move is determined to be necessary to accommodate the tenant's physical disability related to mobility; there is no operational elevator that serves the floor of the tenant's current dwelling or unit; the new dwelling or unit is in the same building or on the same parcel with at least three other units and shares the same owner; the new dwelling or unit does not require renovation to comply with applicable requirements of the Health and Safety Code; the applicable rent control board or authority determines that the owner will continue to receive a fair rate of return or offers an administrative procedure ensuring a fair rate of return for the new unit; and the tenant, who is not subject to eviction for nonpayment and who has a permanent physical disability as defined in Government Code section 12926 (m) and that is related to mobility, provides the owner a written request to move into an available comparable or smaller unit located on an accessible floor of the property prior to that unit becoming available.

It is important to note that *the bill is entirely neutral on the question of whether local jurisdictions should or should not provide this right to a permanently physically disabled tenant* in the first place. The bill does not impose the move in requirement on any local jurisdiction. The bill does not encourage or incentivize local jurisdictions to impose this provision that aids disabled people. The bill only authorizes local jurisdictions to enact this aid to disabled tenants– *if those local jurisdictions want to do so*.

Under the bill, a local jurisdiction that dislikes imposing local rent ordinances on landlords remains free to not enact an ordinance that requires owners to allow those with mobility disabilities to move into newly vacant units that are accessible. This bill is unlikely to spur the less rent control-friendly jurisdictions to make any changes at all. However, tenant supportive jurisdictions like Santa Monica and West Hollywood, the sponsors of this bill, are likely to enact ordinances that would conform with the provisions of this bill.

3. <u>The genesis of the bill</u>

A US District Court has explained that a tenant's request for a first floor unit for lower than market rate can be a reasonable accommodation as required by the Federal Fair Housing Act.[2]

The Central District of California of the United States District Court explained the following in unpublished Civil Minutes[3]:

> Unlawful discrimination under both federal and state housing law might include *either* "a refusal to permit, at the expense of a handicapped person, reasonable *modifications* of existing premises . . . necessary to afford such person

[2] *Bentley v. Peace and Quiet Realty 2 LLC*, 367 F.Supp.2d 341 (2005).
[3] *Mejia v. Comonfort*, Case No. CV 10-05767 ODW (JCX) (Nov. 15, 2010) (USDC Central District of California) Order Granting with Prejudice Plaintiff's Motion to Dismiss Defendant's Counterclaim.

> full enjoyment of the premises except that, in the case of a rental, the landlord may where [] reasonable [,] condition . . . modification on the renter agreeing to restore" the premises to their prior condition, *or* "a refusal to make reasonable *accommodations* in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. §§ 3604(f)(3)(A), (B) (emphasis added). *See also* Cal. Civ. Code §§ 54.1(b)(3)(A), (B) (providing that "any *person* renting [or] leasing or otherwise providing real property for compensation shall not refuse to make reasonable *accommodations* in rules, policies, practices or services, when those accommodations may be necessary to afford *individuals* with a disability equal opportunity to use and enjoy a dwelling," and noting that the "person" providing the rental property is charged with the expense of making reasonable *modifications* to the existing premises, subject to a possible condition that the individual with the disability agree to restore the premises to their original state at the end of the tenancy) (emphasis added).
>
> Accommodations must be made unless the landlord can demonstrate resulting undue financial and administrative burdens or a fundamental alteration in the nature of a program. *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 410, 412 (1979). *See also* 45 C.F.R. § 84.12(a); *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1417 (9th Cir. 1994) (using law applicable to Rehabilitation Act to interpret FHAA provisions); *Vinson v. Thomas*, 288 F.3d 1145, 1152 n. 7 (9th Cir. 2002) (using law applicable to the Americans with Disabilities Act ("ADA") to interpret Rehabilitation Act provisions). "The question of whether a particular accommodation is reasonable 'depends on the individual circumstances of each case' and 'requires a fact-specific, individualized analysis of the *disabled individual's circumstances* and the accommodations that might allow him to'" equally enjoy the rented premises. *Vinson v. Thomas*, 288 F.3d at 1154 (emphasis added). *See also Zukle v. Regents of Univ. of Cal*., 166 F.3d 1041, 1048 (9th Cir. 1999). The fact that an accommodation requires a certain amount of expenditure on the part of the landlord does not, however, render that accommodation unreasonable. Indeed, "accommodations need not be free of all possible cost to the landlord…" *Giebeler v. M&B Assoc.*, 343 F.3d 1143, 1152 (9th Cir. 2003) (opining that the FHAA "anticipated that landlords would have to shoulder certain costs" because the statute contains no exemption for the costs of accommodations).

Unfortunately mobility disabled tenants have been subject to litigation and protracted negotiations in order to receive this reasonable accommodation without incurring a substantial rent increase. The author introduced the bill because the City of Santa Monica and West Hollywood wanted to ensure that mobility disabled tenants in rent-controlled units are able to move to accessible units while retaining their rental rates and terms of their lease. The cities report that tenants with physical disabilities have had varying success in moving to comparable units when they come available and keeping their more affordable rent. If this bill is adopted then these cities can enact

ordinances that require that mobility disabled tenants be able to move into available comparable or smaller units located on an accessible floor of the property when those accessible units become vacant and that those tenants retain their lease at the same rental rate and terms of their existing lease if specified factors exist. The bill is limited to tenants with physical disabilities related to mobility that live in rent controlled units. The bill authorizes local jurisdictions *but does not require* local jurisdictions to enact ordinances pursuant to the provisions of this bill. The unit that will be moved into must be comparable or smaller than the unit from which the tenant is vacating. The ordinance can only be applied to properties with four or more units. It exempts units that require renovations to become habitable and units where the owner's family moves in.

4. Arguments in support

According to the author:

> This bill is about keeping people in their homes and lifting up marginalized Californians in the face of longstanding social and systemic inequities. It's about doing everything we can to address our state's staggering homelessness crisis and finding solutions that are both practical and compassionate. People with physical disabilities who are living in rent controlled apartments are at risk of becoming homeless if they become unable to access their home and cannot find an accessible unit at a similar rental rate. AB 1620 will address this problem by authorizing local jurisdictions to require that tenants with permanent physical disabilities related to mobility be allowed to relocate to an available accessible unit at the same rental rate and terms.

According to the City of Santa Monica, sponsor of this bill:

> The Costa-Hawkins Rental Housing Act authorizes the owner of a rental property to establish the initial and subsequent rental rates for a dwelling or unit and several jurisdictions in California, including the City of Santa Monica, have a rent control ordinance or a rent stabilization ordinance on the books. Unfortunately, those ordinances may not account for situations in which a tenant, due to a permanent disability, needs to find new accommodations without incurring a significant rent increase. AB 1620 will authorize jurisdictions to require that qualified tenants with physical disabilities be allowed to move out of an upper floor unit to a comparable or smaller first floor unit in their building at their current rental rate and terms if the move is necessary to accommodate the tenant's disability relating to mobility; the new unit does not require renovation to comply with legal requirements, and the applicable rent control board determines the owner will receive a fair rate of return. The City of Santa Monica strongly supports efforts to create new housing opportunities, preserve existing affordable housing, and help residents

keep their housing in Santa Monica. AB 1620 will be an additional tool to help keep tenants with physical disabilities housed in Santa Monica.

According to the County of Los Angeles, in support:

> Several jurisdictions in California, including Los Angeles County, have rent-control or rent-stabilization ordinances that set maximum annual increases for rent so long as the tenant remains in their unit. However, those ordinances are not able to account for situations in which a tenant, due to a permanent disability, needs to move out of an upper-floor unit and into a more accessible ground-floor unit without incurring a rent increase they cannot afford.
>
> In many cases, those impacted by these situations are older adults who have lived in a rent-stabilized unit for many years and have developed mobility constraints that make it difficult to access units above the ground floor. Often tenants must withstand protracted negotiations to secure housing that accommodates their disability without incurring a substantial rent increase. In addition, these circumstances arise when older individuals are increasingly financially and physically vulnerable. Older adults and those with disabilities need and deserve ways to remove the roadblocks they encounter to being re-housed in an accessible and affordable rental unit.
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> AB 1620, would be a significant step towards keeping tenants with mobility limitations in their homes and preventing homelessness among older adults and people with disabilities.

5. Arguments in opposition

In opposition to the bill, the California Association of Realtors writes:

> Current law contains a mechanism for processing reasonable accommodation requests in rental housing. This mechanism was put into law by the Civil Rights Department after years of public input and painstaking work. Unfortunately, AB 1620, among other things, fails to cross reference a key section of this mechanism that allows for, in limited circumstances, the denial of a reasonable accommodation request by a small housing provider due to undue financial burdens. Until such time as the bill is amended to no longer harm small housing providers, C.A.R. must respectfully request a "NO" vote on AB 1620.

SUPPORT

City of Santa Monica (sponsor)
City of West Hollywood (sponsor)
County of Los Angeles
East Bay for Everyone

Santa Monica Democratic Club

OPPOSITION

California Association of Realtors

RELATED LEGISLATION

Pending Legislation: SB 466 (Wahab, 2023) Revises Costa Hawkins to allow local jurisdictions to bring rental properties under rent control. The bill does this by changing the dates of what properties can must be exempted from rent control. SB 466 is currently on the Senate inactive file.

Prior Legislation:

AB 36 (Bloom, 2019) would have revised the Costa Hawkins Rental Housing Act to allow local jurisdictions to apply rent control to: (1) units that are more than 20 years old; or (2) units that are separately alienable, unless the landlord is a natural person who owns 10 or fewer units in the same jurisdiction.

AB 1506 (Bloom, 2017) would have repealed the Costa Hawkins Rental Housing Act. AB 1506 failed passage in the Assembly Committee on Housing and Community Development.

AB 1256 (Koretz, 2003) would have revised Costa Hawkins to preempt rent control on all units for the first 25 years after construction, while allowing any rent control, including vacancy control, from 26 years after construction on. AB 1256 died in the Assembly Housing and Economic Development Committee.

AB 1164 (Hawkins, Ch. 331, Stats. 1995) established the Costa-Hawkins Rental Housing Act. That Act prohibits local jurisdictions from enacting rent control measures that: (1) apply to single-family residences or condos; (2) apply to units constructed on or after February 1, 1995, or that were covered by a new construction exemption as of that date; or (3) apply after a vacancy.

SB 1241 (Leonard, Ch. 412, Stats. 1989) preempted the application of local mobilehome rent control laws to "new construction," defined as any newly constructed spaces initially held out for rent after January 1, 1990.

PRIOR VOTES:

Assembly Floor (Ayes 56, Noes 18)
Assembly Housing and Community Development Committee (Ayes 6, Noes 1)

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