

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

SB 466 (Wahab)
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Fiscal: No
Urgency: No
TSG/ME

SUBJECT

Costa-Hawkins Rental Housing Act: rental rates

DIGEST

This bill gives local jurisdictions the option to limit the amount that residential landlords can raise the rent each year for housing that is more than 15 years old.

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 ways. Of particular relevance to this bill, Costa-Hawkins stopped local jurisdictions from imposing rent control on units constructed after February 1, 1995, or in some cases, even earlier dates. The idea was to prevent local rent control from discouraging the development of new rental housing.

With the passage of time, these fixed dates bear less and less relevance to the policy rationale of shielding new rental housing development from rent control. Some "new" construction protected by Costa-Hawkins is now nearly half a century old.

This bill would replace the fixed dates in Costa-Hawkins with a 15-year rolling window, thus giving local jurisdictions the option, should they wish to exercise it, of applying rent control to buildings that are more than 15 years old, while still preserving a buffer period in which newly constructed housing is shielded from local rent control laws.

A different part of Costa-Hawkins preempts locals from imposing rent control on single-family homes and condominiums. That part of Costa-Hawkins is untouched by the bill after recent amendments, so local jurisdictions would remain unable to apply rent control to such rentals, regardless of age.

The bill is sponsored by the Aids Healthcare Foundation. Support comes from tenant and anti-poverty organizations, who want locals to have the option of protecting more tenants against rapidly rising rents. Opposition comes from landlord and realtor associations, who assert that if locals exercise this authority, it will diminish the quantity and quality of the state's rental housing stock. If the bill passes out of this Committee, it will next be heard on the Senate Floor.

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) Exempts newly constructed mobilehome spaces from local rent control laws for a period of 15 years after the space is initially held out for rent. (Civ. Code § 798.45(a).)

- 7) Exempts newly constructed mobilehome parks from local rent control laws for a period of 15 years from the date upon which 50 percent of the spaces in the new mobilehome park are initially held out for rent, as defined. (Civ. Code § 798.45(b).)

This bill:

- 1) Replaces the Costa-Hawkins Rental Housing Act's preemption of local rent control applicable to units constructed after February 1, 1995, or then covered by an exemption for new construction, with a provision preempting application of local rent control for a 15 year period starting from the issuance of a certificate of occupancy.
- 2) Deletes provisions of Costa-Hawkins that were only relevant during the period 1996 to 1999.
- 3) Fixes an outdated cross-reference.

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

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 Apr. 14, 2023).

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. How this bill would and would not revise Costa-Hawkins

As described in Comment One, above, Costa-Hawkins consists of three main components: (1) mandatory vacancy decontrol; (2) a prohibition on applying local rent control to single-family homes and condominiums; and (3) a prohibition on applying local rent control to new construction. This bill makes no changes to mandatory vacancy decontrol and, after recent amendments, it makes no changes to the prohibition on applying local rent control to single-family homes and condominiums. The bill only revises how newly constructed rental housing is treated under Costa Hawkins.

3. Making newly constructed housing new again

A common argument against limiting rent increases is that developers and property owners will be less willing to spend on constructing or upgrading housing if their potential return on investment is diminished. There is some variation, but most studies of the effects of rent control seem to bear this theory out. As a result, most rent control policies exempt newly constructed housing, at least for some period of time.

Through its preemptive effect, Costa-Hawkins guaranteed that all local rent control ordinances would have such an exemption for newly constructed housing, but Costa-Hawkins accomplished that guarantee in a strange and increasingly illogical way. Specifically, Costa-Hawkins went about exempting newly constructed housing from local rent control by prohibiting locals from imposing rent control on any units built after February 1, 1995 or, in a few jurisdictions - sometimes referred to as “legacy”

jurisdictions – even further back. In these legacy jurisdictions, Costa-Hawkins exempted from rent control any units that a local ordinance already exempted on the basis of being “new construction.” In the City of Los Angeles, for example, Costa-Hawkins acts as a bar to the imposition of rent control on any rental unit constructed as far back as October 1, 1978. Thus, all properties in the City of Los Angeles for which a certificate of occupancy was issued after October 1, 1978 cannot be subject to local rent control. In Hayward, that date is July 1, 1979. In San Francisco, the date is June 13, 1979. Similar dates apply for a handful of other legacy jurisdictions across the state.

From a policy perspective, these dates are arbitrary. More importantly, because they are fixed dates, they have less and less relevance to the policy of protecting “new housing” with each passing year. As a result, Costa-Hawkins’ provisions meant to shield “new housing” from local rent control now operate to protect some housing that is, in fact, nearly fifty years old.

This bill proposes to replace these fixed dates with a rolling window. New housing would still be shielded from the imposition of local rent control, but what qualifies as new housing would automatically update with the passage of time.

4. What is the correct rolling window length?

A rolling window, like the one proposed by this bill, has the policy advantage of keeping newly constructed housing shielded from rent control without becoming stale over time. This still leaves the question of how long the rolling window should be.

How long newly constructed housing should be shielded from local rent control has been the subject of many academic papers and ongoing policy debates. The proponents and opponents of this bill have submitted studies and information to the Committee on both sides. An exhaustive summary of these reports is beyond the scope of this analysis, but, in general, groups representing rental property owners tend emphasize reports concluding that much longer exemption periods are necessary while tenant advocacy organizations tend to highlight studies and evidence that come to the opposite conclusion.

The Legislature has already studied and debated this question at considerable length. AB 1482 (Chiu, Ch. 597, Stats. 2019) proposed to enact modest caps on rent increases statewide to prevent dramatic rent spikes or “rent gouging.” At introduced, AB 1482 had no exemption for newly constructed housing, but was amended relatively early on to include a 10 year exemption. Late in the process, the California Apartment Association announced that it would remove its opposition to the bill if the exemption for newly constructed housing were set at 20 years. Ultimately, the bill was amended and enacted with a rolling window set at the same length proposed by this bill: 15 years. (Civ. Code § 1947.12(d)(4).)

When confronted by essentially the same issue in the context of mobilehome rent control last year, the Legislature once again adopted that same compromise: a 15 year rolling window. (SB 940, Laird, Ch. 666, Stats. 2022; Civ. Code § 798.45.)

5. The bill does not impose rent control or require expansion of rent control

It is important to note that *the bill is entirely neutral on the question of whether local jurisdictions should or should not enact rent control* in the first place. The bill does not impose rent control on any local jurisdiction. The bill does not encourage or incentivize local jurisdictions to impose rent control. The bill does not require or encourage any local jurisdiction to expand the scope of its existing rent control laws. The bill only authorizes local jurisdictions to enact or extend rent control to single-family residences and to housing built more than 15 years ago – *if those local jurisdictions want to do so*.

Under the bill, a local jurisdiction that dislikes rent control remains free to leave rental rates exclusively in the hands of market forces. A local jurisdiction that believes rent control can be helpful in stabilizing communities and keeping housing costs down may choose to expand its local rent control ordinance to cover housing constructed up to 15 years ago, but each local jurisdiction is also perfectly at liberty *not* to expand its local rent control in this way. Local jurisdictions could decide that a rolling exemption for new construction of 20, 30, 50 or any other number of years is what is best for their community. Or, they could set a fixed date, so long as it exempts new construction for at least 15 years.

In this sense, the bill can accurately be described as partially restoring the local control over residential rental housing policy that state government took away when it enacted Costa Hawkins.

That said, some local jurisdictions will choose to exercise the authority devolved to them to extend the reach of their local rent control ordinances to include rental units built more than 15 years ago. Such extensions are particularly likely in local jurisdictions that have already shown a predisposition toward relatively expansive rent control regimes, such as Santa Monica, San Francisco, Berkeley, and Oakland, among others. Indeed, some local rent control ordinances are written in ways that would trigger the automatic extension of local rent control to units that are more than 15 years old the moment this bill takes effect. At the same time, this bill is unlikely to spur the less rent control-friendly jurisdictions to make any changes at all. In sum, it is probably accurate to say that the practical impact of the bill will be an expansion of rent control, but that effect is also likely to be limited to places where relatively strong rent control is already in effect.

6. Comparison to Proposition 10 of 2018 and Proposition 21 of 2020

Some of the opponents of this bill stress that voters overwhelmingly affirmed their support for Costa Hawkins when they defeated Proposition 10 in November of 2018 by roughly a 60% to 40% margin. In considering the relevance of that vote, however, it should be born in mind that Proposition 10 proposed to repeal Costa Hawkins in its entirety. This bill does not repeal Costa Hawkins. Rather, it revises how Costa Hawkins treats newly constructed housing and leaves all other aspects of Costa Hawkins untouched.

Proposition 21 of 2020 was defeated by a similar margin. Proposition 21 represents a closer comparison to this bill than Proposition 10 because, like this bill, Proposition 21 included a provision revising the new housing exemption in Costa Hawkins to a rolling window of 15 years. However, Proposition 21 included other modifications to Costa Hawkins, including once again permitting a modified version of vacancy control and expanding the permissible scope of local rent control to include single-family residences and condominiums, except where the owner is a natural person with only one other rental property. In other words, Proposition 21's proposed changes to Costa Hawkins were significantly broader than the present version of this bill.

7. Arguments in support of the bill

According to the author:

[...] Costa-Hawkins Rental Housing Act undermines local efforts to address rent gouging and displacement of millions of California renters across the state. Thus, where local governments want to address the impact of displacement, especially as it disproportionately impacts low-income communities and communities of color, Costa-Hawkins currently limits the effective tools jurisdictions have at their disposal.

SB 466 amends the Costa-Hawkins Rental Housing Act to allow all property owners to establish rental rates during the first 15 years after a residential real property has been issued a certificate of occupancy. In other words, SB 466 would allow local governments to apply rent control to units that have been in use for 15 years or more. As such, local governments could choose to apply rent control to units built up to 2008, and thereafter the date could "roll" to include properties newly-eligible for rent control as they reach the 15 year mark. [...]

As sponsor of the bill, the AIDS Healthcare Foundation writes:

[...] The Costa Hawkins Rental Housing Act is a substantial obstacle to addressing the housing crisis. [...] It is absurd that the law established a static date for the exemption of “new construction.” As a result, no building constructed after 1995 can ever be subject to any form of rent regulation. Even worse, the law locked in a new construction exemption in 1978 for Los Angeles and 1979 for San Francisco. SB 466 reforms Costa Hawkins, so that the obstacles outlined above are removed and local governments can regain some of their authority to drive rental housing policy that their constituents want. [...]

8. Arguments in opposition to the bill

In opposition to the bill, the California Apartment Association writes:

[...] These studies and dozens more demonstrate the disastrous effect that strict rent control has on new construction. Strict rent control adds to the challenges California already faces with cities that violate the state’s housing development laws. SB 466 is bad public policy. [...] At a time when California desperately needs new housing, SB 644 will only serve to harm the rental housing market as well as tenants by instituting yet another harmful change to the rental housing market.

SUPPORT

AIDS Healthcare Foundation (sponsor)
American Federation of State, County, and Municipal Employees
California Housing Partnership Corporation
California Labor Federation
California School Employees Association
City of Berkeley
City of West Hollywood
East Bay for Everyone
East Bay YIMBY
Grow the Richmond
How to ADU
Indivisible California State Strong
Mountain View YIMBY
Napa-Solano for Everyone
National Association of Social Workers, California Chapter
New Liveable California
Northern Neighbors San Francisco

Peninsula for Everyone
Progress Noe Valley
The Resistance Northridge-Indivisible
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
The Santa Monica Democratic Club
Santa Monicans for Renters' Rights
Santa Rosa YIMBY
South Bay YIMBY
South Pasadena Residents for Responsible Growth
Southside Forward
Tenants Together
Ventura County YIMBY
YIMBY Action

OPPOSITION

Affordable Housing Management Association-Pacific Southwest
Apartment Association of Greater Los Angeles
California Apartment Association
California Association of Realtors
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Council for Affordable Housing
California Mortgage Bankers Association
California Rental Housing Association
Building Owners and Managers Association of California (BOMA)
Institute of Real Estate Management
National Rental Home Council
Orange County Realtors
Southern California Rental Housing Association

RELATED LEGISLATION

Pending Legislation: SB 567 (Durazo) reduces the statewide cap on permissible rent increases; expands the types of housing to which those rent caps apply; makes it more difficult for landlords to evade statewide protections against no-fault eviction; and establishes a mechanism for redress of violations. SB 567 is currently pending consideration before this Committee.

Prior Legislation:

SB 940 (Laird, Ch. 666, Stats. 2022) modified the state preemption on local mobilehome rent control ordinances with respect to “new construction” by changing the definition of new construction from spaces constructed after January 1, 1990 to a 15 year rolling window.

AB 1791 (Nazarian, 2021) would have lifted state preemption of local rent control measures in relation to properties owned by an applicable large business, defined as a business entity that owns 10 or more single-family residential properties and has annual gross receipts of \$1 billion or more. AB 1791 died in the Assembly Housing and Community Development Committee.

SB 999 (Umberg, 2020) would have repealed a provision in state law that exempted mobilehome leases from any otherwise applicable local rent control ordinance if, among other specified conditions, the lease term is greater than one year. SB 999 failed passage in the Assembly Housing and Community Development Committee.

AB 2782 (Stone, Ch. 35, Stats. 2020) among other things, repealed a provision in state law that exempted mobilehome leases from any otherwise applicable local rent control ordinance if, among other specified conditions, the lease term is greater than one year.

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 1482 (Chiu, Ch. 597, Stats. 2019) established the Tenant Protection Act of 2019 which, among other things, limited residential rent increases to no more than five percent plus inflation over a 12-month period, with specified exceptions, including an exception for new housing constructed within the last 15 years.

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.
