Rent Control: Tenant Protection and Anti-Displacement Policies, Technically Speaking

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TABLE OF CONTENTS

I. Introduction

California Rental Market: Predictably Challenging

California has long suffered high housing costs and the problem has worsened since approximately 1970 in comparison to other states.[1] The housing market can be particularly challenging for renters, who lack stable housing costs created by long-term financing such as a thirty-year fixed-rate mortgage. Although the housing market varies throughout the state, average monthly rents in numerous California markets are notably above the U.S. average.[2] The predictably challenging rental markets in California are highly volatile, as reflected in high rents, excessive and frequent rent increases, and unexplained evictions.[3]

Local officials in some California cities and counties have responded to the challenging rental market by enacting **rent control**. To proponents, rent control can promote stability and increase rental market predictability for tenants. To opponents, rent control shifts the burdens and costs of what ought to be a public goal (providing safe and stable housing for residents), and places it principally on private property owners. Mere mention of rent control is likely to stir emotions and raise blood pressure.

But what is rent control, technically speaking? Colloquially, rent control often means any of a suite of regulations governing the landlord-tenant relationship. This paper reviews the historical roots and current legal precedents that both support and shape local rent stabilization policies in California and focuses on two main aspects of the landlord-tenant relationship: setting and increasing monthly rents, and evictions. Other regulations, such as ensuring unit habitability or data collection via public registry, may also be included in the rent control policy suite.

Historical Context

Notably, rent control was enacted as a policy response to regulate rental housing markets

[1] Taylor, Mac. "California's High Housing Costs: Causes and Consequences," Legislative Analyst Report. March 17, 2015. Available at https://www.lao.ca.gov.

[2] The U.S. Census Bureau estimates that median gross rents for the state of California ($1,358) were the third highest in the United States ($982), behind Hawaii ($1,507) and the District of Colombia ($1,424). Estimated median gross rents in urban California counites emphasize that high rents are not isolated to one region: Los Angeles ($1,322), Sacramento ($1,122), San Diego ($1,467), San Francisco ($1,709), and Santa Clara ($1,955). U.S. Census Bureau, *2013-2017 American Community Survey 5-Year Estimates*, Table B25064.

[3] Evictions often refer to the unlawful detainer process by which a landlord may seek a judicial order to remove a household and their property from a dwelling. The unlawful detainer process is separate from the termination of a tenancy by a landlord, which is a prerequisite to the unlawful detainer process. This paper uses the term eviction to refer to both a landlord's termination of tenancy and an unlawful detainer action in court.

during the first and second World Wars. Washington, D.C. enacted an ordinance allowing a commission to fix fair and reasonable rents and regulate evictions in 1919 that was subsequently challenged and upheld by the United States Supreme Court in 1921.[4]

In a 5-4 decision, the Court upheld the District's rent control program against challenges based on the Takings Clause and Due Process Clause because it was a temporary measure to address a declared emergency "growing out of the war, [and] resulting in rental conditions in the District dangerous to the public health and burdensome to public officers, employees and accessories, and thereby embarrassing the Federal Government in the transaction of the public business."[5] Three years later the Supreme Court rejected D.C.'s slightly revised rent control law because it appeared the emergency had passed.[6] Rent control was again upheld by the U.S. Supreme Court when enacted in response to World War II.[7]

Although crises of the World Wars subsided, emergency conditions in local housing markets persisted in places like New York City, and later in California cities. In response to local conditions, multiple jurisdictions in the United States have maintained and enhanced long-standing rent control policies while others have enacted new policies. Today, cities in California and New York, Washington, D.C., and the state of Oregon maintain modern rent control programs. At the time this is written, there is no statewide rent control policy or program in California.[8] Instead, thirty California cities and one county have local policies that generally limit the frequency of rent increases to no more than once every twelve months, limit the amount of rent increases, and limit the reasons for which a tenant household can be evicted. These thirty cities and county account for over one-fifth of California's population.[9] In addition to the thirty, many cities offer other tenant protections that could be considered less strict anti-displacement policies, such as voluntary mediation programs and anti-harassment policies.

Section II of this paper describes the outer parameters of rent stabilization programs in California, highlighting the legal issues, court cases, and state laws that authorize and constrain

[4] Block v. Hirsch (1921) 256 U.S. 135.
[5] *Id.* at 154.
[6] Chastleton Corp. v. Sinclair (1924) 264 U.S. 543,
[7] *See e.g. Bowles v. Willingham* (1944) 321 U.S. 503; *Woods v. Miller Co.* (1948) 333 U.S. 138.
[8] AB 1482 (Chiu, 2019) was approved by the Assembly and Senate, and awaits the Governor's signature. Although the law would regulate evictions and limit rent increases for existing tenancies, it is unclear whether and to what extent the state will create an administrative apparatus to safeguard the "fair return" concept discussed below.
[9] Based on 2017 Census data.

the thirty local programs in California cities and counties. Section III of this paper provides brief case studies of three variations of rent control programs in California.

II. Modern Rent Stabilization in California

Numerous federal and state court decisions, in addition to the enactment of state laws, have modernized rent control policies in California since the U.S. Supreme Court approved of wartime rent control. The principal case is *Birkenfeld v. City of Berkeley*, in which the California Supreme Court ultimately struck down Berkeley's 1972 voter-initiative charter amendment, which would have created a rent control program.[10] In its ruling, the Court provided the fundamental analyses resulting in the foundational features of local rent control programs.

A. Jurisdiction: Police Power

The *Birkenfeld* decision concludes that regulation of residential rents is a valid exercise of the police power.[11] The Court stated, "[a] City's police power under this provision can be applied only within its own territory and is subject to displacement by general state law but otherwise is as broad as the police power exercisable by the Legislature itself."[12] The court then found that Berkeley's rent control initiative was "distinct from the purpose of any state legislation, and the imposition of rent ceilings does not materially interfere with any other state legislative purpose."[13] The court concluded, "It is of the essence of the police power to impose reasonable regulations upon private property rights to serve the larger public good."[14]

Accordingly, only those jurisdictions granted police powers may enact some form of rent control. California Constitution Article XI, Section 7 grants cities and counties the legal authority to enact "local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Notably, counties maintain broad police powers only in the geographic areas that are unincorporated (i.e. areas within the county that are not incorporated as and governed by a city). In other words, a county could only apply rent regulations to the unincorporated areas of the county and not to cities within the county.

[10] (1976) 17 Cal. 3d 129.
[11] 17 Cal. 3d at 140-143.
[12] *Id.* at 140 (citation omitted).
[13] *Id.* at 142 (citation omitted).
[14] *Id.* at 146 (citation omitted).

B. Due Process: The end of the "Emergency" Doctrine and a Duty to Offer Speedy Rent Adjustments

While discussing the breadth and depth of police power authority, the *Birkenfeld* court rejected the argument that rent controls may only be imposed in response to an "emergency." Berkeley's voter-initiative had declared that an emergency existed, consisting of "a growing shortage of housing units resulting in a critically low vacancy rate, rapidly rising and exorbitant rents exploiting this shortage, and the continuing deterioration of the existing housing stock."[15]

However, the Court discussed the evolution of usury laws and price controls to protect consumers and minimum wage laws to protect workers, noting that each were previously rejected under *Lochner* era substantive due process.[16] The California Supreme Court concluded that "the 'emergency' doctrine invoked to uphold rent control measures of more than half a century ago [in response to the World Wars] is no longer operative as it was formulated as a special exception to limitations on the police power that have long since ceased to exist."[17]

The California Supreme Court quoted the U.S. Supreme Court decision in *Nebbia v. New York* (upholding the state's authority to regulate the price of milk for dairy farmers, dealers, and retailers), noting that, "a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare . . . [so long as] the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory . . ."[18]

Applying this economic legislation rule, the California Supreme Court held that "the constitutionality of residential rent controls under the police power depends upon the actual existence of a housing shortage and its concomitant ill effects of sufficient seriousness to make rent control a rational curative measure."[19] The Court summarized the role of the courts: because no emergency was constitutionally required, courts should "sustain the propriety of rent controls under the police power unless the findings establish a complete absence of even a debatable rational basis for the legislative determination by the [enacting body] that rent control is a

[15] *Id.* at 137 (citation omitted).
[16] *Id.* at 153-160.
[17] *Id*. at 154.
[18] *Id.* at 155, quoting *Nebbia* (1934) 291 U.S. 502, 537.
[19] *Id*. at 160.

reasonable means of counteracting the harms and dangers to the public health and welfare emanating from a housing shortage."[20]

Still, Berkeley's 1972 rent control charter amendment was fatally flawed. The California Supreme Court stated that it is "constitutionally necessary" for indefinite rent control ordinances to include mechanisms to provide "adjustments in maximum rents without a substantially greater incidence and degree of delay than is practically necessary."[21] The 1972 charter amendment required each landlord submit individual petitions for each unit prior to increasing rent. The Court characterized the petition process as an "inexcusably cumbersome rent adjustment procedure [ ] not reasonably related to the amendment's stated purpose of preventing excessive rents and so would deprive the plaintiff landlords of due process of law."[22]

Berkeley voters again enacted a rent control charter amendment in 1980, which guaranteed each landlord a fair return on their investment.[23] The fair return guarantee was fulfilled via two methods to adjust rents: annual general adjustments granted increases based on a formula to be determined by a rent stabilization board of commissioners, and if landlords were dissatisfied with the general increase they could file property-specific petitions to increase rent.[24]

Berkeley landlords again sought legal review of the charter amendment, which challenge was largely rejected by the California Supreme Court in *Fisher v. City of Berkeley*.[25] The California Supreme Court concluded that the fair return guarantee to each landlord appeared to redress the problems identified in the *Birkenfeld* case because the annual general adjustment could account for the effect of inflation that might otherwise cause confiscatory results if rents were permanently frozen.[26] Thus, the annual general adjustment and a streamlined petition process in which hearing officers would adjudicate petitions with the potential to appeal to the rent board for additional relief addressed "every major procedural failing" identified in the *Birkenfeld* decision.[27] In addition to constitutional challenges, the California Supreme Court rejected a novel theory that

[20] *Id.* at 161. This premise was later confirmed by the U.S. Supreme Court in *Pennell v. San Jose* (1988) 485 U.S. 1, 13, where that Court stated, "we have long recognized that a legitimate and rational goal of price or rate regulation is the protection of consumer welfare."
[21] *Id*. at 169.
[22] *Id*. at 173.
[23] *Fisher v. City of Berkeley* (1984) 37 Cal. 3d 644, 651-52.
[24] *Fisher*, 37 Cal. 3d at 653; 688-690.
[25] Notably, the Court rejected a presumption in the charter amendment that affected the burden of proof in retaliatory eviction cases, which was severed from the measure. *Fisher*, 37 Cal. 3d at 693-699.
[26] *Id.* at 682-83. Because the Court heard a facial challenge to the charter amendment, it was bound to rule based only on its text and not its application to a particular landlord.
[27] *Id.* at 690.

Berkeley's mandatory price controls were preempted by the federal Sherman Antitrust Act.[28] The U.S. Supreme Court granted certiorari on the limited question of preemption under the Sherman Act, and affirmed the California Supreme Court's conclusion that local residential rent controls do not violate the Sherman Act, albeit on a slightly different theory than the California Court.[29]

C. The Takings Clause

Two California Supreme Court decisions verify that local rent controls do not take private property in violation of the Takings Clause in the U.S. and California Constitutions.[30] In *Kavanau v. Santa Monica Rent Control Board*, the Court analyzed whether Santa Monica's rent control ordinance effected a regulatory taking for which a landlord was due compensation. The Court concluded that rent control is not a *per se* taking of property because the policy "does not generally constitute a physical invasion of property . . . and [the landlord] did not lose 'all economically beneficial or productive use of' his property."[31]

Because there was no *per se* taking, the Court then reviewed local rent controls using an *ad hoc* balancing test, including various factors identified in numerous U.S. Supreme Court cases, to conclude that rent control programs do not constitute a taking of property so long as the "future rent ceiling [ ] will maintain financial integrity, attract necessary capital, and fairly compensate [a landlord] for the risks he has assumed, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable."[32] In other words, adjustment of future rents via a petition process provides an adequate remedy for purportedly unconstitutional rent limitations that restricted a particular landlord's earnings.

Moreover, the Court stated that "[r]egulated prices must fall within a broad zone of reasonableness to be constitutional[,]" citing rate-setting cases applicable to gas and electric utilities.[33] The Court then concluded that "[s]etting rent ceilings is essentially a legislative task, and agencies, not courts, choose which administrative formula to apply." Emphasizing this point, the Court strongly resisted "the impossible task of finding somewhere in the penumbra of the

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[28] 37 Cal. 3d at 655-678.
[29] *Fisher v. Berkeley* (1986) 475 U.S. 260. Most recent, the U.S. Supreme Court denied a petition for certiorari regarding a challenge of New York's rent control laws based on the Takings Clause in 2012. *Harmon v. Kimmel* (Apr. 23, 2012) 11-496.
[30] U.S. Const. Amend. V; Cal. Const. art. I, § 19.
[31] *Kavanau*, (1997) 16 Cal. 4th 761, 780 (internal citations omitted).
[32] *Id.* at 785.
[33] *Id.* at 779 (internal quotations and citation omitted).

Constitution a stipulation that a particular apartment in a particular building should rent for $746 per month rather than $745."[34]

Two years later, the Court addressed a more novel regulatory takings claim, which argued that Santa Monica's rent control program did not substantially advance a legitimate governmental purpose. In *Santa Monica Beach v. Superior Court*, the California Supreme Court concluded that the city's rent control program substantially advanced some legitimate state purpose, and that the law is constitutional even if it did not precisely fulfill all of the goals specified in its preamble.[35] Specifically, the challengers relied on Census data to conclude that the rent control law had failed to protect low income, minority, and elderly tenants, which groups were identified as in need of protection in the rent control law.

The *Santa Monica Beach* decision upheld the city's generally applicable rent control law, finding that it was not an arbitrary regulation of property rights, and noting that rent control even withstands heightened scrutiny even though the rational basis test controls (*i.e.* the Court noted that local rent control substantially advances a legitimate governmental purpose).[36] The Court cited the U.S. Supreme Court's *Pennell* decision, noting that even the dissent by Justice Scalia "like the majority, took for granted the basic constitutionality of ordinary rent control laws."[37]

D. Other Constitutional Challenges

California rent control programs have been subjected to judicial challenges based on other constitutional provisions, including the Equal Protection Clause and the Contracts Clause. In *Pennell*, the U.S. Supreme Court rejected an equal protection challenge to San Jose's rent control program, which allowed for hearing officers to consider individual tenant hardships when factoring potential rent increases requested via a landlord petition. The Court stated that it:

> "will not overturn a statute that does not burden a suspect class or a fundamental interest unless the varying treatment of differed groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [the Court] can only conclude that the legislature's actions were irrational."[38]

[34] *Id*. at 784.
[35] *Santa Monica Beach*, (1999) 19 Cal. 4th 952, 970-71.
[36] *Id.* at 967.
[37] *Id.* at 968.
[38] *Pennell*, (1988) 485 U.S. at 14.

Like the California Supreme Court, the U.S. Supreme Court concluded that protecting tenants facing hardships served a legitimate purpose, and so the resulting different treatment of certain landlords on the basis of whether or not they house hardship tenants is rational.[39]

Likewise, the California Court of Appeal concluded in *Interstate Marina Development Company v.* County *of Los Angeles* that generally applicable rent controls do not deprive landlords of equal protection of the laws.[40] The *Interstate Marina* case also presented a novel challenge to rent control by a long-term ground lessor of public property, upon which the landlord developed and operated residential rental housing subject to rent control.[41] The Court of Appeal thoroughly analyzed the claim that rent control unconstitutionally impairs contractual relationships, noting that greater scrutiny is necessary when the government is a party to the contract as a long-term ground lessor to the landlord.[42] The Court of Appeal concluded that L.A. County's rent control ordinance caused minimal alteration of contractual obligations and provided similar treatment for similarly situated landlords, and so did not result in an unconstitutional impairment of contracts.[43] The court noted that "[r]ent control, like the imposition of a new tax, is simply one of the usual hazards of the business enterprise [for anyone engaged in the property rental field]."[44]

E. State Law Constraints

While the constitutionality of rent control programs is well established, state laws prohibit specific aspects of local rent control.

1. Rent Stabilization and the Costa-Hawkins Rental Housing Act

The Costa-Hawkins Act mandates vacancy decontrol of rent-regulated units, which means that a landlord can freely set the rent for a vacant unit subject to regulation when a new tenancy begins. The act states:

> "If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section to a lawful

[39] *Id.*
[40] (1984) 155 Cal. App. 3d 435; *see also Berman v. Downing* (1986) 184 Cal. App. 3d Supp. 1.
[41] *Interstate Marina*, 155 Cal App. 3d at 441.
[42] *Id*. at 445-46.
[43] *Id.* at 449
[44] *Id*. at 448; 453.

> sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996."[45]

This means, that generally landlords may reset the rent for a regulated unit if all the initial occupants of that unit move out, even if a new occupant moved in while one initial occupant lived in the unit. For instance, if one person moves into an apartment and later allows a roommate or significant other to live with them, the landlord may reset the rent for the apartment if the roommate or significant other remains in the apartment and the initial person moves out, regardless of local rent regulation. Because Costa-Hawkins prohibits cities and counties from setting the initial rent in multifamily housing, local programs are essentially limited to regulating the amount and frequency of rent increases for existing tenancies. Thus, regulation of rents in California is often referred to as rent "stabilization" instead of rent control.[46]

The Costa-Hawkins Rental Housing Act also limits local government's ability to regulate different types of residential rental housing.[47] The act limits the housing units to which local rent regulations apply, effectively deregulating detached single-family homes.[48] Among other restrictions, rent for tenancies that began after 1996 generally cannot be regulated, unless the housing unit was built prior to February 1, 1995. The Costa-Hawkins Act also freezes in time local exemptions for newly constructed units, which precludes most regulation of rents in West Hollywood and San Francisco buildings constructed after 1979, but allows for rent regulation of Oakland buildings constructed prior to 1983, and prior to 1995 in Mountain View.[49]

Notably, a voter-initiative to repeal Costa-Hawkins was rejected by popular vote in November 2018, but the issue appears poised for a return to the ballot in 2020.

2. Exiting the Rental Market and the Ellis Act

The Ellis Act was adopted in 1985 in response to a 1984 California Supreme Court decision that effectively allowed a city to require rental property continue to be used as such until a demolition or removal permit was issued by the city.[50] The Ellis Act expressly supersedes the

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[45] Civil Code § 1954.53(d)(2).
[46] Notably, the Costa-Hawkins Act does not apply to mobile home parks; some jurisdictions have mobile home rent control programs that regulate the initial rent and subsequent increases for mobile homes and mobile home spaces.
[47] Civil Code §§ 1954.50 – 1954.535.
[48] Civil Code § 1954.52(a).
[49] Civil Code § 1954.52(a)(2); *see also* W.H. Mun. Code §17.24.010.A.4; S.F. Admin. Code. § 37.2; Oak. Mun. Code 8.22.030.A.5; & M.V. Charter § 1703(b)(1).
[50] Gov. Code §§ 7060 – 7060.7; *see e.g.* Gov. Code § 7060.7 & *Nash v. City of Santa Monica* (1984) 37 Cal. 3d 97.

Court ruling and allows landlords to terminate tenancies in order to exit the residential rental market.

While granting this right to landlords, the Ellis Act provides specific authority for cities and counties to regulate aspects of a landlord's exit from the rental market. However, cities and counties must affirmatively enact ordinances providing the following protections. First, the Ellis Act allows local jurisdictions to require that landlords provide tenants with additional notice of a termination of tenancy that relies on the Ellis Act.[51] Generally, state law requires landlords provide at least 30 days' notice to terminate a tenancy of less than one year, and 60 days to terminate a longer tenancy.[52] Moreover, the noticing requirements in state law have been construed to preempt local governments from requiring longer notice periods.[53] The Ellis Act allows a local jurisdiction to require a 120-day notice to terminate a tenancy based on the landlord's withdrawal of the property from the rental market. The 120-day notice can be extended to one year for seniors over the age of sixty-two and persons with disabilities.

Second, the law authorizes local jurisdictions to require that landlords mitigate the impacts of the withdrawal on tenants, for instance by paying relocation assistance to tenants.[54] Myriad published decisions explore the outer limits of relocation assistance landlords can legally be required to pay departing tenants. For instance, the Court of Appeal rejected a facial challenge in *Pieri v. City and County of San Francisco*, affirming the city's ordinance requiring relocation payments of $4,500 per tenant (up to $13,500 per unit), with additional payments of $3,000 if the household included a senior or disabled person, all of which were to be adjusted annually for inflation.[55] In contrast, a 2014 San Francisco ordinance requiring landlords to pay twenty-four times the difference between the tenant's current rent and the fair market value of a comparable unit in the city was summarily rejected.[56]

Third, the Ellis Act authorizes local jurisdictions to strictly regulate re-entry to the rental market of previously withdrawn units.[57] Cities and counties can impose penalties if the property is returned to the rental market within two years of withdrawal; can require re-control of the rents

[51] Gov. Code § 7060.4.
[52] Civ. Code §§ 1946-1946.1.
[53] *Tri County Apartment Association v. City of Mt. View* (1987) 196 Cal. App. 3d 1283 (holding that the city's minimum 60-day notice for all rent increases was preempted Civil Code § 827).
[54] Gov. Code § 7060.1(c).
[55] (2006) 137 Cal. App. 4th 886.
[56] *Levin v. City and County of San Francisco* (2014) 71 F. Supp. 3d 1072.
[57] Gov. Code § 7060.2.

for units returned to the rental market within five years of withdrawal at the last monthly rental amount plus annual general adjustments; and can require landlords provide former-tenants with a first option to re-rent units returned to the rental market up to ten years from withdrawal.[58]

III. Case Studies

This Section III provides a brief overview of three models of rent stabilization policies in place in California, beginning with a legacy rent control city in southern California using an information-driven enforcement system, followed by a Bay Area city that recently enacted a complaint-driven rent stabilization program, and concluding with a Bay Area county that has initiated an alternative program to mediate landlord-tenant relations.

A. Information-Driven Enforcement of Rent Stabilization in Santa Monica[59]

City of Santa Monica voters adopted a rent stabilization charter amendment in 1979. Since that time, Santa Monica's rent control program continues to limit rent increases and regulate the reasons for which a tenant can be evicted. The program governs 27,445 residential rental units as of December 2018.[60]

Annual rent increases are limited to the lesser of: six percent of the current rent, seventy-five percent (75%) of the annual percentage change in the consumer price index (CPI-U all items) for the Los Angeles area; or a specific dollar figure published by the rent board based on application of 75% of the CPI-U annual change applied to an average 85th percentile maximum allowable rent (MAR), which equaled two percent (2%) or $44 for MARs of $2,175 per month or greater in 2019.[61] Larger rent increases may be authorized through a petition process initiated by a landlord. The Santa Monica program charged an annual registration fee to landlords of $198 per-controlled unit to administer the program in 2019; fifty-percent of the annual fee can be passed through to tenants over a twelve-month period.

Santa Monica's rent stabilization should be considered information-driven because the city proactively calculates and publishes the maximum-allowable rent (MAR) for each regulated

[58] *Id.*
[59] The following discussion summarizes information included in the 2018 Annual Report of the Santa Monica Rent Control Board, and other information published on the City website, available at: https://www.smgov.net/rentboard.
[60] The number of controlled units varies from year to year due in part to the withdrawal and return of units to and from the marketplace under the Ellis Act, as well as temporary exemptions (such as Santa Monica's owner-occupancy exemption on properties of three-or-fewer units).
[61] S.M. Charter § 1805.

tenancy. The city requires mandatory registration of regulated units and publishes MARs for specific units on its website, allowing for easy public access to information about regulated rents and lawful rent increases. The city recently automated tenancy registration, eliminating paper-based registrations and allowing for easier computations of MARs and verifications of fees, waivers and exemptions, and other issues. Notably, MAR calculations are based on information reported by landlords, but the information is sent to tenants in a customized letter so the tenants can validate the accuracy of the tenancy registration.

B. Complaint-Driven Enforcement of Rent Stabilization in Mountain View[62]

Voters in the City of Mountain View adopted a rent stabilization charter amendment in 2016. Mountain View's charter amendment limits rent increases and regulates the reasons for which a tenant can be evicted. The program regulates rents in 13,466 residential rental units as of July 2018.

Annual rent increases are limited to one hundred percent (100%) of the annual percentage change in the consumer price index (CPI-U all items) for the San Francisco area, which equaled three and one-half percent (3.5%) in 2019.[63] Larger rent increases may be authorized through a petition process initiated by a landlord. The Mountain View program charged an annual registration fee to landlords of $101 per-controlled unit to administer the program in 2019, which cannot be passed through to tenants.

In contrast with Santa Monica's information-driven rent stabilization program, Mountain View's program is primarily enforced via tenant complaints and petitions. The city does not require registration of tenancies and so cannot calculate maximum allowable rents for each regulated unit. However, the program actively educates the public about protections under the city's charter amendment, and provides binding arbitration of disputes related to rent and housing services, as well as voluntary mediation services for other disputes.

C. Mandatory, Non-binding Mediation in Marin County[64]

[62] The following discussion summarizes information published on the city website, available at: https://www.mountainview.gov/rentstabilization.
[63] M.V. Charter § 1707.
[64] The following discussion summarizes information published on the county website, available at: https://www.marincounty.org.

In 2017, the board of supervisors in Marin County adopted the Rental Housing Dispute Resolution Ordinance, which mediates disputes related to certain rent increases. The program requires mandatory participation in mediation for rent increases in excess of five percent (5%) of the current rent in any twelve-month period, if requested by either the landlord or tenant. Although participation is mandatory if mediation is requested by any party, it may result in either a voluntary mediation agreement or a nonbinding mediation statement from a neutral third party.[65] There are no direct costs to participating landlords or tenants for the mediation services.

In 2018, the county board of supervisors enacted an ordinance regulating the reasons for which a tenant may be evicted and requiring landlords to register each rental unit with the county on an annual basis, including disclosure of the occupancy status and monthly rent for each unit.[66] The county board of supervisors must review this most recent ordinance by January 2021.

IV. Conclusion

This paper reviews the historical roots and current legal precedents that both support and shape local rent stabilization policies in California. Cases at the state and federal levels confirm that rent stabilization programs in California can withstand constitutional challenges based on the Due Process Clause, Takings Clause, and other constitutional provisions. The decisions from the U.S. and California Supreme Courts identify necessary elements for any rent stabilization program governing rent increases in multifamily residential units, including broadly applicable annual general adjustments that will diminish the effects of inflation on a landlords' income overtime, as well as individualized petition processes that ensure a landlord may earn a fair return from a rental property.

Two state laws significantly constrain local rent stabilization programs. The Ellis Act supersedes local regulations and the reasons for which a tenant can be evicted; allowing landlords to evict all tenants and permanently exit the rental housing market. And the Costa-Hawkins Rental Housing Act mandates vacancy decontrol, which allows a landlord to set the initial rental price for a new tenancy. Vacancy decontrol is also the reason why most local programs reference rent stabilization, and not rent control. Likewise, the Costa-Hawkins Act limits the rental units that may be subject to rent stabilization policies based on the year the unit was constructed and whether

[65] Marin County Code § 5.95.050.
[66] Marin County Code Chapter 5.100.

any other rental units are located on the same parcel (*e.g.* providing a statewide exemption for most single-family homes).

Within the constitutional and statutory constraints, three jurisdictions provide roadmaps for implementing rent stabilization and tenant protection policies that address rent increases and unexplained evictions. Santa Monica's long-standing policy has evolved into an information-driven program that provides detailed, tenancy specific information to landlords, tenants, and the general public to facilitate enforcement of the law. Mountain View's recently enacted program is cheaper to administer and relies on landlord and tenant complaints to enforce the law. While Marin County's mandatory-mediation program offers a softer approach to regulating rent increases when compared to the binding arbitration offered in Santa Monica and Mountain View. Among these three models, local jurisdictions may find an appropriate approach to address California's predictably challenging rental markets by implementing anti-displacement policies that provide tenants with greater certainty and stability in their housing.

Postscript

It appears California will soon be subject to statewide rent stabilization assuming AB 1482 (Chiu, 2019) is signed by the Governor as anticipated (*see* footnote 8, *supra*). With a statewide policy, is there a reason for continued local regulation, let alone the creation of new programs? Undoubtedly each local jurisdiction will grapple with this question.

Cursory review of AB 1482 indicates ample opportunities for some California jurisdictions to assert local control. AB 1482 expressly preserves the ability for local jurisdictions to provide more-strict regulation of evictions and rent increases. For instance, some local jurisdictions provide eviction protections to tenants after renting a unit for more than a month, while AB 1482 eviction limits generally apply after a tenant has continuously occupied a property for 12 months. Likewise, AB 1482 would limit annual rent increases to inflation plus five percent (*e.g.* allowing increases of 7-8% of existing rent). Most local jurisdictions with rent stabilization have only authorized smaller increases (*e.g.* Berkeley limits rent increases to 65% of the annual change in an inflation index, resulting in maximum rent increases of 2.5% in 2019). Finally, AB 1482 extends protections to some unit-types that are exempt from local regulation under the Costa-Hawkins Act: detached single-family homes owned by real estate investment trusts or corporations. Still, with such a large proportion of the population renting their home and the continued upward pressure on

rents, California jurisdictions will mostly likely continue to grapple with the means to provide housing stability for renters in their communities.