

The Constant Battle to Reform California Rent Control

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"With the threat of SB 446 presently nullified, the big challenger to the long-standing Costa-Hawkins Act is the Justice for Renters Act initiative," writes Whitney Hodges of Sheppard Mullin.

California's rent control regulations—specifically, the Costa-Hawkins Rental Housing Act (Civ. Code Section 1954.50 et seq.) (Costa-Hawkins Act)—are under attack, yet again. This most recent challenge comes as the state tries desperately to reverse the decades long trend of declining housing availability through a myriad of legislative enactments.

Admittedly, rent control in the Golden State has a complex history. Enacted in 1995, the Costa-Hawkins Act sets parameters for the implementation of local rent control ordinances by cities and counties and prescribes statewide limits on the application of local rent control with regard to certain properties. Generally, the Costa-Hawkins Act authorizes an owner of residential real property to establish the initial rental rate for a dwelling or unit, except in specified circumstances, including: (i) when the residential real property has a certificate of occupancy issued after Feb. 1, 1995; (ii) when the residential real property has already been exempt from the residential rent control ordinance of a public entity on or before Feb. 1, 1995, pursuant to a local exemption for newly constructed units; and (iii) when the residential real property is alienable and separate from title to any other dwelling units, except as specified. At its core, the Costa-Hawkins Act intended to balance the interests of both landlords and tenants.

Clearly, the housing landscape in California has changed significantly since the mid-90s, when the Costa-Hawkins Act came into law. "California housing has become the most expensive in the nation." (Govt. Code Section 65589.5(a)(2).) The resulting "lack of housing ... is a critical problem that threatens the economic, environmental and social quality of life in California." (Govt. Code 65589.5(a)(1).) As rents have skyrocketed statewide, tenant advocacy groups have blamed the Costa-Hawkins Act, charging that the law empowers landlords to charge exorbitant rents with each new lease. In turn, this has driven up rents, which have displaced tenants and led to increased homelessness.

During the 2023-2024 legislative cycle, the Costa-Hawkins Act faced an overhaul from the California State Legislature through the ill-dated Senate Bill (SB) 466. California Senator Aisha Wahab (D-Hayward) introduced SB 466, which sought to redefine "new housing" to include many units currently exempt under the Costa-Hawkins Act using new complex and confusing formulas to bring these units into compliance with rent control laws. SB 466 also would have created a bifurcated system of different "rolling dates" for determining eligibility for rent control based on the year rent control was adopted at the local level. This meant that the units subject to the Costa-Hawkins Act would gradually increase to include a larger portion of the housing stock under rent control. Because SB 466 failed to obtain a legislative hearing before the Jan. 31, 2024 deadline, it is essentially

dead for the remainder of the current legislative cycle. However, if history is any indication, it should be anticipated that an iteration of SB 466 will be reintroduced at the next opportunity.

With the threat of SB 446 presently nullified, the big challenger to the long-standing Costa-Hawkins Act is the “Justice for Renters Act” initiative. This measure will be put forward to California voters on the November 2024 ballot and would wholly repeal the Costa-Hawkins Act.

The Justice for Renters Act is being funded by AIDS Healthcare Foundation (AHF) President Michael Weinstein. Weinstein—considered by some to be an “agent provocateur” against the state government and dubbed “public enemy no. 1” by the California Apartment Association—has brought some form of this ballot measure twice before (Proposition 10 (2018), Proposition 21 (2020)) without success. Presently, the Justice for Renters Act is publicly supported by the California Nurses Association, the Coalition for Humane Immigrant Rights of Los Angeles, and Housing Is a Human Right (a project of AHF).

By repealing statewide rent control regulations, the Justice for Renters Act purports to give local communities “the right to stabilize rents and make apartments more affordable for low-income and middle-income renters.” Essentially, the Justice for Renters Act preclude the state from infringing upon “the right of any city, county, or city and county to maintain, enact or expand residential rent control” and provide local governments with the autonomy to set rental controls. However, the question remains—will they?

As with Weinstein’s prior attempts, there is a very vocal contingent critical of the Justice of Renters Act. In fact, this iteration of Weinstein’s efforts has made for some surprising bedfellows. While opposition includes the expected parties (i.e., California Apartment Association, local chambers of commerce, and property management groups), critics have found support from two unlikely sources. In May, two top California Democrats—State Senator Toni Atkins and Assembly Appropriations Chair Buffy Wicks—and two of the state’s largest construction unions—United Brotherhood of Carpenters and Norcal Carpenters Union—have come out against the Justice for Renters Act.

According to these former champions of rent control initiatives, the Justice for Renters Act contains a “Trojan Horse.” Specifically, the legislators and unions believe this ballot measure, if passed, would allow wealthy cities (and particularly wealthy coastal cities) to oppose development with affordability requirements. This would, essentially, result in a moratorium on development and undermine the plethora of pro-housing laws intended to avoid such a result. According to Wicks, “This ballot measure will end housing production in California. Full stop.”

Other critics warn that the initiative would allow local governments to apply rent control to all types of housing, regardless of age, and would eliminate vacancy decontrol. This could, in turn, reduce the availability and quality of rental units. It could also deter the development of new rental housing, and any additional private investment in renovating and maintaining existing units. In sum, this act could harm the very individuals it purports to protect—renters. At the end of the day, the initiative’s detractors allege that the elimination of a statewide program would undermine the investment in much-needed new housing and destabilize the rental housing market.

To back up their claims, opponents point to the time before the Costa-Hawkins Act, when local governments had the freedom to enact rent control measures. While the local jurisdictions intended to benefit tenants by preventing rents from rising too quickly, many of these earlier measures had unintended consequences, including a decline in availability and the quality of existing rentals.

Opponents of the Justice for Renters Act also believe the upheaval of the Justice for Renters Act is not necessary in light of the Tenant Protection Act. Enacted in 2019, this legislation, among other landlord-related restrictions, caps annual rent increases either at 10% or at 5% plus the local inflation rate, whichever is lower, for most apartments more than 15 years of age.

Interestingly, earlier this year, the U.S. Supreme Court declined to hear appeals of two cases challenging the constitutionality of rent control—*74 Pinehurst v. New York* (2024) 601 U.S. ____ and *El Papel v. City of Seattle* (Case Docket 23-807). The Supreme Court's rejection of these cases upholds the status quo of allowing state and local governments to retain broad constitutional authority to enact and enforce rent control laws. This rejection underscores the importance of understanding existing safeguards, outside the Constitution, for rental housing providers, including the Costa-Hawkins Act and Ellis Act (Govt. Code Section 7060 et seq.), and those initiatives intended to reshape those laws, like the Justice for Renters Act.

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