



Jesse Arreguín  
City Councilmember, District 4

CONSENT CALENDAR  
October 27, 2015

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Urging the State Legislature and Governor to Repeal the Costa-Hawkins Rental Housing Act

RECOMMENDATION:

Adopt a Resolution urging the California State Legislature and Governor to adopt legislation repealing the Costa-Hawkins Rental Housing Act, Civil Code Sections 1954.50-1954.535. Copies of the Resolution are to be sent to Governor Jerry Brown, State Senator Loni Hancock and State Assemblymember Tony Thurmond.

BACKGROUND:

In 1980, the voters of Berkeley adopted a Rent Stabilization Ordinance which established a system of rent control for all units constructed prior to 1980. The ordinance regulates the rents of most residential rental units in the City of Berkeley and provides protection to tenants against eviction without good cause and against “unwarranted rent increases” to maintain affordable housing and preserve the community’s diversity. An “unwarranted rent increase” is an increase in rent beyond what is needed to pay for the operation, maintenance and renovation of property and to provide the owner with a “fair return” on their investment. Put another way, an unwarranted rent increase is an increase that provides additional “unearned” rent to owners and investors that is not based on the work they do to operate, maintain or improve the property, but is based on increasing rents tenants are willing to pay due to the scarcity of housing.

From 1979 to the end of 1998, Berkeley controlled rents on both vacant and occupied rental units. When a new tenancy occurred the prior rent ceiling would continue in effect and could not be increased except through annual increases approved by the Rent Board, or through individual rent adjustments. These “vacancy controls” keep rents stable and prevented large “unwarranted” rent increases which could displace tenants.

In 1995, the California State Legislature adopted the Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50-1954.535), undermining Berkeley’s system of strong rent control and allowing a property owner to establish a new rental rate for each new tenancy, allowing unlimited increases upon vacancy and then re-control of rents.

The Costa-Hawkins Act went into partial effect from January 1, 1996 - December 31, 1998, with partial decontrol allowing owners to raise rents twice to an amount equal to 15% of the previous rent in effect. It went into full effect on January 1, 1999. After that date all new tenancies are decontrolled.

In the 20 years since the adoption of Costa-Hawkins, Berkeley has seen a dramatic spike in rents which has resulted in a severe affordability crisis. According to figures from the Rent Board, prior to the full implementation of Costa-Hawkins in 1999, the average rent was \$814. This increased to an average rent of \$1,602 in 2013.<sup>1</sup>

Since 1999 fully 85% of all rent stabilized apartments have turned over at least once and the rent has increased to the much higher levels typical of the Bay Area's dysfunctional housing market.

Costa-Hawkins has resulted in significant disparities in the amount of income tenants are paying for rent. According to a 1998 Rent Board survey, 30 percent of tenants in 1988 reported paying more than 30 percent of their monthly income on rent. By 1998, the figure increased to 48 percent, a 60 percent increase in the number of tenants paying over 30 percent of their incomes on rent in just 10 years. According to recent statistics, this figure has risen to one-third of renter households paying more than 50% of their income on rent. About two-thirds of the extremely low-income renter households were paying more than half their income for housing costs in 2011 (5,406 households)<sup>2</sup> Also 28% pay more than half of their income for rent, up from 20% in 1998.

Two principal arguments made by proponents of Costa-Hawkins were that the bill was needed to provide owners a fair return on their investment because rent controls artificially depressed prices and kept rents below the rate of inflation. In addition, they argued that rent controls kept housing in poor condition since owners did not make enough income to fix up their properties. The reality is that Costa-Hawkins resulted in rent increases dramatically beyond the pace of inflation, and did not result in significant reinvestment in rent controlled properties.

Today the average decontrolled rent is up by over 50% after adjusting for inflation. Berkeley tenants now pay an additional \$100 million annually in rent over and above the increases needed to provide owners with a fair return on their investment but only 10% of the increased rent is being reinvested in the community through building renovations and increased tax payments.<sup>3</sup>

The value of Berkeley rental property has doubled, increasing by \$1.2 to \$1.5 billion based on the increased net operating income. Owners of 70% of these rental properties

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<sup>1</sup> 2015-2023 Berkeley Housing Element, Table 6-30, Page 196

<sup>2</sup> 2015-2023 Berkeley Housing Element, page 41

<sup>3</sup> "Rent Stabilization and the Berkeley Rental Housing Market 15 Years after Vacancy Decontrol", Berkeley Rent Board, January 2013, [http://cityofberkeley.info/uploadedFiles/Rent\\_Stabilization\\_Board/Level\\_3\\_-\\_General/Summary%20of%20Economic%20Studies%20Part%20I.pdf](http://cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/Summary%20of%20Economic%20Studies%20Part%20I.pdf)

have old assessed values that give the owners a tax break totaling approximately \$10 million annually.

The reality is that Costa-Hawkins has resulted in “unwarranted” rent increases, creating significant windfall profits for owners, while exacerbating the regional housing crisis.

In addition to dramatic increases in rents created by Costa Hawkins, recent legal decisions have also undermined other affordable housing programs. In 2009, the California Court of Appeal in its decision in *Palmer v. City of Los Angeles*, determined that inclusionary zoning requirements are prohibited under the Costa-Hawkins Act, since the law prohibits government entities from establishing new rental rates. Overnight inclusionary policies, which were an important tool to create affordable housing, were thrown out statewide, making it more difficult for local governments to address the state’s affordability crisis.

The adopted 2001 Berkeley Housing Element included a policy, Policy H-4 "Rent Control", which included the following action:

*B. Support the repeal of the vacancy decontrols of the 1995 Costa-Hawkins Bill or pursue other means to provide city autonomy to stabilize rents through vacancy controls.*

By inclusion of this policy in the Housing Element, the city's housing policy document, the City's official policy was to support the repeal of Costa-Hawkins.

In this unprecedented housing crisis, it is important that we explore all options to preserve affordability and prevent displacement. By repealing Costa-Hawkins and allowing local governments to stabilize rents through vacancy controls, cities will have an important tool to keep rents from rising even further.

If Costa-Hawkins were repealed, under Berkeley’s system of rent control the existing rent ceilings would remain in effect for each new tenancy, except for permitted increases by the Rent Board. This would lock in the current higher market rents, but would not allow rents to further skyrocket. Market rents are currently dramatically above the rate of inflation and what is needed to achieve a fair return. Thus owners could not argue that vacancy control would create an economic hardship and would prevent them from achieving a fair return.

This resolution requests that the State Legislature and Governor repeal the Costa-Hawkins Act, but if the Legislature decides not to outright repeal the law, it directs our lobbyist to support the following amendments to the Costa-Hawkins Act to:

1. Clarify that it does not apply to inclusionary housing.
2. To allow local governments to apply rent stabilization to buildings 10 years after they receive their certificate of occupancy.
3. Restore vacancy control to buildings.
4. Establish a limit on the amount of a vacancy increase.

FINANCIAL IMPLICATIONS:

None

CONTACT PERSON:

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Attachments:

1. Resolution
2. East Bay Express editorial "It's Time to Overturn the State Ban on Rent Control", March 25, 2015

Many of the statistics used in this report are from "Rent Stabilization and the Berkeley Rental Housing Market 15 Years after Vacancy Decontrol", Berkeley Rent Board, January 2013,

[http://cityofberkeley.info/uploadedFiles/Rent\\_Stabilization\\_Board/Level\\_3 -  
\\_General/Summary%20of%20Economic%20Studies%20Part%20I.pdf](http://cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/Summary%20of%20Economic%20Studies%20Part%20I.pdf)

RESOLUTION NO.

URGING THE STATE LEGISLATURE AND GOVERNOR TO REPEAL THE COSTA-HAWKINS RENTAL HOUSING ACT

WHEREAS, in 1980, the voters of Berkeley adopted a Rent Stabilization Ordinance which established a system of rent control for all units constructed prior to 1980. The ordinance regulates the rents of most residential rental units in the City of Berkeley and provides protection to tenants against eviction without good cause and against “unwarranted rent increases” to maintain affordable housing and preserve the community’s diversity; and

WHEREAS, an “unwarranted rent increase” is an increase that provides additional “unearned” rent to owners and investors that is not based on the work they do to operate, maintain or improve the property, but is based on increasing rents tenants are willing to pay due to the scarcity of housing; and

WHEREAS, from 1979 to the end of 1998, Berkeley controlled rents on both vacant and occupied rental units. When a new tenancy occurred the prior rent ceiling would continue in effect and could not be increased except through annual increases approved by the Rent Board, or through individual rent adjustments. These “vacancy controls” keep rents stable and prevented large “unwarranted” rent increases which could displace tenants; and

WHEREAS, in 1995, the California State Legislature adopted the Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50-1954.535), undermining Berkeley’s system of strong rent control and allowing a property owner to establish a new rental rate for each new tenancy, allowing unlimited increases upon vacancy and then re-control of rents; and

WHEREAS, in the 20 years since the adoption of Costa-Hawkins, Berkeley has seen a dramatic spike in rents which has resulted in a severe affordability crisis. According to figures from the Rent Board, prior to the full implementation of Costa-Hawkins in 1999, the average rent was \$814. This increased to an average rent of \$1,602 in 2013.<sup>4</sup>; and

WHEREAS, since 1999 fully 85% of all rent stabilized apartments have turned over at least once and the rent has increased to the much higher levels typical of the Bay Area’s dysfunctional housing market; and

WHEREAS, Costa-Hawkins has resulted in significant disparities in the amount of income tenants are paying for rent. According to a 1998 Rent Board survey, 30 percent of tenants in 1988 reported paying more than 30 percent of their monthly income on rent. According to recent statistics, this figure has risen to one-third of renter households paying more than 50% of their income on rent; and

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<sup>4</sup> 2015-2023 Berkeley Housing Element, Table 6-30, Page 196

WHEREAS, proponents of Costa-Hawkins argued that the bill was necessary to give owners a fair return on their investment and to help fix up older rent-controlled properties; and

WHEREAS, the reality is that Costa-Hawkins resulted in rent increases dramatically beyond the pace of inflation, and has not resulted in significant reinvestment in rent controlled properties; and

WHEREAS, today the average decontrolled rent is up by over 50% after adjusting for inflation. Berkeley tenants now pay an additional \$100 million annually in rent over and above the increases needed to provide owners with a fair return on their investment but only 10% of the increased rent is being reinvested in the community through building renovations and increased tax payments.<sup>5</sup>; and

WHEREAS, the value of Berkeley rental property has doubled, increasing by \$1.2 to \$1.5 billion based on the increased net operating income. Owners of 70% of these rental properties have old assessed values that give the owners a tax break totaling approximately \$10 million annually; and

WHEREAS, the reality is that Costa-Hawkins has resulted in “unwarranted” rent increases, creating significant windfall profits for owners, while exacerbating the regional housing crisis; and

WHEREAS, in 2009, the California Court of Appeal in its decision in *Palmer v. City of Los Angeles*, determined that inclusionary zoning requirements are prohibited under the Costa-Hawkins Act, since the law prohibits government entities from establishing new rental rates. Overnight inclusionary policies, which were an important tool to create affordable housing, were thrown out statewide, making it more difficult for local governments to address the state’s affordability crisis.

WHEREAS, the adopted 2001 Berkeley Housing Element included the following action; “*Support the repeal of the vacancy decontrols of the 1995 Costa-Hawkins Bill or pursue other means to provide city autonomy to stabilize rents through vacancy controls*”; and

WHEREAS, in this unprecedented housing crisis, it is important that we explore all options to preserve affordability and prevent displacement.

WHEREAS, by repealing Costa-Hawkins and allowing local governments to stabilize rents through vacancy controls, cities will have an important tool to keep rents from rising even further; and

WHEREAS, if Costa-Hawkins were repealed, under Berkeley’s system of rent control existing rent ceilings would remain in effect for each new tenancy. This would lock in the current higher market rents, but would not allow rents to skyrocket even further.

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<sup>5</sup> “Rent Stabilization and the Berkeley Rental Housing Market 15 Years after Vacancy Decontrol”, Berkeley Rent Board, January 2013, [http://cityofberkeley.info/uploadedFiles/Rent\\_Stabilization\\_Board/Level\\_3\\_-\\_General/Summary%20of%20Economic%20Studies%20Part%20I.pdf](http://cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/Summary%20of%20Economic%20Studies%20Part%20I.pdf)

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby urges the California State Legislature and Governor Jerry Brown to adopt legislation repealing the Costa-Hawkins Rental Housing Act; and

BE IT FURTHER RESOLVED by the Council of the City of Berkeley, if the Legislature decides not to outright repeal the Costa-Hawkins Act, we urge the adoption of following amendments, and direct our lobbyist to advocate for any of these amendments:

1. Clarify that it does not apply to inclusionary housing;
2. To allow local governments to apply rent stabilization to buildings 10 years after they receive their certificate of occupancy;
3. Restore vacancy control to buildings; or
4. Establish a limit on the amount of a vacancy increase.

BE IT FURTHER AND FINALLY RESOLVED that copies of the Resolution be sent to Governor Jerry Brown, State Senator Loni Hancock and State Assemblymember Tony Thurmond.

# EAST BAY EXPRESS

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## It's Time To Overturn the State Ban on Rent Control

The Costa-Hawkins Act is not only contributing to soaring rent prices, but it's also creating barriers to new housing construction.

By *Robert Gammon* @RobertGammon



The rent is too damn high in Oakland. Last month, real estate website Trulia reported that rents in Oakland [soared 12.7 percent](#) last year — the second largest price jump in the nation. The real estate company Zillow pegged Oakland's median rent in February [at a whopping \\$2,412 a month](#) — which is nearly triple the national average. And as we noted in a news story earlier this month, some landlords are now raising rents by as much as 50 percent (see "[How East Bay Tenants Get Displaced](#)," 3/11).

Rents, in short, are officially out of control. And the skyrocketing prices are making apartments much too expensive for many longtime residents. Unfortunately, however, the city can't do much about it. Why? A twenty-year-old state law known as the Costa-Hawkins Rental Housing Act blocks Oakland and other California cities from adopting sensible rent control rules that could help keep rent prices from getting even higher.

Costa-Hawkins, which doesn't get nearly enough attention from the news media, prohibits Oakland from establishing rent control on buildings constructed after 1983. That means that about one-third of all rental units in Oakland — 32,000 out of 92,000 — are exempt from the city's rent control regulations. Landlords of those buildings are thus free to raise rents as much as they want — which is exactly what they're doing. And that's a big problem for a city like Oakland, in which approximately 60 percent of residents are renters.

Legislators representing Oakland, Berkeley, San Francisco, San Jose, Los Angeles, and other cities with skyrocketing rents should be clamoring to overturn Costa-Hawkins. But the law — like Prop 13 — has become an electric third rail in California politics: Nobody wants to touch it, not even liberals. But that shouldn't be the case, because Costa-Hawkins is helping make California unaffordable for millions of people, and there's evidence that it's hurting the economy.

Supporters of Costa-Hawkins argue that rent control laws dissuade developers from building new housing. But since 1995, when Costa-Hawkins was passed, housing construction in California has trailed the rest of the nation — by a significant margin. According to a report last week by the nonpartisan state Legislative Analyst's Office (LAO), the number of new home permits in California's coastal cities, including Oakland, San Francisco, and Los Angeles, was about one-third lower than the rest of the nation during the Aughts.

In cities like Oakland, there's strong evidence that Costa-Hawkins has had the opposite effect from what its supporters originally intended: Rather than making it easier to build new market-rate housing, it has helped create barriers to it. Indeed, many housing activists now work to block the construction of market-rate units, because they contend that new apartments prompt rents in the surrounding areas to rise, especially when the housing is built in traditionally affordable neighborhoods. And in many circumstances, they're right: Landlords do sometimes raise prices when new apartments, which often rent at higher prices, come on the market.

This cascading effect has numerous impacts. It not only can price low-income residents out of the city and worsen gentrification, but it also can create serious financial hardships for people who have nowhere else to go. According to the LAO, the poorest 25 percent of households in the state spend about 67 percent of their income, on average, on housing. That means large numbers of residents have little to no money to buy food and other essential items.

Overturning — or at least reforming — Costa-Hawkins could change that. It would allow cities like Oakland to keep rent prices affordable in existing buildings when new apartments are built, and thus lift an unnecessary barrier to housing construction.

So what about the argument by opponents of rent control that housing prices are soaring because there's not enough housing (the LAO makes that argument, too)? Well, they're right. The lack of supply has sent housing prices through the roof, and we do need more housing — at all price levels. But it could take decades for California to build enough housing to keep prices under control. According to the LAO, the state should have constructed millions of new units during the past few decades.

As such, one sensible reform to Costa-Hawkins would be to exempt new housing units from rent control laws for ten years. That way, developers could be sure to get healthy returns on their investments, and so would not be dissuaded from building new housing — while renters in

existing buildings that are ten years or older would be guaranteed to not face ridiculous rent hikes.

Out-of-control rents are also an immediate problem that can be addressed quickly. And politics shouldn't get in the way. After all, California has become much more liberal in the last two decades. Costa-Hawkins was enacted under the Republican administration of then-Governor Pete Wilson.

Those days are obviously over, and it's time for the state to let cities like Oakland enact laws that will protect more residents from getting displaced.

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