

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6512

Meeting Date: August 23, 2017

Final Decision Date Deadline: August 23, 2017

STATEMENT OF THE ISSUE: "Banking" AGA rent increases is defined as the ability of a rental property owner to raise the rent up to the Maximum Allowable Rent Level after deferring past Annual General Adjustment. With banking allowed, landlords do not lose past AGA increases that were deferred. With banking prohibited, landlords could potentially lose the ability to recover deferred AGA increases. The Rent Board must determine whether or not to allow "banking" of Annual General Adjustment (AGA) increases, and if so, whether or not to allow for full banking or banking under certain limitations.

INDICATE APPROPRIATE BODY

- | | | | | |
|---|---|--|--|---|
| <input type="checkbox"/> City Council | <input type="checkbox"/> Redevelopment Agency | <input type="checkbox"/> Housing Authority | <input type="checkbox"/> Surplus Property Authority | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> | |

ITEM

- Presentation/Proclamation/Commendation (3-Minute Time Limit)
- Public Hearing Regulation Other:
- Contract/Agreement Rent Board As Whole
- Grant Application/Acceptance Claims Filed Against City of Richmond
- Resolution Video/PowerPoint Presentation (contact KCRT @ 620.6759)

RECOMMENDED ACTION: (1) RECEIVE a presentation regarding the right to raise the Rent up to the Maximum Allowable Rent level, also known as "banking" rent increases; and (2) RECEIVE AND CONSIDER draft Regulation 17-09, regarding the right to raise the Rent up to the Maximum Allowable Rent level, also known as "banking" rent increases, with limitations, such that the net rent increase in any one year as a result of the application of the current plus any deferred or "banked" AGAs does not exceed five percent (5%). This draft Regulation (17-09) would not become effective until September 1, 2018 – Rent Program (Nicolas Traylor 620-6564).

AGENDA ITEM NO:

H-2.



AGENDA REPORT

DATE: August 23, 2017

TO: Chair Gray and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director

SUBJECT: REPORT ON BANKING OF ANNUAL GENERAL ADJUSTMENTS AND DRAFT REGULATION 17-09

STATEMENT OF THE ISSUE:

“Banking” AGA rent increases is defined as the ability of a rental property owner to raise the rent up to the Maximum Allowable Rent Level after deferring past Annual General Adjustments. With banking allowed, Landlords do not lose past AGA increases that were deferred. With banking prohibited, Landlords could potentially lose the ability to recover deferred AGA increases. The Rent Board must determine whether or not to allow “banking” of Annual General Adjustment (AGA) increases, and if so, whether or not to allow for full banking or banking under certain limitations.

RECOMMENDED ACTION:

(1) RECEIVE a presentation regarding the right to raise the Rent up to the Maximum Allowable Rent level, also known as “banking” rent increases; and (2) RECEIVE AND CONSIDER draft Regulation 17-09, regarding the right to raise the Rent up to the Maximum Allowable Rent level, also known as “banking” rent increases, with limitations, such that the net rent increase in any one year as a result of the application of the current plus any deferred or “banked” AGAs does not exceed five percent (5%). This draft Regulation (17-09) would not become effective until September 1, 2018. – Rent Program (Nicolas Traylor 620-6564).

FISCAL IMPACT:

Although the fiscal impact of allowing or prohibiting the banking of Annual General Adjustment rent increases is unknown at this juncture, one concern is that a prohibition on banking may increase staff costs and make it more difficult and cost prohibitive in the future to establish a rent registration system. This concern is further discussed in the Report and Analysis on Banking (Attachment 1).

DISCUSSION:

Background

The Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance is silent on banking. At their meeting on June 21, 2017, the Rent Board approved the banking of the 2016 and 2017 Annual General Adjustment rent increases (the 2016 AGA is 3.0%; the 2017 AGA is 3.4%, for a combined increase of 6.56% for tenancies commencing prior to September 1, 2015). At a subsequent meeting on July 19, 2017, the Board considered, but did not adopt, Regulation 17-09, regarding the right to raise the Rent up to the Maximum Allowable Rent level, under certain limitations.

Proposed Regulation

At the July 19, 2017 Board meeting, the Executive Director presented three options for banking of Annual General Adjustment rent increases. At that meeting, the Board considered adoption of a regulation modeled after Oakland's banking policy.

Based on feedback received from Tenants and Landlords during the July 19, 2017 meeting, the Rent Board asked staff to produce a staff report to help clarify and present a comprehensive understanding of banking of AGA increases. Following additional research, staff developed an alternative banking policy that would allow Landlords to apply deferred Annual General Adjustment rent increases; however, the net rent increase (of the current year's AGA and any deferred AGA rent increases) in any one twelve-month period shall not exceed five percent (5%).

In the event that a current year's Annual General Adjustment exceeds five percent (5%), a Landlord may not apply any deferred Annual General Adjustment increases until the next Annual General Adjustment increase less than five percent (5%) is effective.

The effective date of Regulation 17-09 is proposed to be September 1, 2018, to avoid conflict with the Rent Board's adopted Regulation 17-05, which allows for a combined rent increase of 6.56 percent for tenancies in effect prior to September 1, 2015, to account for both the 2016 and 2017 Annual General Adjustment rent increases.

DOCUMENTS ATTACHED:

Attachment 1 – "Banking" Annual General Adjustment Rent Increases: Policy Considerations

Attachment 2 – Excerpt from Economic Study of the Rent Stabilization Ordinance and the Los Angeles Housing Market (Chapter 5)

Attachment 3 – Draft Regulation 17-09

**“BANKING” ANNUAL
GENERAL ADJUSTMENT
RENT INCREASES**
Policy Considerations

August 23, 2017

Nicolas Traylor

Executive Director

City of Richmond Rent Program

Definition of “Banking” “Banking” is defined as the ability of a rental property owner to raise the Rent up to the Maximum Allowable Rent level after deferring past Annual General Adjustment (AGA), or “cost-of-living,” rent increases. If a banking policy is permitted, landlords maintain the ability to apply past AGA increases that were not applied in the year they were announced.

Example of how banking works A Tenant, Mary, moves in to her unit in 2015 and her base rent is \$1,000. Between the years 2015-2020, the landlord does not raise the rent (in other words, the landlord does not take the cost-of-living AGA rent increases that they would have otherwise had a right to take). The cost-of-living increases for the years 2015-2020 amounted to approximately 3% per year or a total of 15% over 5 years. In the year 2020, the landlord gives Mary a 15% rent increase (with 60 days’ notice) and the rent increases from \$1,000 up to \$1,150 per month.

Policy Arguments Against Banking AGA Rent Increases

Landlords in Richmond are already getting a higher cost-of-living increase than landlords in surrounding rent control cities. Richmond’s AGA rent increase is calculated based on **100 percent** of the change in the Consumer Price Index (CPI) for the San Francisco-Oakland-San Jose region, unlike Berkeley and Santa Monica’s AGA rent increases, which amount to 65 and 75 percent of the CPI, respectively. As such, AGA rent increases in Richmond will allow the Maximum Allowable Rent to increase at a faster pace than in other rent-controlled jurisdictions. For example, while Richmond’s AGA rent increase for 2017 is 3.4 percent, Berkeley’s 2017 AGA rent increase is 1.8 percent. Since Richmond’s AGA rent increases are based on 100 percent of the change in the CPI, rents among Richmond’s rent-controlled units are expected to increase at a faster rate than in surrounding rent control jurisdictions. Allowing Landlords to bank deferred AGA rent increases may exacerbate this effect, resulting in higher rent increases on Tenants that may be unable to absorb a rent increase in excess of 3 percent in a single year.

In the long-run, most landlords are able to receive large rent increases through vacancy decontrol and therefore receive a sufficient fair return even without AGA increases

Since 1999, “vacancy decontrol,” established by the Costa-Hawkins Rental Housing Act (California Civil Code 1954 *et seq.*) allows a landlord to “reset” the rent to a market rate at the start of a new tenancy. Rents on new tenancies in the Bay Area have seen significant increases in recent years. In Richmond, average rents in market-rate developments with 50 units or more (of which there are six) increased 24.3 percent between 2010 and 2014.¹ These inflated increases in rents have and will more than provide a sufficient “fair return” for landlords in the coming years. Additionally, although some property owners enter the rental housing business to make a quick profit by “flipping” properties, many Landlords understand that owning rental property is a long-term investment, and that over time, there will be sufficient turnover and vacancy rent increases to more than provide a “fair return,” without even having to take AGA rent increases.

Landlords don’t raise the rent unless they need to. If a landlord doesn’t take an AGA rent increase, that means they are likely already getting a fair enough return on their investment.

If a landlord chooses not to apply an AGA rent increase in any given year, they are doing so because they don’t have a financial need to. As a result, the landlord is confirming that they believe the rent charged is providing for a fair return and therefore they should not be able to retroactively reinstate an AGA increase that they chose not to take. If a landlord later discovers that their calculation was incorrect and that losing an AGA increase has resulted in them not receiving a “Fair Return” they can always file a “Decrease in Net Operating Income” petition to bring the rent level back to a “Fair Return” level.

An example of how unrestricted banking can result in significant rent increases and potentially reduce housing stability for long-term tenants

If a landlord defers taking the cost-of-living increases for many years, under a banking scheme, the landlord would be able to give a tenant a rent increase that would include numerous years of rent increases taken together. For example, if a landlord doesn’t raise the rent for 10 years and assuming that increases amounted to 3 percent per year, a tenant could face a 30 percent rent increase (after receiving 60 days written notice). A tenant in this scenario paying \$2,000 in 2015 would see no increase in the rent until 2025, at which point they could potentially receive an increase of up to \$600 per month.

¹ RealFacts data extract, March 20, 2015

Such a large increase could lead to the tenant being forced to move, especially tenants on fixed and low incomes, such as Seniors and those receiving social security benefits. According to the 2011-2015 American Community Survey, approximately 62 percent of renters in the City age 65 or older spend more than 30 percent of their household income on rent (Table S0103). Furthermore, nearly a quarter (24 percent) of the City’s total population receives Social Security assistance (2011-2015 American Community Survey, Table DP03)

Prohibiting banking makes rent increases much more predictable for tenants and landlords.

Another argument against banking is that in the absence of a banking policy, a tenant would always know that once a landlord decides to raise the rent, it will never be more than around 3% (assuming the CPI stays stable over the long term). This type of predictability provides greater housing and economic stability for tenants.

Even cities that prohibit banking can provide a legal avenue (petition) for landlords to recover “lost” AGA increases.

If the landlord can show that they are not receiving a “fair return” on their investment because a prohibition on banking has kept the Maximum Allow Rent Level below the threshold of receiving a “fair return,” they would still be able to potentially recover those “lost” AGA rent increases through the Rent Program’s petition process.

Policy Arguments in Favor of Banking AGA Rent Increases

The Annual General Adjustment is the primary measure of fairness in the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance

The Annual General Adjustment is both a primary tool for providing housing stability through limited cost-of-living rent increases AND providing for a Fair Rate of Return (“Fair Return”) on a landlord’s investment. A Landlord’s right to Annual General Adjustment rent increases is a primary mechanism for providing a Fair Rate of Return, per the Ordinance. In fact, the California Supreme Court has ruled that landlords have a constitutional right to a “fair return” in rent control schemes (*California Rent Control as Applied: Assessed Value as a Measure of Fair Return, 1987*). Therefore, limiting the ability to apply such increases limits a landlord’s ability to generate a Fair Return (without having to seek to prove that they have not received a Fair Return through a rent adjustment petition process).

Prohibiting banking may limit a landlords’ ability to keep rents on par with inflation

Prohibiting banking may limit the ability of the landlord to keep his or her rent levels on par with inflation, assuming they do not apply the AGA each year, which limits the landlord’s ability to receive a Fair Return.

Prohibiting banking can create increased Rent Program costs and creates undue burden on landlords who want to recover lost AGA increases

Section 11.100.070 of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance provides there shall be a “Maximum Allowable Rent” for all Controlled Rental Units, defined as the Base Rent plus all applicable Annual General Adjustments. Without banking permitted, the Maximum Allowable Rent Level would not be easily calculated and could lead to an increase in the number of petitions filed to determine the correct Maximum Allowable Rent. An increase in the number of petitions filed will result in higher staff costs and may detract staff resources from other vital services, such as outreach and education, or compliance efforts.

Requiring a landlord to go through the Rent Program’s petition process in order to recover previously deferred AGA increases creates an undue bureaucratic burden for landlords (to achieve a “fair return”) and leads to increased program costs, (due to increased counseling time, petitions, hearings and appeals).

Prohibiting banking may incentivize landlords to apply the AGA rent increase each year and provide a *disincentive* for landlords to give tenants a break on increases in a given year.

If landlords know that they will permanently lose AGA rent increases if they don’t elect to take them each year, case study research from the Los Angeles and East Palo Alto Rent Programs indicate that they are more likely to raise the rent every year up to the Maximum Allowable Rent level. As a matter of good business practice, most landlords will adopt a practice of raising the rent each year, and may be less likely to help tenants who are struggling financially (by offering to forgo raising the rent in a given year).

Prohibiting banking could make it infeasible for a Rent Program to institute rent registration and rent ceiling tracking.

Rent control jurisdictions that allow banking are better positioned to enhance compliance by instituting rent registration. Prohibiting banking challenges a Rent Program’s ability to track rents in any effective or efficient way, which could add substantial costs in administering the program due to the amount of time it would take staff to counsel a tenant or landlord on what the correct rent level

should be. A 2009 economic study conducted by the City of Los Angeles revealed that only 5 percent of tenants in cities with rent registration are overcharged in rent, whereas 27 percent of tenants in cities without rent registration faced rent overcharges.²

Tenants benefit financially in the long-term from banking

Tenants who do not receive AGA rent increases for many years save a substantial amount of money. For example a tenant who doesn’t receive an AGA increase in 5 years, assuming the increase amounts to \$45 (3% of \$1,500), a tenant will have “saved” over \$2,700 over that time period (if you include compounding). If banking is prohibited and landlords feel compelled to take each years AGA increase as a result, tenant will lose any savings from deferred AGA rent increases. To limit the shock effect of a tenant receiving a significant (accrued) increase all at once, rules can be put in place to limit how much of the increase can be accrued at once.

East Palo Alto Case Study on following page →

² Economic Roundtable, 2009. “Economic Study of the Rent Stabilization Ordinance and the Los Angeles Housing Market.” <https://economicrt.org/publication/economic-study-of-the-rent-stabilization-ordinance-rso-and-the-los-angeles-housing-market/>.

Case Study: Banking and the East Palo Alto Rent Program

East Palo Alto’s Rent Program experience with prohibiting banking

At its July 21, 2017 meeting, the Rent Board directed staff to conduct additional research on the practical implications of allowing or prohibiting banking of AGA increases. To this end, staff contacted the City of East Palo Alto’s Rent Stabilization Program to see what their experience has been with a prohibition on banking. Until recently, East Palo Alto’s rent stabilization program prohibited banking and placed restrictions on taking AGA increases.

Initial reasons for the prohibition on banking in East Palo Alto

The prohibition on banking was the result of a case where one of the City’s major housing providers had not raised rents for many years and subsequently raised the rent by 40 percent. The goal of the prohibition was to protect tenants from receiving such massive increases at once. Unbeknownst to East Palo Alto staff was how problematic the prohibition was on program services and data collection. In addition to consuming a significant amount of staff time and administrative cost of having to manually calculate each tenant’s rent level, in cases where AGA increases were lost, the prohibition on banking also made it unfeasible to develop any kind of accurate rent registration or tracking database of the Maximum Allowable Rent for each Controlled Rental Unit.

Example of how a prohibition on banking made it more difficult to calculate the Maximum Lawful Rent Level (MAR)

To calculate the MAR Rent Program East Palo Alto housing counselors had to look up the base rent, the year the tenant moved in, and then manually calculate each year’s AGA increase taking into consideration years where the AGA was not taken. This process would need to be repeated with each tenant (or landlord), and doesn’t take into consideration that staff would need to check to see if the landlord filed rent increase notices with the Rent Program, each time the rent was raised (East Palo Alto has a similar rule that requires landlords to submit a copy of rent increase notices with the EPA Rent Stabilization Program).

East Palo Alto’s Executive Director emphatically recommended against prohibiting banking

Due to difficulties created by the prohibition on banking, the East Palo Alto Rent Board amended their rules to allow banking, but requiring landlords to take no more than 10% of accrued AGA increases in one year. Victor Ramirez, Executive Director of the East Palo Alto Rent Stabilization Program, recommended against a prohibition on banking because of the difficulty it caused in terms of program administration.

Negative impact of banking prohibition on program administration

According to Victor Ramirez, prohibiting banking made it more problematic to administer their program. The prohibition of banking made it difficult to determine the Maximum Allowable Rent Level and led to more disputes and petitions. According to Victor Ramirez, the amount of time staff spent trying to figure out tenant's correct rent levels detracted from other important agency work.

Programmatic Evidence that prohibiting banking incentivizes landlords to take AGA increases every year and provide a disincentive for landlords to defer rent increases

The Executive Director of the East Palo Alto Rent Stabilization Program also noted that once banking was prohibited, there was a substantial increase in the number of rent increase forms that were submitted to the Program (East Palo Alto has a similar requirement to submit all rent increase notices with the Board). According to the Executive Director, this significant increase in rent increase notices filed with the Board is presumed to have been the result of a significantly higher number of landlords electing to take the AGA rent increase each year to ensure they wouldn't lose the ability to take the increase in the future.

Los Angeles Case Study on following page →

Case Study: City of Los Angeles Rent Stabilization Ordinance Study

The 2009 Los Angeles study that addressed the issue of banking

In 2009, the City of Los Angeles produced an extensive report put together by the Economic Roundtable, known as the *Economic Study of Rent Stabilization and the Los Angeles Housing Market*. The report recommended the Los Angeles Rent Board allow banking. However, the Los Angeles Rent Board voted to prohibit banking. There was one work around for landlords who didn’t want to lose AGA increases, but wanted to not raise the rent on their tenant: Take the AGA increase for one month and then discount the rent back to the amount it was before the increase. The Executive Director of the Los Angeles Rent Stabilization Program, Anna Ortega explained that although the Los Angeles Rent Board ended up voting to prohibit banking, the report laid out several key reasons for allowing banking. Those reasons were as follows:

LA rent controlled tenants experience more frequent rent increases due to prohibition on banking

- 1) Rent controlled tenants in Los Angeles experience more frequent rent increases than non-rent controlled tenants because the current use-it-or-lose-it policy for rent increases adds pressure to increase rents annually in order to avoid losing the prerogative to make an increase.

Banking is a common and well established practice in most rent controlled jurisdictions

- 2) Seven other jurisdictions in California with rent control allow owners to bank rent increases, that is, landlords who do not increase rents by the allowable annual amount in a given year are allowed to make this increase in future years.

The nexus between banking and strong rent registration system

- 3) Because the Los Angeles Rent Board was contemplating the creation of a rent registration or rent tracking database, the report recommended allowing banking, but with a limitation of no more than 10% of deferred AGA increases banked annually. However, because the Los Angeles Rent Board voted to prohibit banking, the rent registration system they had to implement was less robust: the registration system didn’t track changes in tenancies and rent ceilings within those tenancies. Instead the system only created a “rent registry”, where landlords had to report the rent being charged for each apartment or unit. Without banking allowed, they couldn’t track the rent ceilings of individual tenancies. There was also a cost consideration: a robust rent registration system would have been much more costly to both develop

and administer, requiring more staff to handle registration, which would have led to a registration fee increase.

Why the Los Angeles Rent Board ultimately decided to continue a prohibition banking

The Los Angeles Rent Board decision to continue a prohibition on banking (despite the recommendation of the 2009 report to allow banking with limitations), was based on the reasoning that “rent increases are likely to be banked during years with economic downturns, and if a number of years of deferred rent increases are applied when the housing market heats up, undercuts the major benefit provided by rent control, which is to protect against rapid rent increases.”

Economic Study of the Rent Stabilization Ordinance and the Los Angeles Housing Market

2009

Prepared for the
City of Los Angeles Housing Department



Economic Study of the Rent Stabilization Ordinance and the Los Angeles Housing Market

2009

Underwritten by the
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Background of the RSO Study

"In 1979, the City of Los Angeles adopted the Rent Stabilization Ordinance (RSO) (Chapter XV of the Los Angeles Municipal Code) after finding that there was a shortage of decent, safe, and sanitary housing in the City resulting in a critically low vacancy factor. At that time, the City Council determined that it was necessary and reasonable to regulate rents so as to safe guard tenants from excessive rent increases while at the same time providing landlords with just and reasonable returns from their rental units. The City has not conducted a comprehensive assessment of the RSO since 1993. Due to market fluctuations, rising costs, and other economic factors of the last several years, apartment owners, tenants, and government officials alike have suggested that a new large scale review and economic study of the RSO in the context of the local housing market is necessary to determine if the RSO is still meeting its purpose and whether any amendments should be enacted." - Excerpt from pg. 3 of the study's Request for Proposals (RFP), released October 2, 2006.

This report has been prepared by the Economic Roundtable RSO study team, which assumes all responsibility for its contents. Data, interpretations and conclusions contained in this report are not necessarily those of any other organization that supported or assisted this project.

This report can be downloaded from the Economic Roundtable web site:
www.economicrt.org

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Rent Increase Standards

*Los Angeles Rent Stabilization Ordinance (RSO) and
Comparison with Ordinances in Other California Cities*

Ken Baar

This chapter evaluates and comments on:

1. The method used to calculate the Annual Rent Adjustment with a comparison of the methodology of other rent controlled jurisdictions
2. Whether the use of alternative methods of determining the Annual Rent Adjustment would more closely reflect increases in operating costs
3. The utility passthroughs under the ordinance, including discussion of practices in other jurisdictions
4. [The] efficacy of lowering the annual allowable increase for persons on a fixed income who are seniors or disabled
5. Rent Stabilization Ordinance (RSO) fees, including a comparison with practices in other jurisdictions¹

Ten California cities have apartment rent stabilization ordinances - Berkeley, Beverly Hills, East Palo Alto, Hayward, Los Angeles, Oakland, San Francisco, San Jose, Santa Monica, and West Hollywood.² The laws enacted by other cities to regulate rent increases provide a frame of reference for evaluating Los Angeles' rent stabilization ordinance. While the various municipal rent control ordinances in California differ in particulars, they all provide for vacancy decontrols and annual rent increases. As a practical matter, the vacancy decontrols permit owners to reset the rents of a majority of rental units at market levels within a five-year period. In the case of Los Angeles, the Census Bureau's 2006 American Community Survey indicated that approximately 20 percent of all tenants in buildings that are subject to the RSO moved into their units within the past year and that 51 percent moved in within the past five years.³

Under the RSO, the annual allowable increase is equal to the percentage increase in the Consumer Price Index (CPI) with a minimum allowable increase of 3 percent and a maximum of 8 percent. An additional annual rent increase of one percent is allowed for the provision of master-metered gas and electricity. (An additional two percent is permitted if both services are master-metered.) In addition, owners may petition for rent increases to cover the cost of capital improvements or to obtain a "just and reasonable" return (defined as base period net operating income adjusted by the percentage increase in the Consumer Price Index since the base year).

BRIEF HISTORICAL PERSPECTIVE ON RENT REGULATIONS IN THE U.S. AND LOS ANGELES

"Rent control" is often spoken about without any clarification or definition, as if all rent control ordinances were the same. In order to place any discussion of any rent control ordinance

in perspective, it is critical to note that rent control laws have varied enormously in terms of the types of restrictions they have placed on rent increases. Therefore, experiences under a particular law may or may not have much relevance in projecting the impacts of other laws.

In order to provide some perspective on the Los Angeles Rent Stabilization Ordinance (RSO), this section briefly describes the characteristics of rent control in the U.S., and the evolution of rent controls in California, the Los Angeles policy of authorizing annual rent increases and vacancy decontrols throughout the life of its ordinance may be contrasted with other forms of rent control.

Rent controls were first adopted after the World War I as a temporary measure in response to conditions arising out of the wartime emergency. In that era, public regulations of private contractual arrangements (such a minimum wage and maximum hours laws) were considered to be an unconstitutional interference with freedom of contract. Consistent with doctrines of the era, the courts held that rent controls were only constitutional if they were temporary emergency measures. By 1924, all controls had been terminated.

During World War II, the federal government instituted rent controls that virtually froze rent levels. Rent increases were authorized for specified defense areas based on apartment operating cost studies. However, the federal Office of Price Administration nevertheless found that the returns from apartment rentals increased due to the drastic reduction of vacancy losses from a prewar level of 9.9 percent and reductions in maintenance expenditures associated with the removal of competitive pressures to obtain tenants.

By 1953, federal rent controls were terminated and all rent controls, federal or local were terminated in all areas except New York City. Under the New York controls, no annual rent increases were permitted (with the exception of an across-the-board increase of 15 percent in 1953) and 15 percent increases were permitted upon vacancies. The law exempted buildings that were constructed after 1947.

In 1969, New York adopted a rent stabilization law that applies to buildings constructed after 1947. This law provides for annual rent adjustments. In 1970, the rent control law, which applied to buildings constructed in 1947 or earlier, was amended to authorize annual rent increases for rent-controlled apartments. Under the current New York City regulations, apartment owners are permitted 20 percent increases upon vacancies plus an additional amount if the prior tenant occupied the unit for more than eight years. Allowable annual increases are based on guidelines that set forth the increased amount necessary to cover operating cost increases and to bring the rent up to a maximum base rent (MBR) that is set forth for each unit. In addition to New York City, an additional 50 municipalities in New York State now have some form of rent control.

Peacetime rent controls were adopted outside of New York in the early 1970's, by Boston and a few neighboring cities, approximately 100 cities in New Jersey, and Washington, D.C. They are still in effect in over 100 New Jersey cities and D.C. The New Jersey controls generally provide for annual rent increases tied to the CPI. About two-thirds of the New Jersey ordinances include a vacancy decontrol provision. Some ordinances allow limited increases upon vacancy. Under some ordinances, when a unit becomes vacant, it becomes exempt from all future rent controls.

In California, rent controls became widespread after the passage of Proposition 13 in 1978. This measure led to a substantial reduction in property taxes and overall apartment

operating costs, which in turn led to tenant expectations that rents would be reduced. However, in the following years rents increased in accordance with tightening market conditions and exceptionally high inflation rates.

Shortly after the passage of Proposition 13, rent regulations were adopted in Los Angeles, San Francisco, San Jose, Oakland, Hayward, Berkeley, Santa Monica, and Beverly Hills. All of the ordinances, except the ordinances of Berkeley and Santa Monica, contained vacancy decontrol provisions and allowed fixed percentage annual increases. The amounts of the allowable annual rent increases were substantial - Oakland - 10 percent, San Jose - 8 percent, Los Angeles and San Francisco - 7 percent. However, the 7 percent ceilings in Los Angeles and San Francisco were substantially below the rate of inflation at that time. From 1978 to 1982, the annual rate of increase in the Los Angeles area CPI ranged from eight to 15.8 percent.⁴ In 1980 and 1981 respectively, the annual increases in the San Francisco area CPI were 12.9 percent and 15.2 percent.

From 1982 through 1985, the annual percentage increases in the Los Angeles area CPI, ranging from 1.8 percent to 4.7 percent, were below the annual percentage rent increases of 7 percent authorized under the ordinance. In 1985, the RSO was amended to tie the allowable annual rent increase to the annual increase to the percentage increase in the CPI, with a minimum allowable annual increase of 3 percent and a maximum of 8 percent.

In Berkeley and Santa Monica, allowable annual rent increases were determined by the Rent Board based on a study of increases in apartment operating costs and the increase in the CPI. After West Hollywood was incorporated in 1984, it adopted an ordinance that authorized annual increases equal to 75 percent of the percentage increase in the CPI and limited increases upon vacancies to 10 percent, with a limit of one vacancy increase within a five-year period.

The Costa-Hawkins Rental Housing Act⁵ - State Law Requires Vacancy Decontrol

In July 1995, the state legislature adopted a statute (the Costa-Hawkins Rental Housing Act), which instituted vacancy decontrol and exempted condominiums and single-family dwellings from rent controls, starting in 1999.⁶ The principal impact of this statute was to terminate the vacancy control provisions of the rent control ordinances of Berkeley, East Palo Alto, Santa Monica, and West Hollywood and prevent any other cities from adopting vacancy controls in the future.

Tightening of Eviction Controls and Increasing Required Mitigation for Tenant Displacement

At various times during the past decades, the market has provided enormous incentives for obtaining vacancies. These incentives for obtaining vacancies include:

- Increases in market rents that have substantially exceeded allowable annual rent increases
- Alternate uses such as condominium conversion or owner occupancy have been far more profitable than continuing in the rental business
- Rents of some or all units in a building have not been increased by the amounts authorized under the RSO.

In the past decade, rent stabilized jurisdictions have focused on tightening their eviction controls and increasing relocation protections and benefits for tenants who are displaced pursuant to Ellis removals and other types of use conversions. Local measures have limited the frequency of owner occupation evictions and adopted other requirements designed to insure that such evictions are bona fide, such as minimum length of occupancy requirements.

COMPARISON OF ANNUAL RENT INCREASE STANDARDS

Currently, most of the municipal rent control ordinances in California tie allowable annual rent increases to the percentage increase in the Consumer Price Index. The ordinances of Los Angeles and Oakland allow increases equal to 100 percent of the percentage increase in the CPI, while San Francisco, Berkeley, and West Hollywood respectively limit increases to 60 percent, 65 percent, and 75 percent of the percentage increase in the CPI. Hayward and San Jose still authorize the fixed percentage increases that were contained in their original ordinances. Under the Santa Monica ordinance, allowable annual increases are set by the Rent Board based on a study of increases in apartment operating costs (Table 5-1).

Table 5-1
Annual Rent Increase Standards under Rent Control Ordinances

I. Ordinances with annual increase based on CPI:		
Jurisdiction	Annual Increase Standard	Utility Adjustments for Master-Metered Units
Los Angeles	100% of CPI Minimum 3%, Maximum 8%	1%/year gas 1%/year electricity
Berkeley	65% of CPI (until 2006, annual increase based on operating cost study)	None
Oakland	100% of CPI	None
San Francisco	60% of CPI	gas and elec. - passthrough of costs increases for a bldg based on application
West Hollywood	75% of CPI	None
II. Ordinances with fixed percentage annual increase:		
Jurisdiction	Annual Increase Standard	Utility Adjustments for Master-Metered Units
Beverly Hills	10%/year*	None
Hayward	5% / year	None
San Jose	8% / year	None
III. Annual Increase Based on Operating Cost Study:		
Jurisdiction	Annual Increase Standard	Utility Adjustments for Master-Metered Units
Santa Monica	Annual increase determined by Board based on apartment operating cost study	Gas or electricity adjustments in 4 of 30 years based on operating cost studies

Source: Based on author's review of rent ordinances. * Beverly Hills also has an ordinance that applies to a few percent of the rental units in the City, units in which the original rent for the current tenant was under \$600. Under this ordinance, annual increases are limited to the percentage increase in the CPI.

The annual rent increases that have been authorized by each rent-controlled jurisdiction since the adoption of rent controls are compared in Table 5-2. It is hard to generalize in comparing the increases under the rent ordinances, except to note that since the adoption of

statewide vacancy decontrols, the increases authorized by Los Angeles have been equal to or have exceeded those of the other jurisdictions that tie annual rent increases to the percentage increase in the CPI (Oakland, San Francisco, and West Hollywood) and in most years have exceeded allowable rent increases authorized in Berkeley and Santa Monica based on apartment operating cost studies. However, the annual rent increases in cities that authorize a fixed percentage annual increase (San Jose, Hayward, and Beverly Hills) have exceeded the allowable annual increases under the RSO.

Table 5-2
 Annual Rent Increases Since the Adoption of Rent Controls
 Excluding Utility Increases and Surcharges Based on Specific Cost Increases

Year	Los Angeles	Berkeley	Beverly Hills	Hayward	Oakland	San Francisco	San Jose	Santa Monica	West Hollywood
1979	7%							7%	No Rent Control
1980	7%			7%	10%			6.50%	
1981	7%	4.75%		7%	10%			5.50%	
1982	7%	9%		7%	10%	7%	8%	5.50%	
1983	7%	4.75%		7%	10%	7%	8%	4.50%	
1984	7%	0%		7%	8%	4%	8%	4%	
1985	4%	2%	7%	8%	4%	8%	3.00%	3.00%	
1986	5%	3%+\$2.50	10%	7%	8%	4%	8%	2.50%	2.50%
1987	4%	3.50%	5%	6%	4%	8%	4%	3.50%	
1988	4%	\$25.00	10%	5%	6%	4%	8%	3%	3.25%
1989	4%	3%	10%	5%	6%	4%	8%	3%	3.75%
1990	5%	\$16.00	10%	5%	6%	4%	8%	6%	3.75%
1991	5%	4% or \$17 + 45% of 1980 rent	10%	5%	6%	4%	8%	3.50%	3.50%
1992	5%	\$26.00	10%	5%	6%	4%	8%	3%	2.75%
1993	3%	\$20.00	10%	5%	6%	1.90%	8%	3	2.00%
1994	3%	\$18.00	10%	5%	6%	1.30%	8%	2%	0.75%
1995	3%	1.50%	10%	5%	3%	1.10%	8%	1.50%	1.75%
1996	3%	1%	10%	5%	3%	1.00%	8%	1.60%	1.25%
1997	3%	1.15%	10%	5%	3%	1.80%	8%	2%	1.00%
1998	3%	0.80%	10%	5%	3%	2.20%	8%	1%	1.25%
1999	3%	1% up to \$8	10%	5%	3%	1.70%	8%	1%	1.75%
2000	3%	\$6	10%	5%	3%	2.90%	8%	3%	2.25%
2001	3%	\$10	10%	5%	3%	2.80%	8%	4.20%	2.75%
2002	3%	3.5% / \$30 limit	10%	5%	3%	2.70%	8%	1.75%	2.25%
2003	3%	0%	10%	5%	3.60%	0.80%	8%	3%	1.50%
2004	3%	1.50%	10%	5%	0.70%	0.60%	8%	1.30%	2.75%
2005	3%	0.90%	10%	5%	1.90%	1.20%	8%	3%	3.25%
2006	4%	0.70%	10%	5%	3.30%	1.70%	8%	4%	4.00%
2007	5%	2.60%	10%	5%	3.30%	1.50%	8%	2.30%	2.25%
2008	3%	2.20%	10%	5%		2.00%	8%	2.7%	

Source: Based on author's review of rent ordinances and annual increases reported by cities with rent control ordinances.

ALTERNATIVE METHODOLOGIES AND STANDARDS FOR SETTING ALLOWABLE ANNUAL RENT INCREASES

Numerous alternatives are available for setting allowable annual rent adjustments. This section comments on these alternatives.

An Alternate CPI Index

Currently, the *CPI for All Urban Consumers: All Items* is used to determine the allowable annual rent increase under most of the ordinances that use a CPI standard.

Often in rent-controlled jurisdictions, there have been proposals for the use of an alternate index. In fact, there a number of CPI indexes that could be considered – including, but not limited to, the *CPI for Urban Wage Earners and Clerical Workers: All Items* and the *CPI for All Items Less Shelter*. Under most ordinances that use a CPI standard, the *CPI for All Urban Consumers: All Items* is used. In the Oakland ordinance, the allowable increase is tied to the average of the percentage increases in the *All Items* and the *All Items Less Shelter* indexes.⁷

At various times, tenant and landlord representatives have proposed the use of alternate CPI indexes on the basis that they would be more reasonable. Each proposal is steeped in scientific justification and coincidentally in the particular years that the proposal is introduced is more favorable than the currently used index to the group (landlords or tenants) that is advocating the change.⁸

The All Urban Consumers: All Items Index versus the Urban Wage Earners and Clerical Workers: All Items Index

The rationale for using of the *CPI for Urban Wage Earners and Clerical Workers: All Items* index, rather than the *CPI for All Urban Consumers* index, is that the former more accurately reflects the changes in the cost of living for renters because renters are more likely to be wage earners and clerical workers. In fact, the differences between the increases in the two indexes have been small. Since 1978, the *All Urban Consumers* index has increased by 232.7 percent (4.23 percent per year compounded), compared to an increase of 222.1 percent (4.12 percent per year compounded) in the *Urban Wage Earners and Clerical Workers* index.⁹

The All Items Index versus the All Items Less Shelter Index

The difference between the increases in the *All Items* and *All Items Less Shelter Indexes* have been much greater than the differences between the increases in the all urban consumers and the urban wage earners and clerical workers indexes.

The *CPI All Items Index* is based on the costs of a market basket of household costs including housing costs. However, in this index, rent levels, rather than the costs of homeownership, are used as a proxy to measure housing costs for homeowners.¹⁰ The use of an index that includes rents in order to determine allowable rent increases is subject to the shortcoming that its use is "circular" to the extent that exceptional increases in rents become a factor in determining what rent increases should be permitted.¹¹

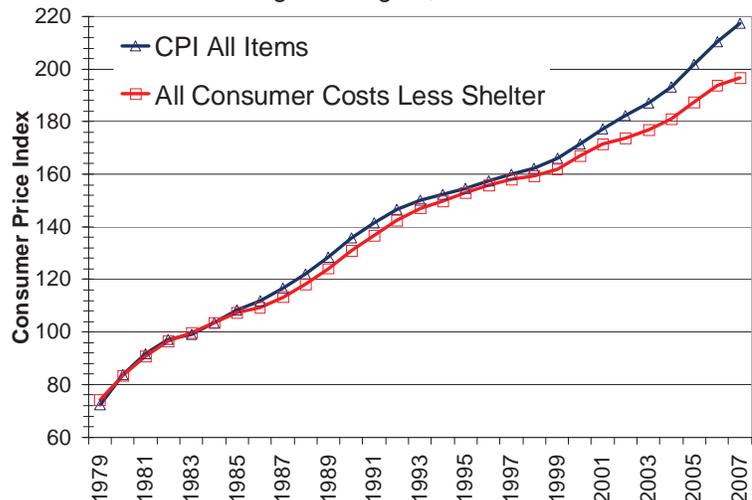
In the Los Angeles area CPI, the combination of "Rent of primary residence" and "Owners' equivalent rent of primary residence" constitute 35.5 percent of the market basket in the *All Items* index for the Los Angeles area.¹² Since the RSO was adopted, the annual increase in the *CPI All Items* index for the Los Angeles area has exceeded the increase in the *CPI All Items Less Shelter* index for the area by 0.4 percent on the average. On a cumulative basis from 1978 to 2007, the *All Items* index increased by 233 percent compared to a 197 percent increase in the *All Items Less Shelter* index.

During periods of exceptional increases in rents, the increases in the Los Angeles area *All Items* index have exceeded the increases in the *All Items Less Shelter* index by one percent or more. (Conversely, during periods of unchanging or declining rents, the increases in the *All Items Less Shelter* index have exceeded the increases in the *All Items* index. From 2000 to 2007, the overall percentage increase in the Los Angeles area *CPI All Items* index exceeded the percentage increases in Los Angeles area *CPI All Items Less Shelter* index by 8 percent. In contrast, in the U.S. as a whole, during this period, the rate of increase in the *All Items* index exceeded the rate of increase in the *All Items Less Shelter* index by 2 percent.

In fact, the impact of the differences in the increases in the two indexes on the annual allowable rent adjustments is a lesser or greater amount than the actual differences between the increases in these indexes for any particular year due to rounding and/or the annual minimum of 3 percent.¹³ In each year from 1997 to 2004, the increase in the *All Items* index exceeded the increase in the *All Items Less Shelter* index; however, in all of these years the allowable increase would have been 3 percent regardless of what index was used. In 2006 and 2007, the annual increases would have been one percent lower if the *All Items Less Shelter* index had been used.

Since the outset of rent stabilization, there have been substantial rationale for using the *All Items Less Shelter* index rather than the *All Items* index. However, if a switch was made to the *All Items Less Shelter* index at this particular time, a "windfall" situation might (or might not) be created. If rents declined or remained flat in the coming decade, the increases in the *All Items Less Shelter* index might be higher than the increases in the *All Items* index. Under these circumstances, as a practical matter, the *All Items* index would have been used when it was most advantageous to apartment owners and would have been discarded when the *All Items* index would have worked to the advantage of tenants (when rents increased at a slower rate than the *All Items* index). Figure 5-1 shows the actual price index changes from 1979 to 2007, and Table 5-3 provides a year-by-year comparison of increases in the two indexes.¹⁴

Figure 5-1
Consumer Price Index - All Items and All Items Less Shelter
Los Angeles Region, 1979-2007



Source: U.S. Dept. of Labor, Bureau of Labor Statistics. Consumer Price Index (CPI) Tables, 1979-2008. Washington, D.C.

Table 5-3
 Comparison Between Increases in
 CPI All Items and CPI All Items Less Shelter Indexes

Year	Percentage increase over prior year (Using 12-month period ending Sept.)		Differences in Percentage Increases		Change in Annual Increase if Less Shelter Index Used
	CPI All Items	CPI All Items Less Shelter	Increases All-Items > All-Items Less Shelter	Increases All-Items Less Shelter > All-Items	
1979	9.4%	9.0%	0.4%		None Due to 3% Minimum
1980	15.8%	12.4%	3.4%		
1981	10.5%	9.5%	1.0%		
1982	8.0%	7.3%	0.7%		
1983	1.5%	3.6%		2.1%	
1984	4.2%	3.6%	0.6%		None
1985	4.7%	4.0%	0.7%		-1%
1986	3.8%	2.4%	1.4%		-1%
1987	3.7%	2.7%	1.0%		-1%
1988	4.6%	4.2%	0.4%		None
1989	5.0%	5.1%		0.1%	None
1990	5.5%	5.0%	0.5%		None
1991	5.0%	5.2%		0.2%	None
1992	3.5%	3.9%		0.4%	None
1993	2.9%	3.6%		0.7%	1%
1994	1.6%	2.2%		0.6%	None Due to 3% Minimum
1995	1.6%	2.1%		0.5%	
1996	1.5%	1.6%		0.2%	
1997	1.8%	1.7%	0.1%		
1998	1.5%	0.9%	0.6%		
1999	2.1%	1.4%	0.7%		None
2000	2.9%	2.6%	0.3%		None Due to 3% Minimum
2001	3.7%	3.4%	0.3%		
2002	2.5%	1.0%	1.5%		
2003	3.0%	2.2%	0.8%		
2004	2.6%	1.5%	1.1%		
2005	4.5%	3.5%	1.0%		-1%
2006	4.8%	4.1%	0.7%		-1%
2007	3.0%	1.0%	2.0%		
2008					

Source: U.S. Dept. of Labor, Bureau of Labor Statistics. Consumer Price Index (CPI) Tables, 1979-2008. Washington, D.C.

Annual Rent Increase Based on a Dollar Ceiling Rather than a Percentage Ceiling

As an alternative to authorizing uniform percentage annual rent adjustments, an ordinance could authorize annual increases of a uniform dollar amount for all units. In some years, the Berkeley and Santa Monica Rent Boards elected to authorize fixed dollar annual rent increases based on the average rent multiplied by the percentage increase that was deemed to be

reasonable in that particular year. For example if a 4 percent rent increase was deemed reasonable and the average rent was \$800, an annual increase of \$32 (4 percent x \$800, rather than a 4 percent increase)

would be permitted for all units (Table 5-4). In some years, Santa Monica has authorized a uniform percentage rent increase, subject to a either a dollar floor or a dollar ceiling. (E.g. 4.2 percent or \$40, whichever is less).

Table 5-4
Annual Rent Adjustments
Fixed Percentage Compared with Fixed Dollar Method

Monthly Rent	4% Increase Based on 4% Increase in CPI	Increase - 4% of average rent -\$1,000
\$700	\$28	\$40
\$1,000	\$40	\$40
\$1,300	\$52	\$40

The uniform percentage increase grants the largest increases for units for which the largest percentage increases have already been authorized by virtue of the vacancy decontrol, rather than granting the largest increases for the units that have not obtained the benefits of the vacancy decontrol. The rationale for the uniform dollar approach is that operating cost increases for apartments tend to be more uniform in dollar amounts than in terms of a percentage of the rents; therefore, allowable rent increases should be uniform, rather than the same percentage of current rents.

There are other rationale for and against each approach. The percentage methodology favors apartment owners with the highest rents, while the fixed dollar methodology favors apartment owners with the lowest rents. On the one hand, differences in apartment operating costs are a function of rent levels to the extent these levels are determined by the size of apartments and the level and quality of services provided. However, due to differences in location and the date of the last vacancy increase, apartments that have the same size and provide same level and quality of services may have vastly differing rents.

The foregoing factors may be "balanced" by permitting fixed percentage rent increases in some years and fixed dollar increases in other years. However, such a step would increase the complexity of the annual rent increase mechanism.¹⁵

The Impact of the Floor and Ceiling on Allowable Rent Increases

As indicated, the minimum allowable annual rent increase is 3 percent and the maximum is 8 percent. None of the other cities that use the CPI in order to determine allowable annual rent increases have a ceiling or a floor on allowable annual rent increases.

In 1979, 1980, and 1981, prior to the adoption of the 8 percent ceiling, the annual increase in the CPI substantially exceeded 8 percent. Since the ceiling was adopted, it has not had any impact because the annual increase in the CPI has never exceeded 6 percent.

Table 5-5
Impact of 3% Minimum on
Allowable Annual Rent Increases

Year	Allowable Annual Increase in Absence of 3% Minimum
1995	2%
1996	2%
1997	1%
1998	2%
1999	1%
2000	2%

Source: Author's calculations based on Table 5-3.

On the other hand, the 3 percent annual minimum had an impact on the allowable annual rent increase in each year from 1995 to 2000 (Table 5-5).

As indicated, the 3 percent minimum has not had any impact since 2000. However, it would have had a substantial impact if the *CPI All Items Less Shelter* index had been used to determine allowable annual increases.

Allowable Annual Increases Based on Apartment Operating Cost Study Using a Weighted Cost Index

The use of the CPI to determine annual increases has been criticized on the basis that the CPI takes into account the market basket of goods purchased by an average household, which differ substantially from basket of expenses associated with the operating of an apartment building. On this basis, some jurisdictions have used of a "weighted" operating cost index based on the types of expenses incurred by apartment owners in order to permit annual rent increases that more closely track trends in apartment operating costs than the *CPI All-Items* index.

When this methodology is used, estimates are made of the ratio of each type of operating expense and net operating income (NOI) to gross income and of the rate of increase in each type of operating cost. On this basis, an estimate is made of the amount of rent increase required to cover each type of cost increase. (For example, if water costs equal 2 percent of gross income and they have increased by 10 percent, then a 0.2 percent (2 percent x 10 percent) rent increase is required to cover this cost increase.) In addition, a CPI related adjustment of NOI, which typically averages about 60 percent of gross income, is included. (For example if NOI averages 60 percent of gross income and the CPI has increased by 5 percent, a 3 percent rent adjustment (60 percent x 5 percent) would be required to cover this factor. The overall rent adjustment is set at a level that would cover the sum of these factors.

Table 5-6 provides an example of the use of a weighted operating cost index. It is based on the 2006 annual general adjustment study of the Santa Monica Rent Control Board, with the exception that it adjusts all of net operating income by the increase in the *CPI All-Items* index. (In contrast, Santa Monica adjusts approximately two-thirds of the net operating income – the cash flow portion but not the debt service portion – by the CPI.)

The 1984 study for the RSO included a detailed description of how a weighted operating cost index could be developed for the purpose of setting annual rent increases. The report sets forth a list of indexes that would be used to determine the percentage increase in each type of cost.¹⁶

From a practical point of view, there are serious limitations to the weighted index approach. By necessity, estimates of annual increases for a substantial majority of apartment costs are based on increases in the CPI, because information on actual increases in a large portion of apartment costs - maintenance, management, and insurance - is not publicly available and is not determined by rates that are set by public agencies. In contrast, only a small part of the weighted cost index - the portion consisting of costs that are publicly regulated - e.g. water, sewer, property taxes, common area utilities - is based on a significant amount of information that can be used to measure the ratios of these costs to gross income and precise measures of the increases in these costs. Furthermore, more than half of apartment owners' rental income

Table 5-6
 Example of Weighted Operating Cost Study
 Rent Increases Required to Cover Operating Cost Increases and Adjust Net Operating Income

Type of Cost	Ratio to Gross Rent (a)	Percent Increase (b)	Percent Rent Increase Required (b x a)	Average Cost in Dollars (d)	Dollar Rent Increase Required (d x a)
Property Taxes	.0855	2.0%	0.17%	\$62.27	\$1.22
Refuse	.0202	10.0%	0.20%	\$15.84	\$1.44
Water & Sewer	.0288	5.5%	0.16%	\$21.66	\$1.13
Gas (common areas)	.0299	17.54%	0.52%	\$25.07	\$3.74
Electricity (common areas)	.0147	0.0%	0.00%	\$10.46	\$0
Maintenance	.1431	4.1%	0.59%	\$106.36	\$4.19
Insurance	.0408	4.1%	0.17%	\$30.31	\$1.19
Self-Labor	.0708	4.7%	0.33%	\$52.94	\$2.38
Management	.0500	4.7%	0.24%	\$37.37	\$1.68
Net Operating Income	.5162	4.7%	2.43%	\$385.85	\$18.13
Total			4.81%		\$35.10

Source: Santa Monica Rent Control Board, 2006 Annual General Rent Adjustment Report ("GA Report").

consists of net operating income (NOI) that covers cash flow and debt service rather than operating expenses. This portion is adjusted by a CPI factor (Table 5-7).

The following table compares the portions of rental income that are adjusted by the CPI in a weighted operating cost study with the portions that are adjusted by estimates of changes in specified costs.

Table 5-7
 CPI and non-CPI Adjusted Cost Factors
 in Operating Cost Study and Annual General Adjustment Determination
 of Santa Monica Rent Control Board

Type of Cost	Operating Cost Weight (Ratio to Rental Income)	Measure of Cost Increase
Factors Adjusted by the CPI :		
Maintenance & Other	.14	CPI-U All Items Less Shelter
Insurance	.04	CPI-U All Items Less Shelter
Self-Labor	.07	CPI-U All Items
Management	.05	CPI-U All Items
Net Operating Income	.52	CPI-U All Items
Total weight of factors adjusted by CPI	.82	
Factors Not Adjusted by CPI		
Gas	.03	Southern California Gas Rates
Electricity	.01	Southern California Electric Rates
Property Taxes	.09	2% per year or actual increases
Water & Sewer	.03	Rates determined by City
Refuse	.02	Rates determined by City
Total Weight Factors	.18	

Source: Santa Monica Rent Control Board, 2006 Annual General Rent Adjustment Report ("GA Report").

In totality, an operating cost study methodology is more sensitive to changes in apartment costs than the CPI standards that are commonly contained in rent control ordinances because it considers increases in water, sewer, refuse, gas, and electricity costs. However, there are substantial limits to what precision is possible.

Furthermore, from a public policy-making perspective, there are other drawbacks to basing the annual rent increase on an annual apartment operating cost study. Such analyses are particularly complex and unintelligible to the average citizen.¹⁷ As a result, although they are performed in an objective manner, the results of such studies are perceived as an outcome of magic or political pressure designed to lean towards a particular outcome. When this methodology is used, either a City Council or a Rent Board must undertake the difficult task of determining what is reasonable based on the analysis in the operating cost study and public comments about how the analysis should be modified in order to be more accurate and reasonable. In the end, it is likely that its decision will be seen as "political".

The history of the use of the operating cost methodology in Berkeley is instructive and ironic. Because the Berkeley Rent Board was often viewed as tenant dominated, its use of an annual weighted operating cost study in order to determine allowable annual rent increases was often viewed by apartment owners with distrust. In 2006, in response to demands tied to a lawsuit by apartment owners, the Rent Board agreed to place an initiative on the ballot that replaced the Rent Board's power to set the annual rent adjustment with an annual rent increase to 65 percent of the percentage increase in the CPI. This initiative received the stamp of approval of the apartment owners and the Rent Board and was approved by the voters.

In fact, over the life of Berkeley rent stabilization program, the operating cost study methodology was more favorable to apartment owners than an annual adjustment set at 65 percent of the increase in the CPI would have been.

In order to understand the Berkeley and Santa Monica experiences with the operating cost methodology certain trends should be noted. Prior to the state mandated imposition of vacancy decontrol in those cities, the public hearings on the annual rent increases were well attended and highly contentious. Since the introduction of vacancy decontrols, the annual rent adjustment process is hardly noticed or discussed by apartment owners, clearly indicating that they are far less concerned about the amount of allowable annual rent increases when a rent control includes vacancy decontrol.

Passthroughs of Exceptional Expense Increases

The critical shortcoming of the CPI methodology is that it does not respond to exceptional increases in costs, which most likely may occur as a result of special property assessments. However, neither the likelihood nor the amount of rent increase necessary to cover such costs can be determined in advance. One methodology for responding to exceptional cost increases would be to modify the allowable annual increase for one year or permit some type of a special rent adjustment when an exceptional cost increase occurs. Section 151.08 of the ordinance authorizes rent adjustments by the Rent Adjustment Commission, that are "appropriate to carry out the purposes of [the RSO]."

ALLOWABLE RENT INCREASES FOR APARTMENT OWNERS WHO PAY FOR MASTER METERED GAS AND/OR ELECTRICITY

In the renter survey, 3.6 percent of all respondents reported that they do not pay for their electricity and 14.2 percent reported that they do not pay for their gas.

Under the Los Angeles ordinance, apartment owners who provide master-metered gas and/or electricity are permitted additional annual rent increases of 1 percent for each of these services that are master-metered.¹⁸ For an apartment with mid-range rents (e.g. \$700 to \$1,100), these provisions allow owners to institute in each year increases in monthly rent ranging from \$7 to \$11 (1 percent of a typical rent) for each service provided.

In order to place these increases in perspective, it should be noted that they are only cumulative for the term of tenancy, because rents may be reset by the owner when a unit becomes vacant. For an apartment with a typical length of tenure by the current tenant - one to five years - the cumulative additional rent increases would be from \$7 to \$11 for a tenant in occupancy for one year to \$35 to \$55 for a five-year tenant. In the case of a long-term tenancy - e.g. ten years - the additional rent increase could be in the range of \$77 to \$110 for each service provided.

The continuous authorization of the additional one percent rent increases is not based on any evidence that these amounts have been adequate or reasonable.

An operating expense report prepared by Apartment Building Appraisers and Analysts in 2007 estimates that apartment owners' expenses for master-metered gas range from \$100 to \$250 per year per unit (or \$8 to \$20 per month per unit) and that expenses for master-metered electricity typically range from \$200 to \$400 per year per unit (or \$16 to \$33 per month per unit).¹⁹ A study of electricity costs in 2001 of 130 buildings with master-metered electricity services containing 1,045 units in Santa Monica indicated that the average annual cost per unit was approximately \$310 (\$25.69 per month).²⁰ Other industry expense reports either do not contain separate data for master-metered gas and electricity expenses or the sample of master metered buildings is extremely small.

In regards to the rate of increase in these expenses, the data that has been provided to the City of Santa Monica over the years indicates that apartment owner's electricity costs have increased by a much lower percentage than the percentage increases in the electricity rates. This is almost certainly attributable to increases in the efficiency of electric appliances.

It is certain that apartment owners who provide master-metered gas and/or electric costs incur greater cost increases than other apartment owners. However, the additional annual rent increases that are allowed for master-metered apartments (e.g. \$7 to \$11, which represents 1 percent of typical rent, for each master metered service) equal a substantial portion of the overall cost for providing these services and are most certainly disproportionate to the annual increases in the costs of these services. Furthermore, electricity and gas rates (unlike rates for other services such as water) have substantially fluctuated rather than steadily increased during the past decades. **In fact, there is no connection between the annual master-metered increase authorized by the Los Angeles RSO and actual cost increases.**

Other rent-controlled jurisdictions have provided apartment owners with varying types of allowances for these expenses. However, these provisions have differed substantially from the utility cost increases authorized by the Los Angeles RSO because they have linked allowable

increases to an estimate of average cost increases for the provision of gas and/or electricity or to the cost increases incurred by individual apartment owners. In fact, the costs of gas and electricity have been highly volatile in the past decades. In contrast, the Los Angeles ordinance provides for a fixed automatic annual rent increase for the provision of these services regardless of whether these costs have actually increased and without any consideration of the amount of the increase (or decrease) in these costs.

In Santa Monica, where efforts have been made to base allowances for master-metered buildings on studies of the actual increases in these costs, the adjustments have totaled only about 3 to 4 percent of the rent for each service since 1985.

Under the San Francisco ordinance, owners may implement a passthrough that is based on the actual increases in gas and electricity costs for the individual property. Originally, these increases did not have to be approved by the Board unless the tenant objected. However, starting in 2004 all passthroughs have to be approved by the Board, based on review of a detailed petition documenting gas and electric expenses.

In FY 2005-06, the San Francisco Board received 228 petitions covering 4,746 units and, in FY 2005-07, the Board received 406 covering 4,703 units. A petition must include gas and electricity bills for a base year (which varies depending on when the tenant moved into the unit) and for the current year. Board staff indicated that the petitions were generally filed by more sophisticated owners of larger buildings.

Berkeley and Santa Monica have authorized uniform across-the-board rent increases to cover the provision of master-metered electricity and/or gas in particular years based on an analysis of the cost increases in those particular years (Table 5-8).

Policy Alternatives

At this point, a reevaluation of the master-metered gas and electricity allowance is recommended, taking into account the foregoing information and analysis. Possible policies include:

1. The authorization of utility increases when significant gas and/or electricity cost increases occur, rather than an unchanging fixed percentage annual increase, and
2. Conditioning the right to gas and electricity passthroughs on an owner submitting one year of gas and electricity bills for the apartment building one time only (or once every five years). This requirement would not impose a substantial burden on an apartment owner and would provide the City with data that could be used in order to determine average consumption levels. Using the average consumption data, the City could make reasonable estimates of what percentage utility adjustments would be reasonable in the future by measuring the impacts of cost increases on buildings with average consumption levels. Currently, while rate increases are known because they are publicly set, the complementary information on average consumption levels and on the ratio of these expenses to gross income is unavailable.

Table 5-8
 Rent Adjustments for Buildings with Master-Metered Gas and/or Electricity
 under California Rent Control Ordinances

Jurisdiction	Type of Utility Allowance	Amount of Utility Allowance
Los Angeles	Automatic annual increase	1%/year for gas, 1%/year for heat
Berkeley	Until 2006 authorized in particular years based on annual apt. operating cost study	1981 – 1.2% if owner, pays space heating, 1982 – \$4 to \$16 if owner pays gas & elec., depending on size of unit, 1983 – 0.25% if owner pays gas or elec. 1989 – 0.5% if owner pays gas or elec., 2001 – \$8 if owner pays gas 2002 – \$9 if owner pays for heating
Beverly Hills	None	
Hayward	Individualized bldg. passthrough of cost increases; documentation must be provided to the tenant; tenant can challenge increase	Individualized by building
Oakland	None	
San Francisco	Individualized bldg. passthrough of cost increases; • Allowable increase = increase in cost over base year (base year for new tenants, the year before the tenant moved-in ; • Advance administrative approval required	Individualized by building
San Jose	None	
Santa Monica	<ul style="list-style-type: none"> • Only for units in which landlord pays all gas or pays all gas and electrical service, • Only units with same tenant since Jan. 1, 1999 (units with no vacancy decontrol increases); • Application and admin. authorization required, • Initial submission of 1 yr. utility bills required, 	1985 – Gas - 1%, Electricity 0.5% 1986 – Electricity 2% 1991 – Electricity \$7.00, G&E-\$11 2001 – Electricity \$10 2002 – Repeal 2001 Rent Adjust. 2006 – Gas or G&E -\$7
West Hollywood	None	None since 1994 Prior to 1994: elec-½%, gas-½%

Source: Based on author's review of rent ordinances and annual increases reported by cities with rent control ordinances.

COMMENT ON PROPOSALS FOR LOWERING THE ANNUAL ALLOWABLE INCREASE FOR SENIORS AND/OR DISABLED PERSONS ON FIXED INCOME

This author is not aware of any provision in a California rent control law that has provided for lower annual rent increases for seniors and/or disabled persons. **The protection of low-income households has been a primary justification of rent controls. However, the tool for accomplishing this objective has been to limit rent increases for all tenants to a level that is deemed to be reasonable, rather than targeting rent increase protections towards particular classes and income groups.**

In the course of debates over apartment rent controls, some critics of rent control have taken the position that the controls should only protect low-income households that need

protection, rather than all tenants. On the other hand, in fair return (just and reasonable return) hearings under mobile home park space rent regulations, park owners have continually taken the position that the income of the residents should not be considered because the purpose of the ordinances is to protect against excessive rent increases rather than to subsidize tenants because their income is low. Subsidization is seen as a state responsibility, rather than a responsibility that may be imposed on individual park owners.

Legal Issues

The constitutionality of provisions that provided for the consideration of tenant income in rent setting under rent control was considered in one U.S. Supreme Court case and in one case before the New Jersey Supreme Court. While the court opinions about the issue are set forth in a legal framework, they also raise policy issues.

In the New Jersey case, which was decided in 1977, the state supreme court considered the constitutionality of a local ordinance provision that froze the rents of low-income seniors. The Court, which had consistently upheld tenant protections and had an exceptionally strong record of compelling municipalities to allow a fair share of affordable housing, struck down this local provision. It stated:

*A legislative category of economically needy senior citizens is sound, proper and sustainable as a rational classification. But compelled subsidization by landlords or by tenants who happen to live in an apartment building with senior citizens is an improper and unconstitutional method of solving the problem.*²¹

In Pennell v. City of San Jose (1985),²² the U.S. Supreme Court considered the constitutionality of a section of the San Jose ordinance that listed "the hardship to a tenant" as one of the factors to be taken into account when considering a landlord petition for a special ("hardship") rent adjustment.²³ The ordinance did not set forth how this factor should be weighted.

The Superior Court and the Court of Appeal had ruled that the provision was unconstitutional, but the California Supreme Court upheld the provision. In each of the appellate courts there was a split vote among the justices. The case came before the courts in a less than ideal posture. It was reviewed solely as a "facial" challenge,²⁴ because the provision had never been enforced in a specific case. Therefore, it was not known how the provision would actually be applied.

The U.S. Supreme Court ruled that the takings claim was premature and rejected the claim facial challenges to the ordinance based on the Due Process and Equal Protection clauses. The Court concluded that:

In light of our conclusion above that the Ordinance's tenant hardship provisions are designed to serve the legitimate purpose of protecting tenants, we can hardly conclude that it is irrational for the Ordinance to treat certain landlords differently on the basis of whether or not they have hardship tenants. The Ordinance distinguishes between landlords because doing so furthers the purpose

of ensuring that individual tenants do not suffer "unreasonable" hardship; it would be inconsistent to state that hardship is a legitimate factor to be considered but then hold that appellees could not tailor the Ordinance so that only legitimate hardship cases are redressed. Cf. Woods v. Cloyd W. Miller Co., 333 U.S. 138, 145 (1948) (Congress "need not control all rents or none. It can select those areas or those classes of property where the need seems the greatest"). We recognize, as appellants point out, that in general it is difficult to say that the landlord "causes" the tenant's hardship. But this is beside the point - if a landlord does have a hardship tenant, regardless of the reason why, it is rational for appellees to take that fact into consideration under 5703.28 of the Ordinance when establishing a rent that is "reasonable under the circumstances."²⁵

If an actual application of the tenant hardship provision had been considered, the case may have raised the issue of whether an application of the provision would be constitutional if an apartment owner received less than a fair return as a result of its application.

In a dissenting opinion, Justice Scalia argued that the provision constituted an unconstitutional taking. He commented that: "Here the city is not "regulating" rents in the relevant sense of preventing rents that are excessive; rather, it is using the occasion of rent regulation (accomplished by the rest of the Ordinance) to establish a welfare program privately funded by those landlords who happen to have "hardship" tenants."²⁶

Practical and Policy Issues

Under the current RSO and many, if not most, ordinances and laws providing for mitigation for tenant displacement, additional mitigation is required for the displacement of senior and disabled tenants- e.g. ordinances and laws covering mitigation for evictions associated with Ellis removals, condominium conversions, or demolitions. However, such provisions may be distinguished from provisions that reduce allowable annual rent increases for low-income senior tenants.

Evictions associated with demolitions and conversions may impose substantial costs and hardships, especially on low-income, senior, and/or disabled tenants. In addition, such evictions occur in conjunction with the conversion of apartment buildings to more profitable uses.

Table 5-9
Annual Allowable Rent Increases Compared with
Increases in Los Angeles Area CPI Rent Index, 1992-1998

Time Period	Allowable Annual Rent Increase - RSO	Increase (Decrease) in L.A. area CPI rent index
7/1/91 - 6/30/92	5%	1.9%
7/1/92 - 6/30/93	5%	1.0%
7/1/93 - 6/30/94	3%	-0.4%
7/1/94 - 6/30/95	3%	-0.3%
7/1/95 - 6/30/96	3%	0.5%
7/1/96 - 6/30/97	3%	1.2%
7/1/97 - 6/30/98	3%	2.0%
Cumulative increase	27.8%	6%

Source: City of Los Angeles Housing Department. July 2007. Landlord-Tenant Handbook: For Rental Units Subject to the Rent Stabilization Ordinance.; U.S. Dept. of Labor, Bureau of Labor Statistics. Consumer Price Index (CPI) Tables, 1979-2008. Washington, D.C.

However, the provision of smaller annual rent increases to specially protected classes of tenants could pose severe practical problems and could achieve the opposite of its intended objective, apart from any legal issues that such a policy may raise.

1. Apartment owners may discriminate against the "protected" classes when seeking tenants, simply because they could be entitled to less rental income from such tenants. As a result, the "favored" treatment may be more harmful than beneficial to the tenants in the "protected" classes.
2. Administration of such a provision could require a substantial administrative effort. Income determinations for eligibility for benefits or special protections based on household income levels are often fairly complex, with detailed provisions regarding what constitutes income and rules regarding the treatment of assets.

New York's Subsidy Offsetting Rent Increases of Low Income Senior and Disabled Tenants

New York's Senior Citizen Rent Increase Exemption (SCRIE) exempts senior households and households of disabled persons with an income under \$29,000 from annual rent increases. However, this program does not impact the rents collected by apartment owners because they can recover the rents that they lose through these exemptions by obtaining property tax rebates.

Tenants must apply to the Department of Aging for exemptions that are authorized by this program. The administration of the program has been criticized for being unduly slow and for failing to undertake adequate outreach to potential beneficiaries of the program. A 2005 study by the Public Advocate for the City of New York estimated that 45,000 households out of a potential 117,000 households had actually enrolled in the program.

"BANKING" OF RENT INCREASES

Under most rent stabilization ordinances, but not the Los Angeles RSO, apartment owners may "bank" allowable annual rent increases if they are not implemented in the year in which they are permitted. The rationale for this policy is that owners should not be "penalized" for not collecting allowable rent increases as soon as they are permitted. It has been commonly noted that, in the absence of a banking provision, apartment owners are in a "use or lose it" position when, in fact, they would like to help out lower income tenants, without being bound to a lower rent level for as long as the tenant remains in occupancy.

The apartment owner and renter surveys indicate that apartment owners do not impose the annual rent increases authorized by the RSO on a significant portion of units. Twenty percent of the apartment owners responded that they usually do not impose the annual rent increases. Half of renters who have moved in since January 2006 and 41% of the renters who have moved in since 2005 indicated that they had not been subject to any rent increases since they moved in.

From a conceptual point of view, apartment owners may forego annual allowable rent increases for different reasons. One type of rental practice involves foregoing allowable rent increases for tenants based on individual considerations such as the financial situation of the

tenant or the desirability of the tenant. When this occurs, the rents are increased in some units in a building but not others. A second type of practice involves foregoing allowable annual rent increases because the average rents in the overall market have not increased. As Table 5-9 indicates, from 1992 to 1998, the allowable increases totaled 27.8%, while market rents only increased by 6%.

Some jurisdictions limit the rate at which banked rent increases can be implemented so that tenants who have benefitted from banked increases are not suddenly faced with steep rent increases.

If banking is considered in Los Angeles, several policy issues would emerge. These include:

1. Whether an apartment owner could bank rent increases for periods preceding the adoption of the banking provision.
2. Whether to include a ceiling on the amount of rent increases authorized pursuant to the banking provision.

Apartment owners have made sale and purchase arrangements and tenants have made rental decisions in light of the current

rent restrictions, including the absence of a banking clause. Under these circumstances, any authorization of banking for past periods would result in "windfalls" for investors who set their purchase prices in a market that established prices for apartment buildings based on the assumption that no banking would be permitted. Also, such a provision could undo the expectations of tenants who have relied on the current rent restrictions in order to remain in their units and/or made decisions to stay in the current units based on the expectation that rents could not be adjusted based on banking for prior years.

As Table 5-10 indicates, some jurisdictions place a ceiling on the amount of increases that may be banked. In the absence of empirical data on when apartment owners have implemented banked increases in other jurisdictions, one would surmise that it is most likely that such increases would be imposed upon changes in ownership.

Table 5-10
Banking Provisions in California Rent Control Ordinances

Jurisdiction	Type of Banking Provision
Los Angeles	No banking authorized
Berkeley	Unlimited right to implement banked adjustments
Hayward	Banked adjustment plus annual adjustment cannot exceed 10% in any year
Oakland	Banked adjustments plus annual adjustment implemented in any year cannot exceed three times annual adjustment
San Francisco	Unlimited right to implement banked adjustments
San Jose	21% rent increase authorized if rents have not been increased in over 24 months
Santa Monica	Unlimited right to implement banked adjustments
West Hollywood	If no vacancy decontrol since 1996, increases authorized prior to 1996 may be banked. Increases since 1996 may not be banked

Source: Based on author's review of rent ordinances.

RENT STABILIZATION PROGRAMS - ADMINISTRATION FEES

Program fee and service levels vary substantially between programs, as shown in Table 5-11. The programs with higher fees formerly had vacancy controls and have continually required annual registration of the rents for each unit (Berkeley, Santa Monica, and West Hollywood). The programs with lower fees always have had vacancy decontrols and do not require annual registration of rents (Los Angeles, Oakland, San Francisco, and San Jose).

Table 5-11
Administrative Fees and Budgets for California Rent Control Programs

Jurisdiction	Rent controlled units	Annual Admin. Fee Per Unit	Share of Fee Passed Through to Tenants	Annual Budget	Staff Size
Los Angeles	638,000	\$18.71	50%	\$12,567,000	90
Berkeley	19,000	\$170	100%	\$3,500,000	19.3
Beverly Hills	1,100	\$20.80	0%	\$198,655	.9
Hayward	8,900	\$0.81	50%	\$33,000	.5
Oakland	60,000	\$30	50%	\$1,638,185	11
San Francisco	180,000	\$26	50%	\$5,234,170	20
San Jose	40,000	\$7.26	0%	\$300,000	2
Santa Monica	28,000	\$156	100%	\$4,459,224	29.4
West Hollywood	15,000	\$120	50%		18

Source: Based on author's review of rent ordinances.

SUMMARY

Brief Perspective on Rent Regulations in California

- Currently, 10 jurisdictions in California have apartment rent stabilization ordinances - Berkeley, Beverly Hills, East Palo Alto, Hayward, Los Angeles, Oakland, San Francisco, San Jose, Santa Monica, and West Hollywood.
- The California Legislature passed the Costa-Hawkins Rental Housing Act in July 1995, which provides for vacancy decontrols on rents subject to local rent control ordinances.

Comparison of Annual Rent Increase Standards

- Currently, most of the municipal rent control ordinances in California tie allowable annual rent increases to the percentage increase in the Consumer Price Index (CPI).
- Questions have been raised about whether the CPI should be used to determine allowable annual rent increases on the basis that it is based on the market basket of goods purchased by an average household, which differs substantially from the basket of expenses associated with operating apartment buildings.
- Under some rent control ordinances, annual apartment operating cost studies have been used to determine allowable annual rent increases, instead of the CPI. However, the outcome of these studies are largely determined by the CPI, because estimates of increases in a substantial portion of apartment operating expenses are based on the CPI, because actual data is unavailable.
- Annual rent increases in cities that authorize a *fixed* percentage annual increase (San Jose, Hayward, and Beverly Hills) have exceeded allowable annual increases under the RSO.

Allowable Rent Increases For Apartment Owners Who Pay For Master Metered Gas And/Or Electricity

- Under the Los Angeles ordinances, apartment owners who provide master-metered gas and/or electricity are permitted additional annual rent increases of one percent for each of these services that are master-metered.
- In fact, there is no connection between the annual master-metered increase authorized by the Los Angeles RSO and the actual cost increases associated with the provision of master-metered gas and electricity.
- Some of the other jurisdictions with rent control provide apartment owners with additional allowances for master-metered gas and electricity, but link these additional rent increases to an estimate of the average increase in the cost of those utilities or provide for passthroughs of cost increases based on individual building applications.

Comment on Proposals for Lowering the Annual Allowable Increase for Seniors and/or Disabled Persons on Fixed Income

- There are no provisions in any California rent control law that provide for lower annual rent increases for low-income households, senior or disabled renters.

- Judicial precedent in regard to the constitutionality of rent control provisions that place greater limits on the allowable rent increases of protected classes of tenants has been mixed.
- Rent control provisions that provide for low rent increases for protected classes of tenants (low income, seniors and the disabled) may result in discrimination against these classes in the selection of tenants by apartment owners.

"Banking" of Rent Increases

- Under most rent stabilization ordinances, but not the Los Angeles RSO, apartment owners may "bank" allowable annual rent increases if they are not implemented in the year in which they are permitted.
- Some jurisdictions limit the amount of banked rent increases that can be implemented in a single year and/or place a ceiling on the total amount of increases that can be banked so that tenants who have benefitted from banked increases are not suddenly faced with steep rent increases.

Rent Stabilization Programs - Administration Fees

- Registration fees vary greatly among the different California cities with rent control laws. Higher fees are in effect in cities that once had vacancy controls (pre-Costa-Hawkins) and still require annual registration of rents and reporting of rents for new tenants.

ITEM H-2 ATTACHMENT 3

RICHMOND RENT BOARD REGULATION 17-09

Regarding the right of Landlords to raise the Rent up to the Maximum Allowable Rent level, also known as “banking” rent increases, under certain limitations

Whereas, the Richmond Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code) provides that no later than June 30 of each year the Board shall announce the percentage by which Rent for eligible Rental Units will be generally adjusted effective September 1 of that year. Section 11.100.070 (b), RMC; and

Whereas, the Annual General Adjustment shall equal one-hundred (100%) percent of the percentage increase in the Consumer Price Index (All Urban Consumers, San Francisco-Oakland-San Jose region, or any other successor designation of that index that may later be adopted by the U.S. Bureau of Labor Statistics)(CPI) as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the 12-month period ending as of March of the current year and

Whereas, on December 30, 2016, Landlords were entitled to increase the Maximum Allowable Rent in an amount not to exceed 3.0% for tenancies in effect prior to September 1, 2015, as provided in Section 11.100.070 (b) (3), RMC, assuming a Landlord served a Tenant with the legally required notice of a rent increase under State law; and

Whereas, the percentage increase in the CPI from 2016-2017, as set forth in recital 2, was 3.4%; and

Whereas, in recognition that some Landlords may elect not to impose in any given year the full amount of the Annual General Adjustment but have concerns that if they do not, they will lose the opportunity to impose some or all of the Annual General Adjustment in a subsequent year or years, the Board, by this Regulation, providing Landlords the right to raise Rent up to the Maximum Allowable Rent to address those concerns, but include limitations such that to protect tenants, a Tenant will receive no more than one Rent increase in a twelve-month period and the application of any deferred Annual General Adjustment rent increases for which the Landlord was eligible but chose not to apply shall not exceed five percent in any one twelve-month period. In the event the current year’s Annual General Adjustment exceeds five percent

NOW, THEREFORE, THE RICHMOND RENT BOARD ADOPTS THE FOLLOWING REGULATION:

1. A Landlord may, but is not required to, increase Rent by the Annual General Adjustment as provided by Board Regulation.
2. Based on the Annual General Adjustment, a Landlord may increase Rent for a Controlled Rental Unit occupied continuously by the same Tenant only once in any twelve-month period.
3. To the extent a Landlord has not increased Rent up to the Maximum Lawful Rent level, the Landlord shall have the ability to apply deferred Annual General Adjustment rent increases; however, the net rent increase in any one twelve-month period shall not exceed five percent (5%).
4. In the event that a current year’s Annual General Adjustment exceeds five percent (5%), a Landlord may not apply any deferred Annual General Adjustment increases until the next Annual General Adjustment increase less than five percent (5%) is effective.

