

Sec. 1: Renter Protections Policy Landscape Summary

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Introduction

Section 1 of this report summarizes available research and policy language related to tenant protections in rental housing within the 9-county Bay Area to provide a baseline of understanding of the potential downstream impacts of amendments to Rule 9-4: Nitrogen Oxides from Fan Type Residential Central Furnaces, and Rule 9-6: Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters (“Appliance Rules”), adopted by the Air District Board of Directors in 2023.¹ The Appliance Rules' objective is to reduce harmful NO_x pollution by requiring commercial and residential buildings to only install new appliances that are designed to have zero nitrogen oxides (NO_x) emissions per the compliance dates below:

- Manufactured after Jan. 1, 2027 – Water heaters less than 75,000 BTU/hr (typically residential tank water heaters) - Rule 9-6-301.5
 - Manufactured after Jan. 1, 2029 – Residential and commercial furnaces – Rule 9-4-301.3
 - Manufactured after Jan. 1, 2031 – Water heaters between 75,000 and 2 million BTU/hr (commercial and multifamily as well as tankless water heaters) - Rule 9-6-303.5
- The purpose of the memo is to identify whether and where policy mechanisms are in place that could protect renters from either rent increases or evictions as an indirect result of space and water heating equipment upgrades.

These requirements only apply to newly installed or sold appliances. Therefore, the installation of a Zero NO_x appliance only needs to occur when an existing appliance breaks and would require a replacement.

Today, there is a highly varied patchwork of residential rental housing regulations at the state and local level. California provides standard statewide rental protections through AB1482, the Tenant Protection Act of 2019.² In addition, 16 cities across five counties in the Bay Area have local rental protections that go as far or further than the state protections. The key questions addressed by this report are:

¹ "Rules 9-4 and 9-6 Building Appliances," Bay Area Air Quality Management District, Last modified February 28, 2024. Accessed February 28, 2024. <https://www.baaqmd.gov/rules-and-compliance/rule-development/building-appliances>.

² Tenant Protection Act of 2019: tenancy: rent caps, A. AB-1482, 2019 Leg. (Cal. Oct. 9, 2019), accessed March 13, 2024, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1482.



Figure 1. The line of inquiry in approaching this policy landscape

Section 2 (below on page 10) describes opportunities and recommendations to potentially mitigate any unintended consequences for renters that may result from implementation of the Appliance Rules.

Types of Rental Protections (definitions and applicability)

There are two primary³ forms of rental protections within any tenant protection policy:

1. Rent stabilization ordinances (often used interchangeably with the term rent control⁴)
2. Eviction protections

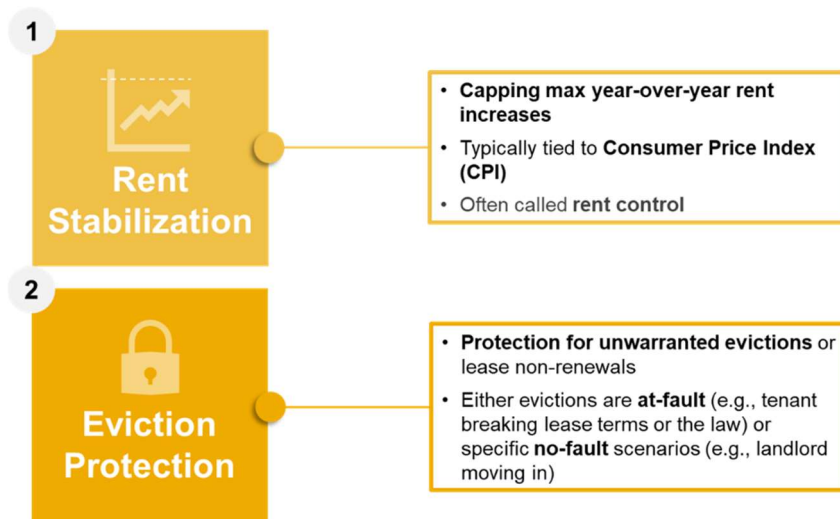


Figure 2. Summary of primary types of rental protections

³ Note: Another type of rental protection not covered in this overview involves limiting hours of construction – which if unrestricted, can also be used as a form of harassment – to minimize disruption to tenants.

⁴ “Rent control” generally refers to policies that establish rent limits for covered rental properties, whereas “rent stabilization” policies set limits to allowable **increases** in annual rent; these terms are often used interchangeably. This memo uses the term “rent stabilization” to capture policies that limit annual rental increases, though the state of California refers to its same policy as rent control.

Rent Stabilization

Rent stabilization ordinances limit how much rent can be increased each year. The allowable increase amount is often tied to the percent change in the Consumer Price Index (CPI) because that is a standard metric for how the cost of goods and services are changing. Anchoring allowable rent increase percentages at or below change in the CPI helps keep rent from rising faster than the rate of inflation.

The CPI is typically calculated at the national and regional level, but certain metropolitan regions have a locally defined CPI. For cities in the Bay Area, the CPI change cited in rent stabilization ordinances refer to the specific CPI calculated for the San Francisco Area (which covers the entire metropolitan region).

Without rent stabilization protections, landlords can increase rents at any time by any amount.

Eviction Protections

“Just cause” eviction protections limit the reasons for which landlords can evict tenants or refuse to renew their leases. Within just cause, allowable reasons fall into two types of categories:

1. **At-fault:** Reason for eviction is based on the tenant’s actions (like breaking the law or health and safety violations) or non-compliance with lease terms (like not paying rent, causing damage, or refusing to leave when lease expires).
2. **No-fault:** Landlords may legally evict tenants for a limited and specific set of reasons, such as if the landlord or their dependent plans to move in, if they are doing substantial repairs or renovations⁵, or if they want to remove the property from the rental market. In these cases, the tenant bears no-fault and may be entitled to certain benefits, such as relocation assistance. For the purpose of this assessment, only no-fault evictions are relevant. Eviction protections apply to temporary evictions triggered by meeting the criteria for substantial repair.⁶ Since landlords cannot evict for reasons not included in protection laws, minor construction that can be done safely with tenants occupying the unit is not considered a justifiable reason to evict.

Without just cause protections, tenants may be evicted for any reason.

While not covered specifically in this memo, tenant harassment laws are another potential rental protection that could prevent unfair or unlawful evictions.

⁵ Substantial repair (also referred to in code language as capital improvements, rehabilitation, or renovation) refers to a work that (1) must be completed for code compliance (2) requires a permit from the relevant City department and (3) cannot be done safely with the tenant living in-unit. Tenants are entitled to certain benefits or compensation and have the “right of first refusal” (they can choose to reoccupy the unit) when repairs are completed. Some cities more clearly define the cost threshold and length of repair. Table 1 contains more details on the scope of “substantial repair” within each city’s policy language.

⁶ See prior note for substantial repair.

Statewide Renter Protections - AB1482

The passage of AB1482 in 2019 provides both rent stabilization⁷ and just cause eviction protections across the state of California. For non-exempt properties:⁸

1. Rent control is limited to the lesser of (1) 5% (of current rent), plus the change in the Consumer Price Index (CPI), and (2) 10% (of current rent)
2. No-fault just cause evictions includes (1) intent to substantially remodel or replace structural, electrical, plumbing, or mechanical systems that require a permit and cannot be safely done such that tenants must vacate for at least 30 days, or (2) removal of property from the rental market. However, tenants are entitled to relocation assistance or a rent waiver.

Coverage

AB1482 primarily applies to **multifamily housing that is 15 years or older** (based on the certificate of occupancy).

Exempt buildings include newer multifamily housing (younger than 15 years), single-family homes and condominiums not owned by corporations, duplexes in which the owner occupies one unit (this would include ADUs)⁹, other transient housing (hotels, dormitories), and regulated affordable housing.¹⁰ There are two laws governing exemptions of units from rental protections:

1. **Costa Hawkins Rental Act of 1995**: exempts single-family homes, condominiums, and housing built after 1995 from rent control
2. **Ellis Act (passed in 1985)**: allows landlords to remove properties from rental market for redevelopment, condominium conversion, or owner move-in

Both laws limit both state and local coverage of rental protection. Strategic Actions for a Just Economy (SAJE), a Los Angeles-based tenant advocacy group, has noted that landlords could potentially use the Ellis Act as a loophole to evict tenants to make substantial remodeling upgrades.¹¹

Local Rental Protections

In this analysis, Arup found that 16 cities¹² across five counties in the Bay Area have local rental protection laws. These cities include Alameda, Antioch, Berkeley, East Palo Alto, Emeryville, Fairfax,

⁷ The State refers to its rent-related policies as rent control.

⁸ Tenant Protection Act of 2019.

⁹ Apartment Association of Greater Los Angeles (AAGLA), "AB 1482 (Chiu) Tenant Protection Act of 2019: Rent Caps Quick Facts." California Rental Housing Association (CRHA), Last modified September 12, 2019. Accessed February 28, 2024. <https://aagla.org/wp-content/uploads/2019/10/AB-1482-CalRHA-Fact-Sheet.pdf>.

¹⁰ "AB 1482 FAQ," California Rental Housing Association (CRHA), Accessed February 28, 2024. <https://www.cal-rha.org/ab-1482-faq>.

¹¹ Chelsea Kirk, "Decarbonizing California Equitably: A Guide to Tenant Protections in Building Upgrades/Retrofits Throughout the State," Strategic Actions for a Just Economy (SAJE), pg. 10, Last modified October 2023. Accessed February 28, 2024. <https://www.saje.net/wp-content/uploads/2023/09/Decarbonizing-California-Equitably-Report-1.pdf>

¹² These cities came up in Arup's initial policy review but may not represent an exhaustive review of all tenant protections of every city in the Bay Area.

Hayward, Los Gatos, Mountain View, Oakland, Petaluma, Richmond, San Francisco, San Jose, San Rafael and Union City.¹³ At the county level, Marin County has adopted just-cause eviction protections that complement the cities in its jurisdiction with local tenant protection policies. The five counties with cities that have passed additional local protections are Marin, Alameda, Santa Clara, and Contra Costa County. Table 1 at the end of this memo summarizes the building age requirements, density requirements, and specific rental protections for each jurisdiction surveyed.

Takeaways

The key takeaways of local rental protection coverage include the following:

- In Bay Area cities that have rent stabilization policies in place, the maximum allowable rent increases are typically lower than those set by AB1482. In other words, for covered buildings, the **local policies offer greater rent increase protection than the state's.**
- However, **state policy covers more buildings than local ordinances.** For example, in San Francisco, rent stabilization only applies to buildings built before 1979 (versus before 2009 per the state).
- **Of the sixteen cities noted above, ten cities have both rent stabilization and eviction protections.** The exceptions:
 - Emeryville, Union City, Petaluma, and San Rafael do not have local rent control laws, though Union City and San Rafael have a Rent Review/Mediation process in which tenants can flag issues with rent increases. Only Marin County has county-level just cause eviction protections.
 - Antioch and Los Gatos do not have just cause eviction protections.
- The following four counties have no local rental protection beyond the state: Napa, San Mateo, Solano, and Sonoma.
- In many cases, just cause eviction protection laws do not have building age limits, but rent stabilization does, which results in **more units with eviction protections than rent stabilization protections.**
- Notably, enforcement mechanisms for such laws were not evaluated as part of this analysis. However, in certain cases, such as Union City's Rent Review law, it was determined that tenants are responsible for initiating the Rent Review process if rent increases are higher than 7% (Union City's threshold), thus putting the onus on renters to avoid being overcharged for rent. Since these issues are often settled by the government or arbitrated in court, this legal process favors those with resources to arbitrate and have access to legal counsel.¹⁴

The Potential for Pass-through Costs and Evictions

Regarding the potential for pass-through costs and evictions in the Bay Area:

¹³ Kirk, "Decarbonizing California Equitably."

¹⁴ Kirk, "Decarbonizing California Equitably."

- Substantial repair is a viable cause for eviction, though it is usually at no-fault to renters. Substantial repair is generally defined as repairs that bring the unit into code compliance, cannot be done with tenants safely living in the unit, and require a permit from the local permitting agency. Replacement of space and water heating equipment will require a permit, and some cities specify that mechanical upgrades could qualify as a substantial repair if all other criteria are met.
- Most local policy validates pass-through costs of capital improvements if **required for compliance**, but it **requires landlords to petition** to pass on capital costs to renters. This cost may be allowed to exceed any caps set by rent stabilization ordinances, though some cities have established an explicit cap for increases related to Capital Improvements or other maintenance.
- Eight of the 16 cities with local rental protection laws allow “banking,” a process by which landlords can exceed an annual rental cap by the margin they did NOT increase rents in preceding years (i.e. withhold past years’ allowable rental increases but then recoup these in an aggregated rent increase all at once). This policy **may allow a greater increase in cumulative rent than the annual cap suggests** if landlords have not raised rent significantly in prior years.

Typical exemptions from local rental protections policies (which generally overlap with state protections, aside from building age) include:

- Regulated affordable housing¹⁵ (discussed below), though it varies across jurisdictions
- Temporary housing (hotels, motels, dormitories)
- Resident-owned cooperative housing
- Housing operated by nonprofit hospitals or care industries (e.g., retirement homes)
- Multifamily housing built before a specified year ¹⁶

ADUs may or may not be exempt from rental protections, depending on the city.

Affordable Housing

Regulated affordable housing, in the context of rental protections, can refer to housing units that are:

- Government owned or operated
- Deed-restricted (i.e., a regulation is in place that governs long-term affordability of unit)
- Government subsidized, such as the Section 8 Housing Voucher program
- Subsidized or otherwise regulated through another agreement for low-income tenants, such as the Low-Income Housing Tax Credit

Affordable housing usually uses Area Median Income (AMI) to assess eligibility for housing assistance; the US Housing and Urban Development Department (HUD) typically sets these AMI estimates by

¹⁵ Regulated affordable housing refers to the following types of housing: government-owned, deed restricted, or subsidized housing.

¹⁶ The specified year for protections to apply may differ for rent stabilization and eviction protections. In particular, building age limits apply rent stabilization more than eviction protections, meaning more buildings are covered by eviction protections than rent stabilization.

region. For households, whose income falls within certain thresholds under the AMI, housing assistance or subsidies may be available.

The California Housing Partnership¹⁷ calls out the following types of housing subsidy programs in its Affordable Housing Map:¹⁸

- Federal
 - o US Housing and Urban Development (HUD): runs the Section 8 housing vouchers
 - o US Department of Agriculture (USDA): supports economic development and housing in rural communities
 - o Low-Income Housing Tax Credit (LIHTC): offers a tax credit or exemption for developers in exchange for guaranteed affordable housing within certain AMI tiers
- State
 - o California Department of Housing and Community Development (HCD): Allocates loans and grants to preserve and expand affordable housing opportunities
 - o California Housing Finance Authority (CalHFA): Subsidy financing and programs that support affordable housing opportunities for low- to moderate-income households

At the state level, government-owned housing as well as deed-restricted housing is not covered by rent stabilization but is covered by eviction protections; at the local level, restrictions usually exclude these types of housing or mention precedence of state or federal exemptions for affordable housing. However, subsidized affordable housing programs may be subject to rental protection provisions in certain municipalities.

The Section 8 housing assistance program provides housing vouchers or rental assistance to buildings or tenants in order to mitigate displacement and/or allow low-income tenants access to affordable housing in higher-income locations. Regarding rent increases, Section 8 housing usually sets eligible units at 40th or 50th percentile of a “Fair Market” rental rate established by HUD and local municipalities.¹⁹ **In California and most of its cities, Section 8 assisted housing is excluded from rent stabilization,** meaning that although there are limits to the rent Section 8-subsidized tenants must pay (usually around 30% of their income), there is *not* a cap to allowable annual rent increases. Escalating prices in the rental market without changes to HUD’s Fair Market threshold for subsidies has resulted in fewer units that fall under the 40th percentile of Fair Market Rent and therefore are ineligible for a tenant’s vouchers.²⁰ And

¹⁷ <https://chpc.net>

¹⁸ "Affordable Housing Map and Benefits Calculator," California Housing Partnership, Last modified October 25, 2021, Accessed February 28, 2024. <https://chpc.net/datatools/affordablehomes/>.

This map is used to help identify affordable housing properties and calculate related social and economic benefits.

¹⁹ Megan Kirkeby, "2023 State Income Limits," California Department of Housing and Community Development, Last modified June 6, 2023. Accessed February 28, 2024. <https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/income-limits-2023.pdf>.

²⁰ Rachel Swan, "HUD Raises Section 8 Rent Benchmark in Bay Area," San Francisco Chronicle, Last modified February 16, 2016. Accessed February 28, 2024. <https://www.sfchronicle.com/bayarea/article/HUD-raises-Section-8-rent-benchmark-in-2-Bay-Area-6835010.php>.

for tenants subject to rent increases, this means there will be fewer affordable options outside of their current housing.

Instead of a direct tenant subsidy, the LIHTC program offers developers tax incentives in return for setting aside a certain portion of rental units as affordable for a set number of years (55 years in California). In California and most cities, privately-owned housing financed by the LIHTC is not eligible for rent stabilization or eviction protections. While there is an upper threshold to allowable rents in LIHTC housing, the lack of a rent cap or any limitation on how quickly rents can grow means certain residents may see large increases that may inevitably cause higher rent burden or displacement.²¹ Furthermore, the rent increases in LIHTC properties are tied to an increase in the AMI rather than a tenant's income, meaning an escalation in area median income beyond a tenant's income can inadvertently make units unaffordable for existing tenants.²²

The main takeaways regarding affordable housing include the following:

- In many cities, local rental protections (in many cases, rent stabilization ordinances and in some cases, eviction protections) may not apply to the regulated affordable housing types listed above.
- Privately-owned subsidized housing, such as Section 8 or LIHTC-eligible, are also typically exempt from rent stabilization. While they are subject to other rent limitations, these rent ceilings may not function to keep rents steady and affordable as housing costs rise rapidly.
- Given the complexity of affordable housing agreements and regulations, more research is necessary to assess mechanisms for eviction and pass-through costs.
- Naturally occurring affordable housing, which refers to private housing below market-rate without any government involvement, would likely be subject to the rental protections at the state and local level, barring other exemptions.

Conclusion

The current landscape of rental protection policies may not adequately prevent renters from financial burdens resulting from upgrades and retrofits required to replace NOx-emitting equipment per Rules 9-4 and 9-6.

- In most cities, pass-through of capital costs requiring a permit is allowed if a landlord petitions to do so and gets it approved.
 - Pass-through costs may be subject to caps either within or alongside existing rent control caps.
- Furthermore, at the state level and for cities with eviction protections, all protections identify substantial repair as a reason for a no fault, just cause eviction.

²¹ Jeanne Kuang, "California's Rent Hikes Hit Low-Income Housing." KQED, Last modified December 13, 2023. Accessed 2023. <https://www.kqed.org/news/11969623/these-californians-live-in-affordable-housing-why-did-their-rent-skyrocket>.

²² Lucie Hollingsworth et al. "Tenants' Rights in the Low-Income Housing Tax Credit (LIHTC) Program," Justice In Aging, Last modified April 19, 2023. Accessed February 28, 2024. <https://justiceinaging.org/wp-content/uploads/2023/04/LIHTC-4.19.23.pdf>.

- Regulated affordable housing may not be safeguarded to the same extent as non-regulated housing regarding how quickly rent can be increased, even if capped through other regulation.

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Sec. 2: Policy Recommendations

Background

Arup was commissioned by the Bay Area Air Quality Management District to conduct a scan of the housing policy landscape in the Bay Area to provide context for understanding potential impacts to renters in relation to the future implementation of zero-NOx building appliance rules (“Rules”) which were adopted in 2023. The amended Rules only apply to newly installed equipment (i.e. replacement-on-burnout or new construction) and do not force the early replacement of NOx-emitting appliances.

The first phase of research looked specifically at pathways for potential impacts to occur, focusing on whether cities and counties within the region provide rent stabilization or eviction protection beyond levels required by the State of California (under AB 1482²³).²⁴ In other words, the research examined whether local policies are in place that could 1) prevent costs of appliance replacements under the rules from being passed on to tenants, and 2) whether such retrofits could be used by landlords to initiate no-fault evictions of tenants (e.g. due to required construction activities).

Importantly, the research is an assessment of **pathways**, but not an assessment of **risk**, as it only looks at whether policy mechanisms are in place that could limit negative consequences but does not evaluate the likelihood that those consequences would occur. A full evaluation of risks would require the consideration of multiple other factors, including at least the number of rental units covered by different housing protections policies; the costs²⁵ and level of disruption associated with implementation of the Rules; the frequency that similar appliance or equipment replacements are currently leading to rent increases or evictions (prior to implementation of the amended Rules). Without this level of risk assessment, there is no way to predict the likelihood or extent of potential negative consequences occurring.

Furthermore, there are critical and certain risks associated with *not* implementing appliance standards, including negative health impacts, continued generation of NOx and secondary particulate matter as well as greenhouse gas emissions, and the risk that residents of buildings left on the gas system (after others electrify sooner because they have the financial means) – which are likely to be located in lower-income and disadvantaged areas of the state – would shoulder a higher share of fixed costs required to maintain remaining gas infrastructure (given a dwindling gas ratepayer base). Systemic approaches are needed to mitigate risks and create opportunities within the clean energy transition for low-income communities that have been chronically excluded from public investment. Implementation of the Rules should be looked at holistically with other policies, regulations and programs in order to drive the benefits (e.g. improved air

²³ AB-1482 is the Tenant Protection Act of 2019 and applies to most residential rental properties but has certain exceptions (e.g., if constructed within last 15 years, if single-family owner-occupied, duplexes, etc.). The policy is in effect until January 1, 2030.

²⁴ Enforcement and other tenant protection policies and resources, such as relocation assistance, tenant habitability-related plans and policies, anti-harassment, and legal service availability, are important to factor in and recommended to investigate as a next step.

²⁵ Note that BAAQMD commissioned Rincon to do a separate study looking at the costs of compliant technologies.

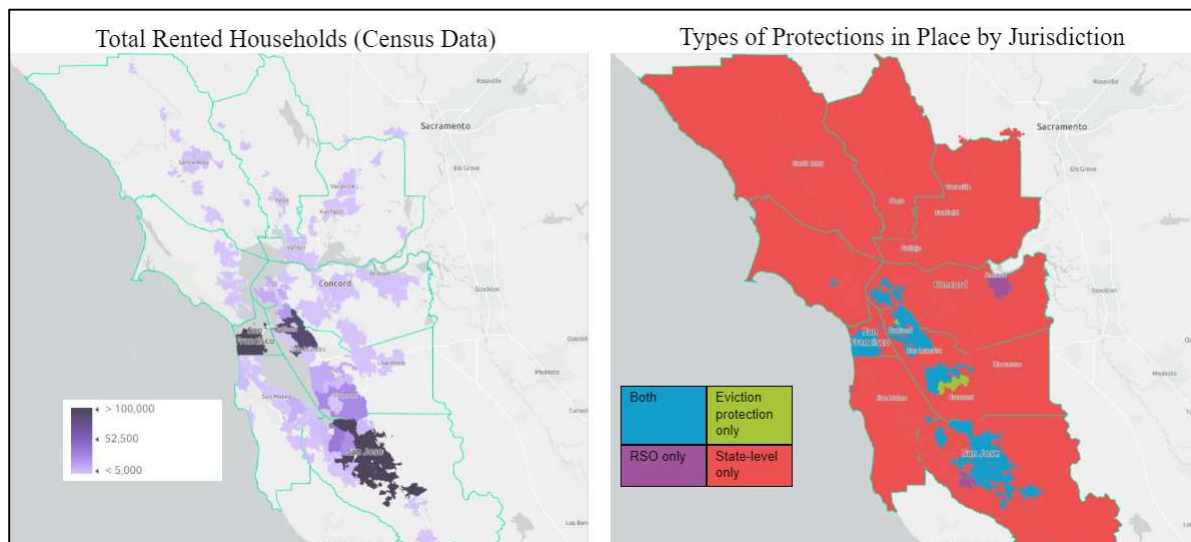
quality, improved health outcomes, climate resilience) toward communities most in need while preventing harm.

Key Takeaways from the Policy Assessment

Landscape of Renter Protection Policies

The policy assessment revealed a complex patchwork of local protections that leave renters without consistent protection.

- The applicability of tenant protection varies based on factors such as the year a building was constructed.
- The terms of tenant protections differ, including limits on passthrough costs and the allowances for no-fault evictions.
- State protections (under AB 1482) cover all areas but only apply to buildings that are at least 15 years old.
- While most cities in the Bay Area are only covered by state-level renter protections, jurisdictions with the highest number of renters were found to have local policies in-place, which typically offered stronger protections (see map below).



Total Renters vs. Protection Policies: In left map, darker purple areas indicate higher number of renter households. In right map, red indicates areas that have state-level protections alone. Other colors indicate the presence of local protections that go beyond what the state provides.

- Local jurisdictions offer stronger protections than the state but cover fewer buildings. For example, in San Jose, rent stabilization applies only to buildings built before 1979 (compared to 2009 for the state).
- The policies considered in this study (rent stabilization and eviction protections) generally apply only to market rate housing, which can include “naturally occurring affordable housing that is affordable due to market conditions. Most regulated affordable housing (i.e. housing that receives public subsidies in exchange for covenants regulating affordability) falls outside of the scope of these

protections but are subject to different and often more stringent regulatory requirements, including regarding tenant protections.

- There are pathways within the current rent stabilization policy landscape for at least some equipment upgrade and supporting retrofit costs to be passed along to renters, which could lead to displacement by exacerbating existing rent burden. However, the likelihood that costs of appliance replacement and upgrades would be significantly burdensome, or that the extent of retrofits would allowably trigger no-fault evictions is unknown and would benefit from further research and risk analysis.

Recommendations

When considering renter protections, it's important to recognize that housing security in California is a complex issue and cannot be viewed or addressed solely within the context of implementation of the Rules. While the Rules could potentially lead to pass-through costs as well as no-fault evictions – even in places that have additional local rental protections – these challenges are not a reason to delay action. Rather, coordinated efforts are needed from state, regional and local agencies to keep people safe and housed while implementing health-protective rules and regulations. For each policy recommendation below, further consideration is needed to identify which specific agencies or partners should lead and which must participate to develop solutions.

Based on the policy assessment, Arup suggests the following actions and opportunities for the variety of stakeholders and agencies involved to support renters through the implementation of new appliance standards.

Stronger and clearer renter protections overall

The policy assessment revealed an urgent need to improve renter protections overall, which include the following:

- Rent stabilization and eviction protections should be expanded at the state level to further limit pass-through costs and to provide more stringent eviction protections for clean energy and/or zero NOx appliance replacements. Stricter state level protections would help address the patchy and confusing housing policy landscape by providing a top-down approach to a broader set of buildings rather than the many variations of renter protection policies provided by local jurisdictions. AB 1482 expires in 2030, so there is both a need and opportunity to revisit the bill language and enhance state-level renter protections.
- Pending future state action on AB 1482, examples of tenant protection ordinances should be collected and disseminated, or created for local jurisdictions to consider adopting to address potential burdens that might be created by the Rules. The Metropolitan Transportation Commission (MTC) is currently creating new tenant protection policy implementation guidelines for transit-oriented community developments, which could be useful for local governments in this regard.²⁶

²⁶ https://mtc.ca.gov/sites/default/files/documents/2023-09/MTC_Final_Draft_TOC_Policy_Administrative_Guidance.pdf

- Stakeholders and research have identified the need for a robust approach to tenant outreach/education regarding existing renter protections, as well as for dedicated legal support services for low-income tenants facing harassment or wrongful conduct from landlords.²⁷ Recommendations include:
 - Identify and assemble relevant organizations and resources that can support dedicated outreach to expand knowledge of tenants’ legal rights.
 - Identify partners and supportive resources to research the viability of creating a regional tenant attorney fund to support tenants with legal costs associated with a range of landlord-tenant dispute issues.
 - Advocate for local governments and other entities to increase awareness of legal self-help and legal aid resources available to tenants.
- Critically, alongside strengthening tenant protections, local governments and stakeholders should allocate more focus and resources toward reviewing and improving local and state renter protection enforcement mechanisms.

Eviction-specific recommendations

The “substantial repair” clause for code-compliance allows for temporary no-fault evictions; as a result, these protections may not provide sufficient guardrails to support tenants should appliance replacements lead to any other repairs meeting this threshold. Arup recommends the following:

- Incorporate language in local and state policies that clarifies/closes any loopholes around the terminology “substantial repair” and how it may be used, so that equipment replacement with compliant zero-NOx appliances is considered standard operation and therefore not eligible for evictions (as recommended by SAJE²⁸.)
- Identify and assemble relevant stakeholders and resources to support the creation and implementation of strategies that address the use of construction activities – which could include certain appliance replacements that result in landlords invoking the “substantial repair” clause – as a means of tenant harassment and evictions (sometimes referred to as “renovictions”). Examples of such strategies include limiting the duration and/or hours of construction activities, and adding penalties for non-compliance.²⁹

Rent and pass-through cost-specific recommendations

Most local rental ordinances allow landlords to pass through the costs of upgrading appliances and making retrofits to their tenants, within the limits of existing rent stabilization caps. Some jurisdictions have an additional cap or threshold for accommodating such pass-through costs (either related to a

²⁷ During Arup’s presentation to the Implementation Working Group (IWG) Equity Subcommittee on March 25, 2024

²⁸ See SAJE’s report for detailed recommendations around adding structured transparency and accountability of landlords.

percentage of rent or as an added cost on top of rent), whereas some may determine the pass-through cost separately upon receiving a capital improvements petition from the landlord. To better shield renters from potential pass-through expenses resulting from the Rules, agencies overseeing rent-related policies should consider banning or limiting pass-through costs for this upgrade type, especially for low-income tenants.

Additionally, clarity should be provided by local agencies regarding the classification of appliance replacements (such as those required by the Rules), as specific policy language or within associated guidance documents. Specifically and to the extent possible, end-of-life equipment replacements that are required to meet state or local appliance standards should be treated as operations and maintenance costs, rather than capital improvements; this would mean that zero-NOx replacements would not be able to be passed through as a capital improvement, but would rather be the ongoing responsibility of the landlord to provide basic services such as heat and hot water.

Integrate renter protections with incentive programs

The forthcoming implementation of the Rules allows for time to advance the development and use of incentive programs that reduce appliance upgrade costs for landlords and limit tenant risks. The following recommendations are centered on expanding incentives as a proactive approach to mitigate potential impacts to renters:

- Advocate for publicly funded incentive programs supporting zero-NOx technologies to include no- eviction agreements as well as affordability commitments. Note that the CEC's Equitable Building Decarbonization program, which is currently funded with \$500 million for heat pump incentives targeted to low-to-moderate income households, includes such provisions for building owners who participate in the program.
- Develop and offer new incentives, such as tax incentives and more generous depreciation Rules, for landlords who choose not to pass-through zero-NOx appliance replacement costs to tenants.³⁰
- Continue collaboration with utilities, CCAs, and the state to expand on-bill financing and/or other financing mechanisms to support zero NOx appliance upgrades and associated retrofits while ensuring transparency and consumer protections.³⁰
- Target incentive funding and technical assistance to support non-profit and non-corporate affordable housing providers. Technical assistance could include zero-NOx appliance replacement roadmaps, portfolio analysis, concierge service/one-stop-shops, streamlined permitting pathways as needed based on retrofit required.

³⁰ This was a recommendation voiced by BAAQMD's Implementation Working Group (IWG) Equity Subcommittee on March 25, 2024.

Areas for further research

Assessing the *risk* of increases and displacement

- As noted above, this assessment looked only at potential pathways for impacts on tenants but did not include a full risk assessment. To perform a full risk assessment would entail developing an accurate estimate of the number of renters at risk, the levels of protection they are under, and the likelihood that they could be negatively impacted. Such an assessment should also look at data from rent boards to see how often appliance upgrades are being used to trigger cost pass-throughs, no-fault evictions, or other harms. This study would answer critical questions relating to both policy development and incentive programs.
- This assessment focused primarily on rent stabilization and eviction protections but did not examine other types of protections, such as relocation assistance, code enforcement issues, and equitable access to legal services. Delving into risk could mean looking broadly at how these different mechanisms work together and their effectiveness in keeping people comfortably housed.
- Analyze available data regarding the types and scale of projects that trigger displacement as well as the length of displacement in a variety of different scenarios (i.e., different cities and building ages).
- Determine which jurisdictions have rental licensing requirements, as well as the scope of those requirements (for those interested in becoming landlords).³¹
- Analyze oversight and enforcement mechanisms for tenant protections related to rental unit renovations. Based on findings from SAJE and Arup’s review, generally it is the tenant’s responsibility to initiate action regarding non-compliance.

Increase understanding of how different types of building improvement projects impact low-income renters

Additional research from relevant agencies and CBOs could identify other burdens faced by tenants in the following housing types:

- Low-income residents in any housing type, who would face the most hardship under a temporary eviction (that could be extended to be functionally permanent) or subjected to pass-through costs.
- Tenants in older buildings, where renovations may require more costly, time-intensive upgrades (e.g., extensive electrical infrastructure upgrades).
- If housing (either regulated or naturally occurring) is characterized as affordable due to deferred maintenance, under repair, or underinvestment, the building would likely require additional renovations that could result in temporary evictions due the “substantial renovation” clause.

³¹ This was a recommendation voiced by BAAQMD's Implementation Working Group (IWG) Equity Subcommittee on March 25, 2024.

- Discussion with tenants' rights group the application and enforcement of rental protections. (e.g., how does right to counsel play out in certain cities?)
- Impact on rural communities, which may have a lower concentration of renters but may face increased development and as a result, rising rents, in the near future.
- Special cases of housing, such as ADUs that are regulated differently by local policies.
- Code-mandated improvements (e.g., seismic retrofit ordinances), within and outside of the Bay Area.

Collaboration Opportunities and Needs

Engage with collaborators

Successful policy design and implementation will require engagement with a range of different stakeholders to advise, partner, or lead efforts. The IWG Equity Subcommittee suggested the Air District engage with the following priority organizations to increase their understanding of pertinent tenant's rights issues and to seek partnership on potential solutions:

- Other Air Districts and relevant state agencies to collaborate and share information
- Bay Area Housing Finance Authority to obtain and analyze data, conduct further policy research
- Other regional agencies in the Bay Area that support similar rulings or are involved in decarbonization.
- Local organizations working at the intersection of decarbonization, housing, and tenant protections, including groups that advocate for tenants rights and legal representation groups.
- Housing organizations working to lower housing development costs.
- Local tenants' unions or rent boards.
- Non-corporate landlords who own naturally occurring affordable housing.
- Organizations that represent property owners and providers, such as those that represent corporate owners (e.g. California Apartment Association or National Association of Realtors).

Table 1: Rental Protection by City

City	Rent Stabilization? Cap?	Building must be built before:	Density (min. number of rental units to qualify)	Banking Allowed?	Pass-Through Cost Allowed?	Just Cause Eviction Protections?	Multifamily building must be built before:	Substantial remodel and or capital improvements grounds for eviction?	Is it possible for upgrades to trigger eviction?
California	Y; lesser of 5% + % change in CPI or 10%	15 years or older	2+	N	Potentially	Y	2009 (15 years or older)	Yes, no-fault, but - requires permit from agency - includes mechanical equip - if it takes more than 30 days and cannot be done safely w tenant	Y
Alameda	Y; 70% of % change in CPI, up to 5%	1995	2+	Y	Y; with petition, 8% cap (inclusive of rent stabilization)	Y	No age limit	- Capital Improvements (approved plan) - must be above \$10,000 and can include HVAC equipment for pass through - right to re-occupy	Y
Antioch	Y; lesser of 60% of % change in CPI or 3%	1995	2+	N	Y; with petition	N	-	no protections beyond state	Y
Berkeley	Y; 65% of % change in CPI, up to 7%	1980 (single family before 1995)	2+ (unless Golden Duplex, in which one has been owner occupied since before 1980)	Y	Y; with petition	Y	No age limit	No-Fault just cause eviction for "substantial" repairs - code compliance - cannot be done with tenant on site / owner move in - right to re-occupy	Y

East Palo Alto	Y; 80% of % change in CPI, up to 10%	1988	2+ (4+ if one is owner occupied)	Y	Potentially	Y	No age limit	Substantial repairs by the landlord, with permits required - must be at least 10x rental cost - must be for code compliance, requires permit - if tenant can't stay safely in unit for upgrades for 30 days - right to reoccupy	Y
Emeryville	N	-	-	-	Potentially	Y	No age limit	No-fault: Capital improvements to unit - requires permit - unit uninhabitable by tenant - right to return	Y
Fairfax	Y; 60% of % change in CPI, up to 5%	1995	2+	N	Y; with petition	Y	No age limit	Substantial repairs (temporary replacement) - code compliance - permit required - not able to be done with tenant living in for 30 days or more - right to re-occupy	Y
Hayward	Y; 5%	1979	2+	Y	Y; with petition, 10% cap (inclusive of rent stabilization)	Y	1979	No-fault: temporary eviction for capital improvements necessary - code compliance - tenant cannot reside during repairs - right to re-occupy	Y
Los Gatos	Y; greater of 70% of % change in CPI or 5%	No age limit	2+	N	Y; must justify if tenants file a dispute	N	-	no protections beyond state	Y
Marin (County)	N	-	-	-	Potentially	Y	No age limit	No fault termination for substantial rehabilitation for health and safety - requires permits - code compliance - unit uninhabitable	Y

Mountain View	Y; 100% of% change in CPI, minimum 2% and maximum 5%	1995	2+	Y	Y; with petition	Y	2017	No-Fault: Necessary and Substantial Repairs requiring temporary vacancy - requires permit - necessary for code compliance - uninhabitable for 30 days or more - right to re-occupy	Y
Oakland	Y; lesser of 60% of % change in CPI or 3%	1983	2+	Y	Y; with petition	Y	1995	No-fault for substantial renovation - requires permit - code compliance - cannot be done while unit is occupied - renter has first right to refuse	Y
Petaluma	N	-	-	-	-	Y	No age limit	No fault for substantial remodel - requires permit - for compliance with federal, state, & local laws - requires vacating for 30 days - tenant's rights for repossession of unit	Y
Richmond	Y; lesser of 60% of % change in CPI or 3%	1995	2+	Y	Y; with petition	Y	1995	No-fault for substantial repairs - code compliance - tenant cannot reside on premises (can re-occupy on completion)	Y
San Rafael	N; 5% can invoke Mandatory Mediation	No age limit	1+ unit	-	Potentially	Y	No age limit	No-fault for substantial rehabilitation for health and safety - code compliance	Y
San Francisco	Y; 60% of % change in CPI, up to 7%	1979 (single family before 1995)	2+	Y	Y; with petition, 5-10% cap depending on # of units	Y	No age limit	No-fault for substantial repairs or temporary removal from market for capital improvements - requires permit - makes unit uninhabitable - tenant can have right to reoccupy	Y

San Jose	Y; 5%	1979	3+ units	N	Y; with petition, 3% of rent	Y	No age limit	No-fault for substantial rehabilitation - requires permit - code compliance - improvements must be 10 x monthly rent of all units - uninhabitable for 30 days - right to reoccupy at same rent, but landlord can petition	Y
Union City	N; 7% can invoke Rent Review	No age limit	2+	-	Potentially	Y	No age limit	No-fault for substantial renovation - requires permit - unit will be uninhabitable - tenant can re-occupy	Y