

Understanding the Diversity of Rent Regulation Laws
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Rent Control Reform Committee
Rolando Lavarro, Council President
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President Lavarro and members of the Committee, I am honored to share with you our research on the diversity of rent regulation ordinances nationwide. My name is Sophie House, and I am a fellow at the Furman Center for Real Estate and Urban Policy at New York University. The Furman Center is a joint research center of NYU’s School of Law and Robert F. Wagner School of Public Service. Founded in 1995, it is one of the nation’s leading academic research centers devoted to the public policy aspects of land use, real estate development, and housing.

I will provide an overview of the Furman Center’s research on rent regulation to aid the committee as it evaluates Jersey City’s rent regulations. Along with Ingrid Gould Ellen and Vicki Been, I am the co-author of an article forthcoming in the *Fordham Urban Law Journal* entitled *Laboratories of Regulation: Understanding the Diversity of Rent Regulation Laws*. Our research catalogs the diversity of rent regulation ordinances, identifying the decisions and tradeoffs involved in designing and implementing these regulations.

Regulating Rents

Annual rent increases

Establishing permissible rent increases is the core task of rent regulation. Jurisdictions can opt to use a pre-determined formula; create a new agency or board; or charge an existing institution to set increases.¹ Using a formula — for example, linking maximum rent increases to an index of inflation² — simplifies the process, but may understate or overstate costs. An agency or board may be able to incorporate more information and nuance, but it may be vulnerable to political or other pressures.

Recent legislation in Oregon and California adopts an “anti-gouging” approach, setting statewide caps on rent increases of 7% and 5%, respectively, without regulating increases below

¹ See, e.g., D.C. CODE § 42-3502.08(h)(2)(A) (1985); N.Y.C. ADMIN. CODE § 26-510 (2006); WEST HOLLYWOOD, CAL., MUN. CODE § 17.36.020 (1997); N.Y.C. RENT GUIDELINES BD., MAIN FEATURES OF RENT STABILIZATION 59 (2010), <https://www1.nyc.gov/assets/rentguidelinesboard/pdf/history/mainfeaturesofrs.pdf>, at 75; *Rent Control*, CITY OF NEWARK, N.J., <https://www.newarknj.gov/departments/rentcontrol>.

² See, e.g., D.C. CODE § 42-3502.08(h)(2)(A) (1985); *Rent Control*, *supra* note 2.

these caps. Anti-gouging statutes aim to allow for flexibility within housing markets and ease administrative burdens while protecting tenants from severe rent increases.

Jurisdictions must also decide the extent to which landlords can raise rents after capital improvements. Rent increases help incentivize property maintenance, but can allow housing to become less affordable or encourage landlords to make non-essential or undesirable investments. Robust monitoring and enforcement should therefore accompany capital improvement allowances.

Hardship increases

Rent regulation systems generally allow a landlord to apply for a hardship variance if the annual increases provided do not allow the landlord to receive a fair income after operating expenses. This avoids potential Fifth Amendment takings claims.³ Some jurisdictions, including Jersey City, require landlords to demonstrate compliance with applicable building codes to be eligible for hardship increases.⁴ While these processes are one way to ensure a balance between landlords' entitlements to fair returns and their obligations to provide habitable dwellings, they can also pose challenges. Specifically, landlords whose buildings are losing money may lack the available cash to make repairs that comply with building codes, rendering them ineligible for the hardship increases they need.

Tracking and Enforcement

Additionally, jurisdictions must decide how to monitor and enforce, either at the state or local level, whatever regulations they adopt. In New York City, owners must register rent-stabilized buildings⁵ and file annual rent registrations.⁶ These reports are not public, though, which may undermine accountability. Oakland, by contrast, does not maintain a registry of rent-regulated buildings.⁷ Without a comprehensive registry of regulated buildings, it is difficult for tenants to know the level of rent they should be paying.

In New York, treble damages are available for many violations, including willful overcharges.⁸ Tenants may also, of their own initiative, apply for rent reductions if landlords fail to provide services.⁹ San Francisco's rent stabilization ordinance grants tenants a private right of

³ U.S. CONST. amend. XIV, § 1 (“[N]or shall any State deprive any person of . . . property, without due process of law.”); *id.* amend. V (“No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.”); *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 149 (1978) (“[T]he inability of the owner to make a reasonable return on his property requires compensation under the Fifth Amendment.”).

⁴ *Id.*

⁵ N.Y.C. ADMIN. CODE § 26-517 (2019).

⁶ *Id.* § 26-517(f).

⁷ See Bigad Shaban et al., *Lack of Oversight May Be Allowing Some Oakland Landlords to Wrongfully Evict Families, Elderly*, NBC BAY AREA (Feb. 16, 2018), <https://www.nbcbayarea.com/investigations/Lack-of-Oversight-May-be-Allowing-Some-Oakland-Landlords-to-Wrongfully-Evict-Families-Elderly-474352123.html>.

⁸ N.Y. COMP. CODES R. & REGS. tit. 9, § 2526.1 (2005).

⁹ N.Y.C. ADMIN. CODE § 26-514 (2019); FACT SHEET #1 RENT STABILIZATION AND RENT CONTROL (2018), <https://hcr.ny.gov/system/files/documents/2019/03/fact-sheet-1-sj-final-12-19-18.pdf> at 2. See generally N.Y. DIV. OF HOUS. & CMTY. RENEWAL, FACT SHEET #14 RENT REDUCTIONS FOR DECREASED SERVICES (2016), <https://hcr.ny.gov/system/files/documents/2018/12/orafac14.pdf>.

action to seek injunctions and treble damages for rent overcharges.¹⁰ The City Attorney and nonprofit tenants' rights organizations can also bring civil actions against landlords for rent overcharges.¹¹

Additional Tenant Protections

Rent regulations are often coupled with other tenant protections. These can help to prevent tenants from harassment to leave their units or arbitrary eviction.¹² However, they can also lead landlords to screen tenants more aggressively to minimize the risk of problematic tenants.¹³

Some jurisdictions, like Oakland, require landlords to pay relocation expenses for tenants under certain circumstances.¹⁴ In San Francisco, the Rent Board and the City Attorney can seek civil penalties and injunctive relief from landlords or refer cases to the District Attorney.¹⁵ New York City tenants can initiate harassment cases in housing court.¹⁶ There is limited capacity, however, for legal service providers to bring these affirmative cases rather than defend against evictions. In general, attorneys' fees, private causes of action, and minimum and/or treble damages can equip and incentivize tenants, non-profits, and private attorneys to fill gaps in enforcement by bringing affirmative litigation to enforce tenant protections.

New York City also designates "anti-harassment zones"¹⁷ in which an owner seeking a permit for construction or renovation must first obtain a "certification of no harassment" to the Department of Housing Preservation and Development.¹⁸ The city then conducts an investigation into any past harassment, including outreach to tenants and community groups.¹⁹ If the investigation reveals allegations of harassment, an administrative body determines whether the agency can refuse to grant a certificate.²⁰

The Furman Center recently convened a diverse group housing policy and administration experts to identify best practices and avenues for reform in tenant protections. Together, these experts distilled the following principles as crucial to successful housing enforcement efforts:

- Charging a single agency with oversight on enforcement
- Distinct and well-delineated roles for all government and non-profit partners

¹⁰ S.F., CAL., ADMIN. CODE § 37.11A(a) (2017).

¹¹ *Id.*

¹² See, e.g., Andrew Scherer, *Gideon's Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings*, 23 HARV. C.R.–C.L. L. REV. 557 (1988).

¹³ Landlords screening due to cost of eviction is discussed in David P. Sims, *Rent Control Rationing and Community Composition: Evidence from Massachusetts*, 11 B.E. J. ECON. ANALYSIS & POL'Y 6, 24 (2011); see also Meredith Greif, *Regulating Landlords: Unintended Consequences for Poor Tenants*, 17 CITY & CMTY. 658, 666–67 (2018).

¹⁴ See, e.g., OAKLAND, CAL., MUN. CODE § 8.22.360 (2018); S.F., CAL., ORDINANCE § 37.9.

¹⁵ S.F., CAL., ORDINANCE § 37.11A (2017).

¹⁶ N.Y.C. ADMIN. CODE § 27-2115(o) (2017)

¹⁷ *Certification of No Harassment*, N.Y.C. DEP'T OF HOUS. PRES. & DEV., <https://www1.nyc.gov/site/hpd/owners/certification-of-no-harassment.page>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See NYU FURMAN CTR., GENTRIFICATION RESPONSE: A SURVEY OF STRATEGIES TO MAINTAIN NEIGHBORHOOD ECONOMIC DIVERSITY 17 (2016), http://furmancenter.org/files/NYUFurmanCenter_GentrificationResponse_26OCT2016.pdf.

- Clear language about tenants' rights and recourse in leases
- Landlord outreach and education

Conclusion

Presently, there is little empirical research into the effects of discrete components of rent regulation on tenant outcomes and housing markets. We encourage the Council to pair any legislative reforms with rigorous evaluation that will demonstrate the effects of various features of rent regulation, allowing future policymakers to develop more effective and efficient policies.

Thank you for your time. I'd be happy to answer any questions.