| DOCKETED | |
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| **Docket Number:** | 24-BPS-01 |
| **Project Title:** | Building Energy Performance Strategy Report |
| **TN #:** | 257451 |
| **Document Title:** | Strategic Actions for a Just Economy Comments - SAJE Response to Building Energy Performance Strategy Report |
| **Description:** | N/A |
| **Filer:** | System |
| **Organization:** | Strategic Actions for a Just Economy |
| **Submitter Role:** | Other Interested Person |
| **Submission Date:** | 6/26/2024 4:30:01 PM |
| **Docketed Date:** | 6/26/2024 |

*Comment Received From: Strategic Actions for a Just Economy*
*Submitted On: 6/26/2024*
*Docket Number: 24-BPS-01*

## SAJE Response to Building Energy Performance Strategy Report

*Additional submitted attachment is included below.*

June 26, 2024

To: California Energy Commission
From: Strategic Actions for a Just Economy
Re: Docket NO. 24-BPS-01
Via Electronic Commenting System

**DOCKET NO. 24-BPS-01 REQUEST FOR INFORMATION (RFI) RE: California Building Energy Performance Strategy Report**

**1. Please provide the following information about you and/or your organization:**

**1.1.** Names & email addresses of public contacts for you and your organization:
- Chelsea Kirk, ckirk@saje.net
- Grace Hut, ghut@saje.net

**1.2.** What are your areas of interest in this report development process?
- Tenant protections to ensure that the Building Energy Performance Strategy developed by the CEC does not result in rent-increases, displacement, increased energy burden and other negative impacts for tenants.

**1.3.** Description of your organization and the constituency you represent.
- SAJE is a community-based organization in South Los Angeles that builds community power and leadership for economic justice. Our constituency is low-income renters, majority of whom are people of color, immigrants and/or monolingual Spanish speakers. We are working to advance a tenant-centered and equitable approach to building decarbonization.

**1.4.** What is the best way to outreach and engage with your constituency?
- See section on engaging low-income tenants and tenant advocates from SAJE's report Decarbonizing California Equitably.

**11. What considerations or protections should the CEC be aware of to ensure minimal impacts to housing affordability and other potential disruptions for multifamily tenants that may result from a statewide building performance standard?**

The California Energy Commission (CEC) must account for and proactively address gaps in residential tenant protections across the state to mitigate unintended negative impacts on multifamily tenants. Specifically, SB 48 requires that the BPS must "Avoid increasing utility and rental cost burdens for, or causing evictions, harassment, or displacement of, tenants of covered buildings." If strong safeguards for tenants are not in place, a statewide building performance standard could lead to the eviction, harassment, rent burden, and displacement of renters, especially low-income renters of color who are disproportionately vulnerable to such outcomes. Please read more on this topic and recommendations in our two reports *Decarbonizing California Equitably: A Guide to Tenant Protections in Building Upgrades* and *Los Angeles Building Decarbonization: Tenant Impact and Recommendations*. Additional relevant legal considerations are described in *Tenant-Friendly Building Decarbonization in Los Angeles: Maximizing the Benefits and Minimizing the Harms*.

These recommendations address residential tenant protections, however it is also crucial that small commercial tenants be protected. The CEC must ensure that small commercial tenant protections are included in the proposed BPS, and that small commercial tenants' interests are reflected in the recommendation-design process.

Residential tenants in California are protected by a patchwork of regulations based on factors such as location, building age, and ownership (See Table 1). In the private rental market, tenants typically fall under one of two renter-protection categories:

1. A local rent stabilization ordinance or
2. California's statewide rent stabilization law: AB 1482, also known as the Tenant Protection Act of 2019.

Tenants who reside in buildings less than 15 years old or single-family homes owned by a non-corporate entity do not have protections under local rent stabilization laws or AB1482.

| **Table 1. Rent Stabilization Policies in California** | |
|---|---|
| Local Rent-Stabilization Ordinances | ● Enacted by local jurisdictions at the city or county level<br>● Differ from jurisdiction to jurisdiction<br>● Aim to protect tenants from excessive rent increases and unjust evictions<br>● Tie rent increases to the Consumer Price Index (CPI)<br>● Apply to a subset of buildings constructed before a certain date and include specific exemptions<br>● Include temporary relocation programs and construction regulations<br>● Can be affected by capital improvement programs |
| The California Tenant Protection Act (AB 1482) | ● Applies to most residential rental properties older than 15 years old<br>● Exempts single-family homes or condos not owned by a corporate entity, a real estate investment trust (REIT), or an LLC owned by a corporate entity or REIT<br>● Rent raises cannot exceed 5% of the current rent plus CPI, up to 10%<br>● Evictions require just-cause reasons for tenants who have resided on the property for at least 12 months<br>● No-fault just-cause evictions include owner move-ins, demolitions, withdrawal from rental market, and substantial remodels<br>● Relocation fees for no-fault just-case evictions total one month's rent |

Considerations Related to Local Rent Stabilization Ordinances: Around 30 jurisdictions in California have enacted local rent stabilization ordinances at the city or county level. The specifics of these ordinances vary based on jurisdiction but generally protect tenants from excessive rent increases and arbitrary evictions by setting annual caps on rent increases and establishing "just-cause" eviction protections. Even in jurisdictions with the strongest protections in California, tenants covered by local rent stabilization ordinances are still vulnerable to decarbonization-related rent increases and displacement due to the following factors:

1. **Cost Recovery Programs:** Many local rent stabilization ordinances include exemptions for rent increases for capital improvements. These exemptions allow landlords to recoup the costs of building upgrades by raising rents beyond the amount usually permitted. Decarbonization can cost as much as $28,000 per rental unit,[1] and if landlords are able to pass this cost onto tenants, this will erode affordability, resulting in larger rent burdens for low-income renters. Worse yet, pass-through costs could leave tenants unable to pay their rent.
    - **Policy Example:** The Los Angeles Primary Renovation Work Program allows landlords to pass 100% of the cost of primary renovation work–which could include work such as upgrading electrical panels or adding insulation–on to tenants. Costs are amortized over time, with the annual allowable rent increase capped at 10% on top of the allowable increases specified in Los Angeles' local rent stabilization ordinance. Los Angeles' local rent stabilization ordinance currently caps rent increases at 8%, meaning tenants could incur a maximum total rent increase of up to 18% in one year. For many, such an extreme rent increase would be tantamount to eviction.
2. **Evictions for Substantial Renovation Work:** Most local rent stabilization ordinances provide just-cause eviction protections to tenants, thereby protecting them from arbitrary eviction. However, some California cities have carve-outs that permit landlords to evict tenants in order to "substantially remodel" their units. Because the retrofits mandated by a statewide building performance standard could qualify as "substantial remodels," a statewide building performance standard could spur a devastating increase in evictions for substantial remodel evictions.
    - **Policy Example:** The City of Santa Ana has a local rent stabilization ordinance that limits rent increases and provides just-cause eviction protections to tenants in covered residential properties. Under this policy, landlords may evict tenants for intent to demolish or substantially remodel property. In such situations, landlords must waive payment of rent for the final three months of the tenancy or provide three months of relocation assistance. Given the state's ever worsening affordability crisis, three months of relocation assistance is likely to fall short of covering moving costs, a new security deposit, first month's rent and any increases in monthly rent costs.

[1] Chelsea Kirk, Los Angeles Building Decarbonization: Tenant Impact and Recommendations," report by Strategic Actions for a Just Economy, December 2021, available at https://www.saje.net/wp-content/uploads/2021/12/LA-Building-Decarb_Tenant-Impact-and-Recommendations_SAJE_December-2021-1.pdf.

Considerations Related to The Tenant Protection Act (AB1482): AB 1482 was enacted in 2020 and applies to most residential rental properties older than 15 years old that are not already protected by local rent stabilization ordinances. It establishes rent caps by limiting annual rent hikes to 5% of the current rent plus CPI, up to a maximum of 10%. The law also requires landlords to provide "just-cause" reasons for evicting tenants who have resided at the property for at least 12 months. Exceptions apply for single-family homes and condominiums that are not owned by corporate entities and for duplexes where the owner occupies one of the units. A statewide building performance standard would render tenants protected by AB1482 vulnerable to displacement due to:

1. **Evictions for Substantial Renovation Work:** AB1482 allows tenants to be evicted for "substantial remodels." Even if a retrofit can be done quickly and easily, an unscrupulous landlord might deceive tenants and city agencies by exaggerating the timeline or scope of work or prolonging the process deliberately in order to trigger an eviction. Tenants who are evicted because of renovation work are entitled to wholly insufficient relocation assistance–payment equal to just one month's rent.
    - **Case Study in San Pablo, CA:** In 2019, new owners purchased a 14-unit complex in San Pablo, CA and subsequently tripled the rent on existing tenants who were protected by AB1482. When tenants resisted the increase, the owners served eviction notices under the pretext of substantial remodels. Owners claimed the work included bathroom and kitchen remodels, replacing unsafe appliances, eliminating mold and termites, and updating wiring and plumbing. However, the key justification for the evictions was that the electrical panel upgrade would necessitate over 30 days without power, which was used as the pretext to force the tenants out. Fortunately the tenants were able to secure lawyers who proved that the work wouldn't take 30 days, and they got to stay. Electrification of our homes may require electrical panel upgrades, and we worry this could trigger this type of eviction.

Other Considerations:

- **Lack of Strong Construction Regulations:** Landlords often use harassment tactics to circumvent rent stabilization policies that prevent them from evicting or increasing rents without reason. "Construction-as-harassment" refers to the practice of conducting illegal, invasive and dangerous construction in an attempt to make living conditions so unbearable and harmful to health that tenants feel pressured to leave. Without safeguards, a statewide building performance standard could exacerbate this problem by motivating landlords to use harassment to displace tenants and recoup the high cost of retrofits through rent increases. Most localities do not have legislation that adequately penalizes harassment or illegal construction.
    - **Example:** In Los Angeles, there is no effective system for penalizing property owners for conducting illegal construction. The only fees that the local housing department issues for illegal construction are reserved for owners who ignore Stop Work Orders and trigger multiple inspections. In such cases, the department will charge inspection fees—$201.50 dollars per visit—which are intended to recover costs of inspections but are too low to disincentivize illegal construction.

Owners may even regard these fees as the cost of doing business given that the time and money saved by performing unpermitted work is greater than the cost of the fees.

- **Poor Enforcement of Tenant Protections:** Rent stabilization laws often lack enforcement mechanisms, making it difficult to hold landlords accountable. The lack of proactive and reactive enforcement allows some landlords to exploit loopholes and disregard rent stabilization provisions, resulting in illegal rent increases, tenant harassment, and evictions. Rent stabilization ordinances are primarily enforced through civil court, either during eviction proceedings or when a tenant files suit against a landlord for violating the ordinance. This reliance on the judicial system as the mechanism of enforcement poses challenges, as it places the burden on tenants to assert their rights. Many renters, especially those who are low-income or do not speak English, have trouble navigating a lengthy, complex, and expensive legal process. The California Department of Housing and Community Development (HCD) and local housing agencies can play a role in upholding these ordinances by instituting complaint systems, levying fines on noncompliant landlords, or engaging city attorneys to prosecute repeat offenders.
- **Under-Resourced Housing Departments:** Departments responsible for overseeing rent stabilization ordinances are often understaffed and underfunded, with little capacity to investigate complaints, enforce regulations, or provide adequate support to tenants facing issues with their landlords.
- **Lack of Tenant Knowledge and Education:** Tenants are often not aware of these laws and what their rights are, and localities do not have robust public education programs for tenants. As a result, tenants may self-evict when faced with illegal rent increases or tenant harassment.

Legislative Recommendations:

*Below are recommendations that should be adopted and implemented prior to SB48 implementation to ensure adequate tenant safeguards.*

1. **Amend the Tenant Protection Act (AB1482) to Close Substantial Remodel Loophole at Statewide Level**

SB 48 requires that the BPS avoid “causing evictions…[of] tenants of covered buildings,” and that the CEC specifically consider ways to prohibit renovations required by the BPS “from being a basis for terminating a tenancy.” AB 1482’s substantial remodel loophole allows landlords to evict tenants by claiming substantial remodels. A statewide BPS will increase the number of retrofits that qualify for this exception, likely leading to an increase in evictions, unless the loophole is closed. Closing the loophole for purposes of the BPS alone will be both difficult and uncertain, since the CEC or some other agency would need to determine which retrofits were done for purposes of BPS compliance and which were done for some other reason. Closing this loophole also prevents landlords from using decarbonization upgrades as a pretext for evictions, thereby protecting tenants from displacement during building retrofits. Therefore, we recommend eliminating substantial remodels entirely as a cause for eviction actions.

Where retrofits would make a building unsafe for tenants, building owners should be required to provide for the temporary relocation of tenants instead of eviction. Specifically, SB 48 requires CEC to identify a means "to ensure that any temporary relocation costs resulting from [a BPS-caused] renovation is paid for by the covered building owner." Ideally, the CEC's legislative recommendations would ensure that specific plans to protect tenants are in place before any such renovation begins, and that such plans would include relocation assistance where necessary. An example of such a program is the City of Los Angeles's Tenant Habitability Plan requirement. If CEC determines that this requirement would be impracticable as a statewide policy, it should consider recommending a requirement that building owners pay tenants a per-diem adequate to cover all costs of relocation. An example of a per-diem payment requirement is the County of Los Angeles's relocation assistance requirements for temporary relocation. This per-diem policy should be implemented whenever tenants are required to temporarily relocate, and should include a clear delineation between renovations that require relocation and those that do not.

2. **Amend the Tenant Protection Act (AB1482) to cap rents at maximum 5% and extend to all buildings**

SB 48 requires that the BPS "[a]void increasing utility and rental cost burdens" for tenants in covered buildings. As part of this, the CEC must consider a prohibition on rent increases resulting from renovations to meet the BPS, or a prohibition on such rent increases in excess of the resultant reduction in the tenant's utility burden. Identifying which rent increases are the result of the BPS, and determining with certainty the specific amount of tenants' utility savings, will be difficult. CEC would need to require covered building owners to submit detailed justifications of rent increases (or create a statewide rent registry, see recommendation 4 below), and potentially estimates of energy savings, for the CEC to review for impermissible BPS-linked rent increases.

However, the administrative burden on CEC would be substantially less if permissible rent increases were simply reduced across the board. Capping rent increases at a flat 5% ensures affordability and economic stability for tenants, preventing landlords from passing decarbonization costs onto tenants while still allowing them adequate return on investment. This measure supports equitable housing and protects low-income households from displacement during the state's transition to energy-efficient buildings. Additionally, we recommend expanding the coverage of AB 1482 to include buildings constructed in the last 15 years, ensuring newer tenants also benefit from rent stabilization. This measure will enhance tenant protections and prevent sudden rent increases in recently built properties, promoting housing affordability and stability across all rental units.

3. **Amend Tenant Protection Act (AB1482) to establish proactive and robust enforcement**

Enforcement of AB1482 is currently inadequate to protect tenants, and therefore to meet the mandates of SB 48. Both local and state government agencies can enforce AB1482 by bringing actions for injunctive relief and seeking damages for violations of rent cap provisions, but they

rarely do so. So, the burden is mostly on tenants to secure lawyers and defend against eviction by arguing non-compliance with AB1482 or sue for damages for non-compliance. More robust and proactive enforcement is needed.

**Enforcement by HCD**: The California Department of Housing and Community Development (HCD) could establish a tenant-facing division dedicated to enforcing AB 1482. This division would handle complaints, conduct investigations, and enforce compliance statewide, ensuring consistency and standardized enforcement practices. While HCD is based in Sacramento, it could expand its reach by establishing regional offices or partnering with local agencies to effectively manage tenant issues and uphold rent control laws across the state. HCD could establish regional offices to provide enforcement services in areas without local housing departments. These regional offices would function similarly to how the Los Angeles County Department of Public Health (DPH) conducts inspections in cities without their own health departments across the County. In regions where local housing departments exist, these entities should continue to handle enforcement. However, for cities lacking these resources, HCD's regional offices would ensure consistent and equitable enforcement of tenant protections and rent stabilization provisions. Alternatively, a dedicated regional agency (existing or to be established) could provide these services, ensuring no city is left without proper enforcement mechanisms. We are finalizing our full recommendations and comments and will submit them shortly.

**Local Enforcement**: Localities could be required to enforce AB 1482 by adopting a model similar to the City of Los Angeles' Housing Department. Local housing officials would be responsible for intervening in cases of illegal rent increases, reduction of services, and tenant harassment, ensuring that violations are addressed swiftly and effectively. This approach leverages local infrastructure and knowledge, allowing for responsive and context-sensitive enforcement tailored to the specific needs of each community.

4. **Adopt a statewide rent-registry**

Building on the framework of AB 2406 (2020), establish a statewide rent registry managed by the California Department of Housing and Community Development (HCD) to track rental rates and lease agreements. This registry would be a first step to enhancing enforcement of AB 1482 by providing HCD with comprehensive data, enabling proactive identification and resolution of rent control violations.

5. **Prevent local rent-stabilization ordinances from allowing cost pass-throughs for the cost of BPS retrofits.**

Under AB1482, local rent-stabilization ordinances prevail over the statewide rent caps when they are more protective of tenants. However, many local ordinances currently allow for cost recovery programs that enable 100% of the costs for major capital improvements or substantial renovation work to be passed down to tenants through amortized rent increases beyond allowable caps. If the cost of renovations to comply with the BPS were passed through to

tenants, this would be a clear violation of the requirement that the BPS "[a]void increasing…rental cost burdens for…tenants of covered buildings."

Therefore,to protect low-income tenants, we recommend implementing a ban on passing through the costs of energy-efficiency or decarbonization retrofits to tenants. This can be achieved by requiring local rent stabilization ordinances to explicitly prohibit any rent increases above the capped amount for the purpose of cost recovery related to energy efficiency upgrades or decarbonization measures. Ensuring that the financial burden of these necessary environmental improvements does not fall on tenants will promote equitable and sustainable housing.

6. **Repeal the Ellis Act**

Enacted in 1985, the Ellis Act grants landlords in California the authority to remove residential units from the rental market by invoking owner move-in, redevelopment, or condominium conversion. Since 2001, this law has resulted in the eviction of over 28,000 rent-stabilized households. The costs required to retrofit older buildings for energy efficiency may prompt owners to take their properties off the rental market altogether or redevelop them as hotels or condominiums by invoking the Ellis Act. Property owners may also use retrofits as a pretense to invoke the Ellis Act illegally, falsely promising to take rental units off the market when renovations are complete.

7. **Repeal the Costa Hawkins Act**

The Costa-Hawkins Rental Housing Act of 1995 is a statewide law that prohibits vacancy control throughout the state, thereby allowing a landlord to reset the rent to market rate once a tenant has vacated their rent-controlled unit. The Act also exempts single-family homes and condominiums as well as residential buildings constructed after 1995 from local rent control laws. Costa-Hawkins has had the impact of weakening local rent stabilization by limiting it to a subset of the housing stock and incentivizing landlords to displace tenants, sometimes by using illegal tactics, in order to raise rents. Repealing the act would allow more households to reap the benefits of local rent control laws and disincentivize displacement of long-standing tenants.

Thank you for your consideration of our recommendations. We look forward to working with the California Energy Commission on development of a Building Energy Performance Strategy.

Sincerely,

Chelsea Kirk
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