



**Ball Janik LLP's  
2017 Real Estate and  
Land Use Seminar**

**April 13, 2017**

**Multnomah Athletic Club  
Portland, Oregon**

# Welcome

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Damien R. Hall  
Ball Janik LLP

# Portland Changed (Almost) All of Its Zoning – Know How You are Impacted

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Damien R. Hall  
Ball Janik LLP

# Portland Changed (Almost) All of Its Zoning – Know How You are Impacted

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- ▶ Periodic Review
- ▶ Implementation
- ▶ New Zoning

# Mixed Use Zones Project

## ► Replaced commercial zones

Mixed Use Zones Project - Conversion-Based Zoning Map

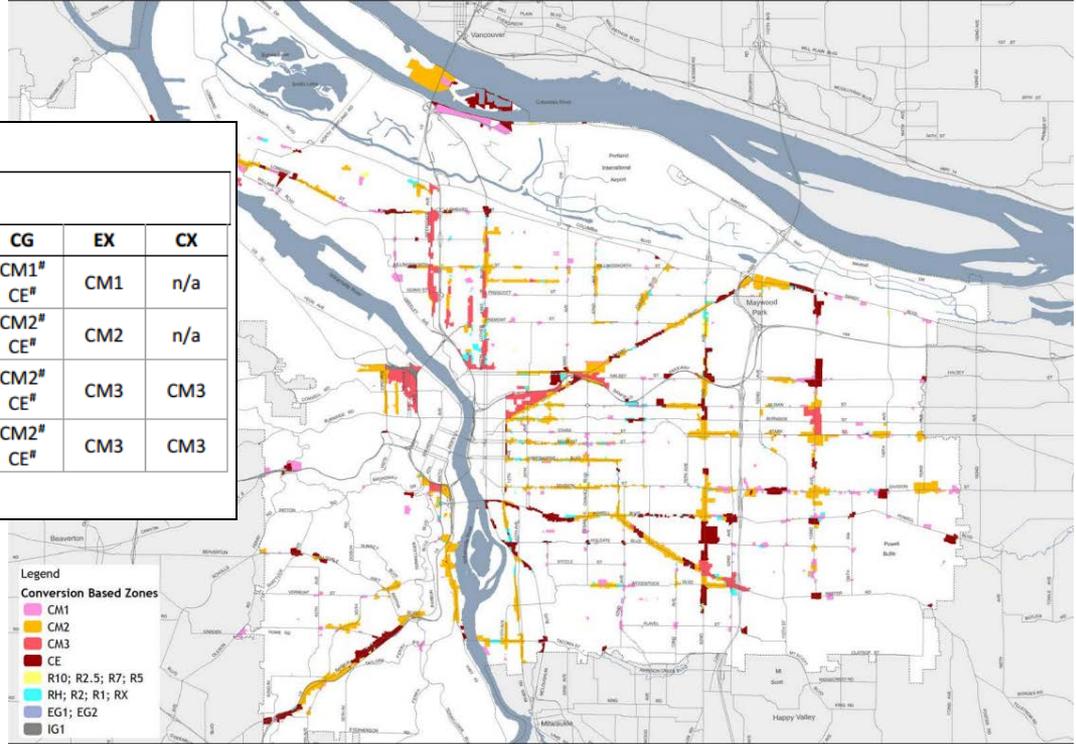


Table VI-1: Zone Conversion Table

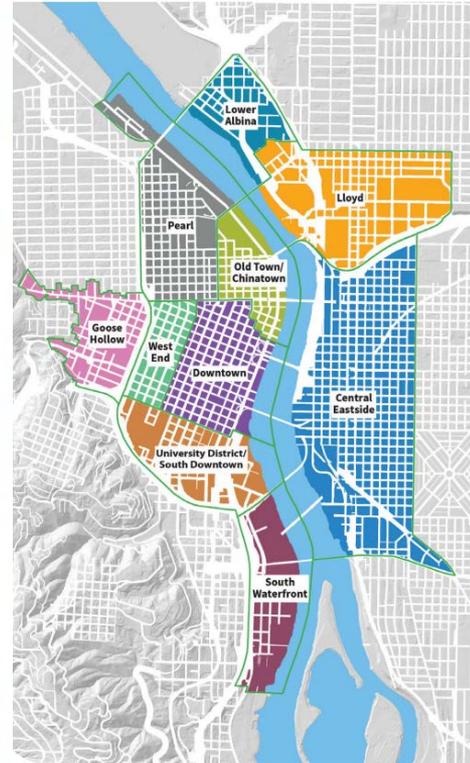
Comp Plan Designation	Current Zone						
	CN1/2	CO1/2	CM	CS	CG	EX	CX
Mixed Use Dispersed	CM1	CM1	CM1	CM1	CM1 <sup>#</sup> CE <sup>#</sup>	CM1	n/a
Mixed Use Neighborhood	CM1	CM1 <sup>+</sup> CM2 <sup>+</sup>	CM2	CM2	CM2 <sup>#</sup> CE <sup>#</sup>	CM2	n/a
Mixed Use Civic Corridor	CM1	CM1 <sup>+</sup> CM2 <sup>+</sup>	CM2	CM2	CM2 <sup>#</sup> CE <sup>#</sup>	CM3	CM3
Mixed Use Urban Center	CM1	CM1 <sup>+</sup> CM2 <sup>+</sup>	CM2	CM2	CM2 <sup>#</sup> CE <sup>#</sup>	CM3	CM3

+ CM1 recommended for CO1 zones; CM2 recommended for CO2 zones  
# CM zones recommended for Centers; CE zones recommended for Corridors.

Legend  
Conversion Based Zones

- CM1
- CM2
- CM3
- CE
- R10; R2.5; R7; R5
- RH; R2; R1; RX
- EG1; EG2
- IG1

# Central City 2035



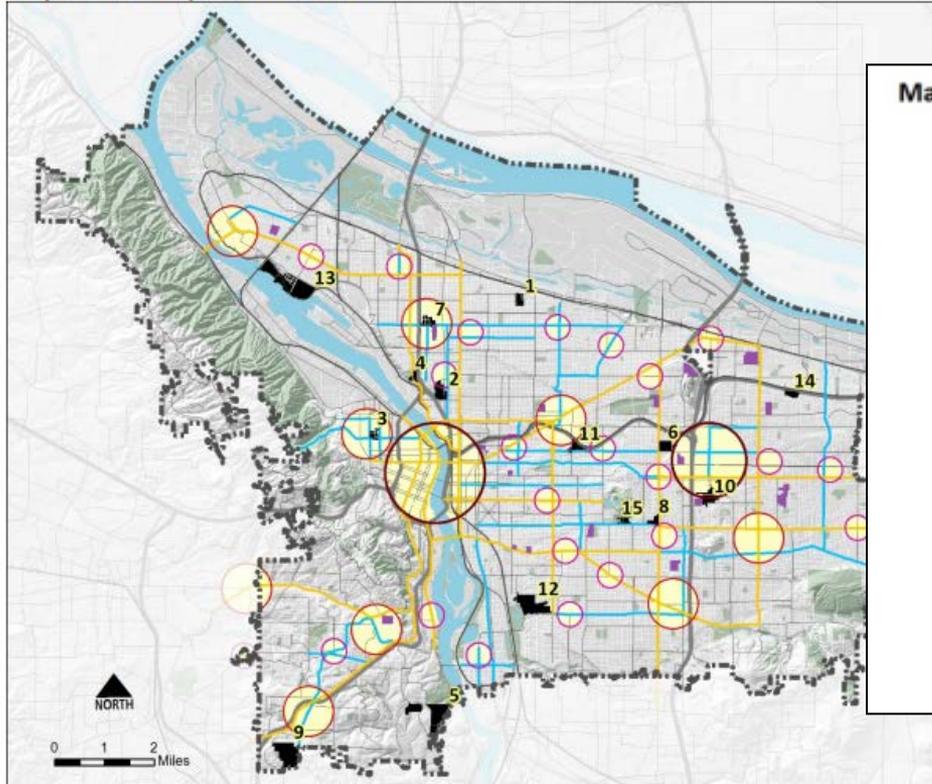
# Employment Zoning Project

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- ▶ Industrial Office
- ▶ No residential in EG
- ▶ Prime Industrial Designation

# Campus Institutional Zoning Project

## Dispersed Campus Institutions



Map Number	Institution
1	Concordia University
2	Legacy Emanuel Hospital & Health Center
3	Legacy Good Samaritan Hospital & Health Center
4	Kaiser Medical Centers
5	Lewis and Clark College
6	Multnomah University
7	Portland Community College--Cascade
8	Portland Community College--Southeast Center
9	Portland Community College--Sylvania
10	Adventist Medical Center
11	Providence Portland Medical Center
12	Reed College
13	University of Portland
14	University of Western States
15	Warner Pacific University

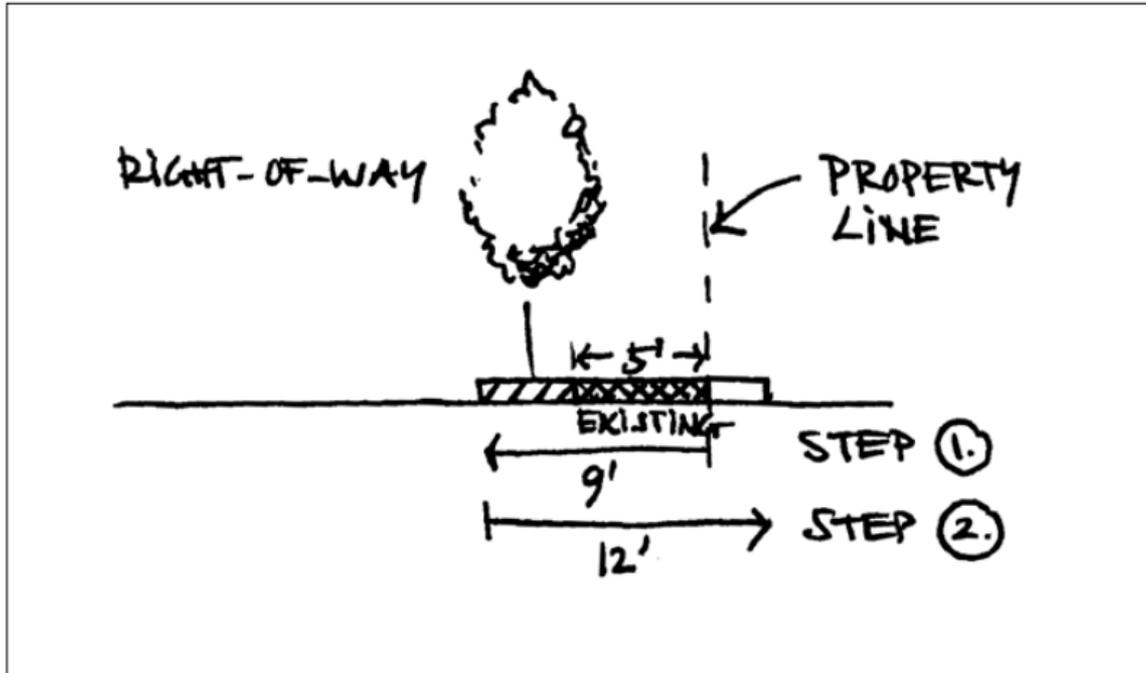
# Residential Infill Project

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- ▶ Housing Choice and Affordability
- ▶ Neighborhood Infill Size Limits
- ▶ Residential Demolition

# Regulatory Improvement Code Package 8

- ▶ Floor Area Ratio now includes dedication area.



Two step approach to achieve a standard 12-foot wide sidewalk corridor.

Source: Portland Bureau of Transportation

## Inclusionary Zoning

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- ▶ Multi-family developers are now in the affordable housing business.
- ▶ 20% of the units in buildings of more than 20 units must be affordable.
- ▶ Public subsidy but no public equity.

# (Almost) all property in the City is impacted...

## Adopted

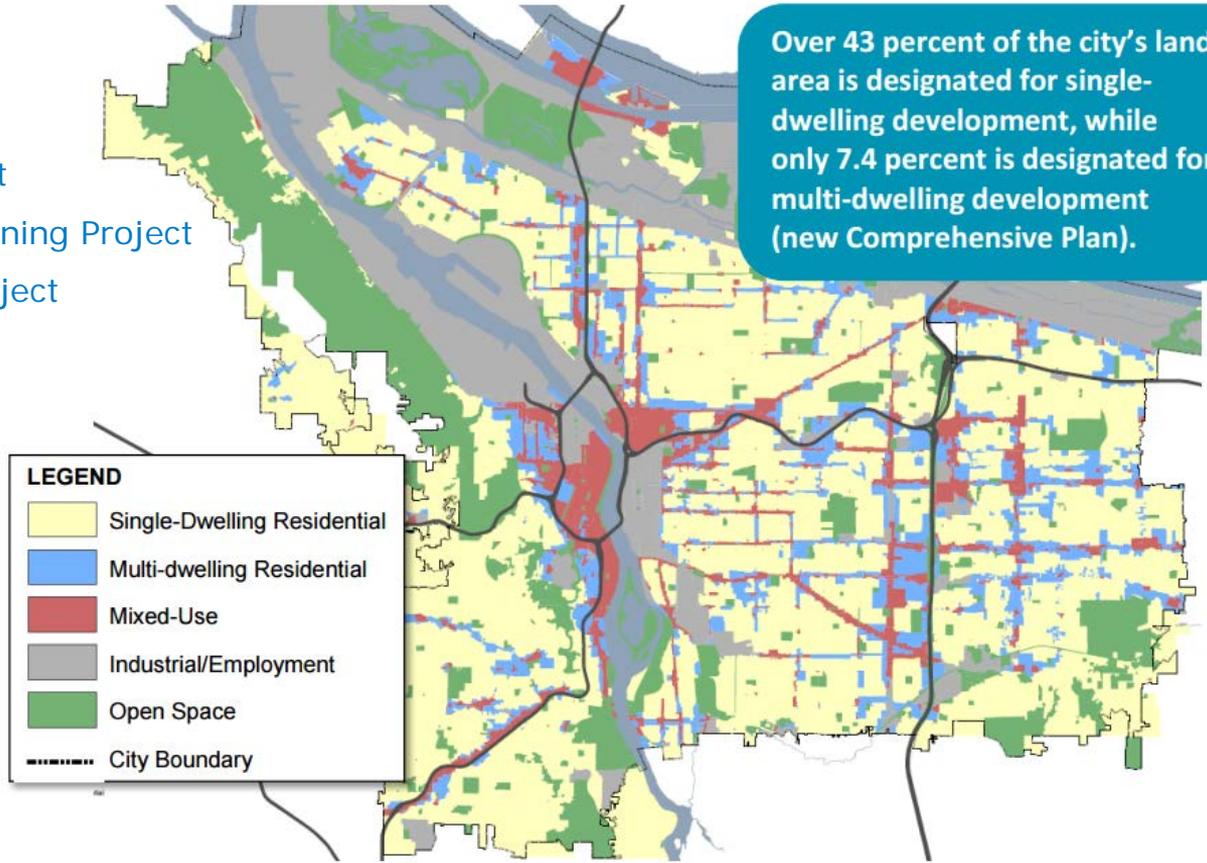
- ▶ Mixed Use Zones Project
- ▶ Campus Institutional Zoning Project
- ▶ Employment Zoning Project

## Ongoing

- ▶ Central City 2035
- ▶ Residential Infill Project

## Last Chance

- ▶ Plan Map Refinement
- ▶ Code Reconciliation



# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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Angela M. Otto  
Ball Janik LLP

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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*“In a more balanced market there’s not the feeding frenzy.” ~ Michael Conway*

- ◆ Even though the construction market might be in a frenzy, you can strive for balance by selecting a solid team.
- ◆ Whether balance is achieved often rests with how the team communicates and distributes risk.

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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*"Do unto others as you would have them do unto you."* ~ Golden Rule (Luke 6:31)

- ◆ Translation: I want a team of partners with the shared goal of a successful project.

–OR–

*"Do as I say, not as I do."* ~ John Selden, Table-Talk (1654)

- ◆ Translation: Regardless of what I say or provide, you bear all of the responsibility to deliver a project that meets my goals.

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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*"It's hard to fight when the fight ain't fair."*

~ Taylor Swift

- ◆ Although tempting to shift all risk downstream, one-sided contracts can generate as many claims as they attempt to prevent.
- ◆ Disputes are more likely to be avoided through open and frequent communication, a team-approach, and the fair allocation of project risk.

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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*“Opportunity and risk come in pairs.”*

~ Bangambiki Habyarimana – The Great Pearl of Wisdom (2015)

- ◆ Each new project presents its own unique challenges, but almost all construction claims originate from:
  - Unforeseen/Changed Conditions
  - Changes to the Work
  - Late/Incomplete Design
  - Late Delivery of Permits, Site Access, or Materials
  - Delays/Interferences in the Work
  - Force Majeure Events

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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*“Risk comes from not knowing what you’re doing.”*

~ Warren Buffett

- ◆ Before entering into a contract, ask yourself:
  - Can I identify the risks that I am being asked to assume?
  - Do I have direct control over the process creating the risk?
  - Can I protect against the risk?
  - Can I transfer the risk?
  - Should I transfer the risk?

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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*"Don't find fault, find a remedy."* ~ Henry Ford

- ◆ Common provisions that attempt to allocate risk:
  - Responsibility for pre-construction site conditions
  - Indemnification
  - Insurance/Additional Insured
  - Liquidated Damages/Waiver of Consequential Damages
  - Notice and No Damages for Delay
  - Responsibility for site safety
  - Pay-when/if Paid
  - Limitation of Liability

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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- ▶ Example of a provision shifting responsibility for site conditions to contractor:

“Contractor is responsible for all conditions that exist at the Site. Contractor has represented in its Bid that Contractor has visited the Site and made a reasonable and thorough investigation of the Site. Contractor has undertaken all studies, inspections, or other actions the Contractor deems necessary to discover any differing subsurface or physical conditions..., any Underground Facilities..., and any Hazardous Environmental Conditions...”

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

▶ Example of an indemnity provision:

"... Contractor will defend, indemnify and hold harmless Owner...from and against all claims, demands, causes of action, damages, expenses, costs, losses or liabilities ...including attorneys' fees, consultants' fees, court costs and similar costs...caused by, arising out of, resulting from or occurring in connection with (i) the Work, (ii) performance or intended performance of the Work, (iii) performance or breach of this Contract by or on behalf of Contractor, or (iv) the alleged or actual acts or omissions, whether active or passive, of Contractor...regardless of whether or not such Claim is caused in part by an Indemnatee...."

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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▶ Example of an indemnity provision:

“Contractor specifically and expressly agrees to waive any immunity that may be granted under worker’s compensation laws and industrial insurance, to the extent necessary, to give rise to this defense, indemnity and hold harmless obligation. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, benefits payable to or by any third party under Worker’s Compensation Acts, Disability Benefit Acts, or other employee benefits acts.”

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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▶ Example of an additional insured provision:

“Such additional insurance coverage will apply independently of, and not coextensively with, Contractor’s indemnity obligations... The additional insurance required by this Section on behalf of the Additional Insured will apply to bodily injury and/or property damage claims arising from Contractor’s operations regardless of the fault, negligence or proximate cause (or alleged fault, negligence or proximate cause) of any Additional Insured and regardless of whether Contractor is named or not named in the claim, lawsuit or complaint. The additional insurance required by this Section shall be primary and any insurance maintained by the Additional Insureds shall be excess and non-contributory.”

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

▶ Example of a liquidated damages provision:

“Contractor acknowledges that the Owner will suffer damages if the Contractor fails to timely achieve the substantial completion of the entire Work by the Substantial Completion Date. Further, Contractor acknowledges that the Owner’s damages in the event of such delay will be difficult, if not impossible, to definitely ascertain and quantify at the time of contracting. Therefore, Contractor agrees that if Contractor fails to substantially complete the entire Work on or before the Substantial Completion Date...Contractor shall pay to the Owner as liquidated damages and not as a penalty an amount equal to: (i) \$6,750 per each calendar day beginning on the first calendar day after the Substantial Completion Date ...provided, however, the maximum total amount of liquidated damages that Contractor shall be liable for shall not exceed the total amount of \$1,000,000 ....”

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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- ▶ Example of an expanded consequential damages provision:

“Consequential damages include but are not limited to loss of profits, loss of business opportunities, extended home office overhead, loss of bonding capacity, loss of financing, loss of productivity, labor inefficiencies, and downtime for laborers or equipment.”

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

## ▶ Example of claim notice provision:

“If the Contractor is delayed or disrupted at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect...or by changes ordered in the Work...or by labor disputes..., fire, unusual and unavoidable delay in deliveries..., unavoidable casualties, unusually adverse weather conditions, or other unforeseen causes beyond the Contractor’s control... (collectively referred to as an “Excusable Delay”), then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine provided the Contractor provides to the Owner written notice within three (3) days of the beginning of the event causing the claimed Excusable Delay. The Contractor’s failure to provide timely notice shall be a waiver of any right by the Contractor to an extension of time and an adjustment in the Contract Sum ....”

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

- ▶ Example of an atypical notice provision:

“Subcontractor shall not be liable for a delay in the performance of...its obligations under the Subcontract due to events of force majeure, but only to the extent and upon the conditions that : (I) Subcontractor’s written notice to Contractor of the event for which it seeks relief (a) conspicuously indicates in the notice’s subject heading, “CLAIM FOR FORCE MAJEURE RELIEF”...and (c) is provided...no later than two (2) business days prior to the date Contractor is required to submit such notice to Owner under the Owner Contractor....”

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

- ▶ Example of a “hidden” notice provision:

“... Contractor acknowledges and agrees that any request for an adjustment will be totally inclusive of all additional costs and time extensions related to the Change, whether resulting from delays, inefficiencies, interferences or any other impact to Contractor’s performance of the Work. Contractor’s failure to request a cost or time adjustment in connection with a Change shall constitute a representation by Contractor that no such adjustment is required and shall constitute a waiver by Contractor of its right to any such adjustment.”

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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- ▶ Example of a no damages for delay provision:

“...the full and complete compensation to, and sole and exclusive remedy of, Contractor in the event of any delay, interference or other adverse impact to the Work shall be an extension of time for performance of the Work. Contractor acknowledges that in agreeing to the Contract Amount it has assessed the potential impact of the limitations in this Section on its ability to recover additional compensation in connection with a Work delay or interference and agrees that these limitations will apply regardless of the accuracy of the Contractor’s assessment or actual costs incurred ...”

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

- ▶ Example of a pay-if paid provision:

"... Subcontractor acknowledges and agrees that Owner's payment to Contractor under the Owner Contract of amounts due Subcontractor under the Subcontract is a condition precedent to Contractor's obligation to pay such amounts to Subcontractor. Subcontractor further acknowledges that it is relying on the credit and ability of the Owner to pay for Work performed and not Contractor and accepts the risk that it will not be paid by Contractor for Work performed in the event Contractor is not paid by Owner for such Work."

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

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- ▶ Example of a provision re: responsibility for site safety:

“The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract and shall be in full compliance with all federal, state, and local safety and health related statutes, rules, and regulations.”

# How to Fairly and Equitably Distribute Risk in this Frenzied Construction Market

## ▶ Example of a limitation of liability provision:

“In recognition of the fees charged by the Architect, the relative risks and benefits of the project to the Owner and the Architect, the Owner agrees, to the fullest extent of the law, that the Architect’s liability to the Owner...contractors, or subcontractors for all injuries, claims, losses, expenses or damages whatsoever arising out of, or in any way relating to the project or this Agreement, from any causes, including, but not limited to, the negligence, negligent acts, errors and omissions, or breach of contract by the Architect...shall be limited to the available remaining proceeds of the insurance, but not more than \$1,000,000 under any circumstances. Available remaining proceeds are proceeds after deduction of all attorney fees and costs associated with Owner’s claim(s) against Architect and after the deductions of all other claims, claim costs and attorney fees associated with all other claims.”

# Buying and Selling a New Building: The Untested Asset

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Christopher M. Walters  
Ball Janik LLP

# Buying and Selling a New Building: The Untested Asset

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## Construction Due Diligence

- ▶ Consultants: ADA, noise, code compliance (structural, mechanical, electrical)
- ▶ Independent punchlist review
- ▶ Closing—certificate of occupancy versus post-punchlist final completion
- ▶ Liens

# Buying and Selling a New Building: The Untested Asset

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## Public Agency Due Diligence

- ▶ Land use approvals
- ▶ Fulfillment of conditions of approval
- ▶ Affordable units, partial tax exemption certification

# Buying and Selling a New Building: The Untested Asset

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## Assignments

- ▶ Of Construction Contract
- ▶ Of Architect Agreement and Plans
- ▶ Of Warranties

# Buying and Selling a New Building: The Untested Asset

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## Long Term Planning

- ▶ Wet cycles warranty
- ▶ Current tenant uses/rent control
- ▶ Future resale concerns/condominium conversion

# Buying and Selling a New Building: The Untested Asset

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## Closing Issues

- ▶ Estoppels from Contractor and Architect
- ▶ Title Insurance
- ▶ Holdbacks

# “Bad Boy Bad Boy: Whatcha gonna do when they come for you? – The Good, the Bad and the Ugly of Nonrecourse Carve-Out (Bad Boy) Guarantees

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David W. Criswell  
Ball Janik LLP

# “Bad Boy Bad Boy: Whatcha gonna do when they come for you? – The Good, the Bad and the Ugly of Nonrecourse Carve-Out (Bad Boy) Guarantees

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## Springing and Non-Recourse Carve-Out (“Bad Boy”) Guarantees

### A. Non-Recourse Loan

A “non-recourse” loan is one where the borrower (and the sponsor of the borrower) is not personally liable for the debt upon default. In other words, the secured creditor’s remedies are limited to the property granted as security for the loan.

# “Bad Boy Bad Boy: Whatcha gonna do when they come for you? – The Good, the Bad and the Ugly of Nonrecourse Carve-Out (Bad Boy) Guarantees

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## B. Springing and Non-Recourse Carve-Out Guarantees

### 1. Springing Provisions

Under this type of guaranty (or sub-part of a guaranty), certain acts will cause the borrower or guarantor to be fully liable for the entire amount of the loan. Such full recourse becomes effective or “springs” into existence only upon the happening of certain specified events.

# “Bad Boy Bad Boy: Whatcha gonna do when they come for you? – The Good, the Bad and the Ugly of Nonrecourse Carve-Out (Bad Boy) Guarantees

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## Typical Trigger events:

- The filing of a bankruptcy petition by or against the borrower or pledgor
- The violation of single asset/bankruptcy remote covenants in the loan documents by a borrower or pledgor
- Efforts to hinder, delay or contest (whether by seeking injunctive relief, the filing of a redemption notice or otherwise) by a borrower, pledgor or guarantor of enforcement by the lender
- Prohibited transfer of the collateral or an interest in the borrower
- Placement of additional liens on the collateral in violation of loan covenants

# “Bad Boy Bad Boy: Whatcha gonna do when they come for you? – The Good, the Bad and the Ugly of Nonrecourse Carve-Out (Bad Boy) Guarantees

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## 2. Non-Recourse Carve-Out Provisions

The type of guaranty (or sub-part of a guaranty) provides that upon the occurrence of certain acts which cause the lender to suffer costs, losses, and expenses, the lender may recover the actual amount of such costs, losses or expenses.

# “Bad Boy Bad Boy: Whatcha gonna do when they come for you? – The Good, the Bad and the Ugly of Nonrecourse Carve-Out (Bad Boy) Guarantees

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## Typical Trigger events:

- Fraud
- Misappropriation of rents, security deposits or other collateral
- Misappropriation of insurance proceeds of condemnation proceeds
- Misappropriation of condemnation proceeds
- Physical waste (though some lenders are now trying to include omissions that hurt collateral such as failure to pay taxes or insurance)

# “Bad Boy Bad Boy: Whatcha gonna do when they come for you? – The Good, the Bad and the Ugly of Nonrecourse Carve-Out (Bad Boy) Guarantees

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## 3. Pay Attention to Full vs. Limited Recourse

Borrowers and guarantors must carefully consider those events which trigger full recourse versus those that trigger recourse limited the actual amount of lender losses/damages.

# “Bad Boy Bad Boy: Whatcha gonna do when they come for you? – The Good, the Bad and the Ugly of Nonrecourse Carve-Out (Bad Boy) Guarantees

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## 4. Recent Cases Involving Springing or Nonrecourse Carve-out Guarantees

*Wells Fargo v. Cherryland Mall* (Michigan 2012). The guarantor executed a guaranty under which liability for the full amount of the loan was triggered if certain “SPE” (special purpose entity) covenants were violated. One SPE covenant was an agreement by the borrower to at all times remain solvent. The market sank, the borrower became insolvent and the lender sought recovery on the guaranty. The Court held that the lender could hold the guarantor liable for the full amount of the loan.

## “Bad Boy Bad Boy: Whatcha gonna do when they come for you? – The Good, the Bad and the Ugly of Nonrecourse Carve-Out (Bad Boy) Guarantees

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*Westheimer Mall LLC v. Okun* (SDNY 2008). The lender made a loan secured by a mall in Houston. The guaranty provided that the guarantor would become liable for the loan in the event of a voluntary bankruptcy by the borrower. The borrower filed bankruptcy and the lender sued guarantor. The court held for lender and that guarantor was liable for the full amount of the loan.

## “Bad Boy Bad Boy: Whatcha gonna do when they come for you? – The Good, the Bad and the Ugly of Nonrecourse Carve-Out (Bad Boy) Guarantees

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*ING v. Park Avenue Hotel* (NY 2010). The guaranty provided for certain “partial recourse events” and certain “full recourse events.” The lender sued the guarantors for \$90 million for failure to pay approximately \$275,000.00 in real estate taxes which became a lien on the property. The court found that the guaranty had some ambiguity as to what triggered full liability on the loan and ruled against the lender and in favor of the guarantors.

## “Bad Boy Bad Boy: Whatcha gonna do when they come for you? – The Good, the Bad and the Ugly of Nonrecourse Carve-Out (Bad Boy) Guarantees

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*Princeton Park Corporate Center v. SB Rental* (NJ 2009). The guaranty provided for full recourse liability if borrower failed to obtain lender’s consent before placing subordinate liens on the property. The lender sought entry of a deficiency judgment following foreclosure. The borrower had borrowed \$400,000 from another lender and granted a junior lien to secure that debt. The junior debt was repaid prior to the borrower’s default on the loan to the senior lender. The Court held the guarantors fully liable based on the plain language of the guaranty.

# Multi-Family: Where Do We Go from Here?



Tom Cody  
project ^



Stephen T. Janik  
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Tom Petersen  
Melvin Mark Capital



Sam Rodriguez  
Mill Creek Residential



Eric Cress  
Urban Development +  
Partners



Noel Johnson  
Cairn Pacific

## Thank You for Coming

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- ▶ Certificates of Attendance for Oregon Real Estate Agency CE will be emailed to you after the seminar.
- ▶ Be sure you signed in at the registration table for educational credit.
- ▶ Oregon MCLE credit is pending; attorneys, be sure to sign MCLE Sheet at registration table.



## Presented by

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**Disclaimer: This presentation is intended for information purposes only and is not intended to convey legal advice.**

## **Portland Changed (almost) All of its Zoning: Know How You Are Impacted**

State law requires the City of Portland to update its Comprehensive Plan through a process called Periodic Review. The City has been working through its State approved Periodic Review Work Plan since 2011 and is now at the final task, implementation. Implementation involves the new inventories and studies that the City has performed and compiled under the Work Plan being synthesized into the actual Comprehensive Plan and Zoning code languages and maps.

Following is a list of all the separate planning efforts that comprise the Implementation Task that the City is currently undertaking. Each is discussed in detail after the initial list.

- 1) 2035 Comprehensive Plan
- 2) 2035 Comprehensive Plan Map Refinement
- 3) 2035 Comprehensive Plan Code Reconciliation Project
- 4) Comprehensive Plan Early Implementation Package
  - a. Mixed Use Zones Project
  - b. Campus Institutional Zoning Project
  - c. Employment Zoning Project
  - d. Residential Open Space Zoning Map Update
- 5) Central City 2035
- 6) Residential Infill Project
- 7) Regulatory Improvement Plan 8
- 8) Inclusionary Housing

1) 2035 Comprehensive Plan

The City is undertaking the task of overhauling its Comprehensive Plan. The Comprehensive Plan was initially adopted in 1980 and has been incrementally amended and updated over time. In many ways, Portland is a different city than in 1980, as pointed out on the BDS website:

“That year, Mt St Helens erupted, Jimmy Carter was president, the first MAX line was still in the design phase, and the city’s population was 366,000. Now, some 220,000 people later — and with another 200,000 on the way —”

The City needs a new plan. Comprehensive Plan 2035 represents a major overhaul with the intended purpose of establishing the City’s land use goals and objectives for the next 20 years.

The 2035 Comprehensive Plan was adopted by the City Council in June of 2016, and is scheduled to become effective in January of 2018. The Comprehensive Plan contains the high-level land use policy goals and objectives of the City. Generally, these goals and objectives are implemented and applied to individual properties through the zoning code, found at Title 33 of the Portland Municipal Code. In order to implement the 2035 Comprehensive Plan, the City has been very active in undertaking the wholesale amendment of Title 33 to reflect new goals and policies.

2) 2035 Comprehensive Plan Map Refinement

Extensive changes to the Comprehensive Plan map and Zoning Map across the City are bound to create some unanticipated inconsistencies. In anticipation of such issues and in response to concerns raised by property owners, in adopting the 2035 Comprehensive Plan, the City Council included a directive that the Bureau of Planning & Sustainability evaluate changes to the Comprehensive Plan Map and Zoning Map on, (i) specifically listed sites, (ii) technical map changes (i.e. affordable housing, split zones and nonconforming commercial), (iii) reconciliation of new nonconforming situations, and reconciliation of past quasi-judicial map changes.

This project is ongoing and a discussion draft is anticipated to be published this summer, with Council action as soon as winter, around the same time that the 2035 Comprehensive Plan becomes effective.

3) 2035 Comprehensive Plan Code Reconciliation Project

The City’s processes for preparation and adoption of the 2035 Comprehensive Plan Early Implementation Package and the Inclusionary Housing Project took place at the same time. Some of the subject matter of these two regulatory packages is also overlapping (i.e. FAR bonuses outside of the Central City Plan District).

BPS has established this process for identifying both major policy amendments and minor technical amendments aimed at ensuring consistency between the separately adopted

Inclusionary Housing and Early Implementation Projects and overall functionality of the newly implemented code provisions.

This project is ongoing and a discussion draft is anticipated to be published this summer, with Council action as soon as winter, around the same time that the 2035 Comprehensive Plan becomes effective.

4) Comprehensive Plan Early Implementation Package

The Comprehensive Plan Early Implementation Package is comprised of 5 separate planning efforts, each of which underwent separate public outreach and stakeholder committee's processes, prior to being aggregated for review by the Planning and Sustainability Commission and ultimate adoption by the City Council in December 2016.

a. Mixed Use Zones Project

This project replaced the former commercial base zones and replaced them with the mixed use zones. The project's focus was development along corridors and nodes outside of the Central City Plan District. Issues of whether close-in and farther east neighborhoods should be similarly zoned for redevelopment were decided along with the viability of automobile accommodating zoning. The mixed-use zones ultimately focus on modernizing the built form so that new development anywhere in the City's corridors and nodes will consist of housing over commercial, include vertical components, and be oriented to the street with limited setbacks.

b. Campus Institutional Zoning Project

This project reviewed the zoning and review of development for institutions, primarily colleges and larger medical facilities. These institutions represent future centers of job growth and the project resulted in a plan intended to balance institutional growth and manage impacts to surrounding neighborhoods.

c. Employment Zoning Project

This project focused on the current and future use of industrial and employment lands with the objective of achieving more efficient use of such lands as well as expanding job-creating uses in the City. An outcome of the Employment Zoning Project is the designation of "prime" industrial areas, the zoning for which cannot be changed through quasi-judicial process. This project also removed the ability to build limited residential in EG and IG zones, while providing more flexibility as to commercial uses of industrially zoned land under the guise of "industrial office" use.

d. Residential Open Space Zoning Map Update

This project focused on purposefully zoning underdeveloped residential areas in order to further the City's policy objectives. Residential density around the David Douglas School District was reduced to ease class size pressure, while in other areas of the City residential density was increased adjacent to existing mixed use development.

5) Central City 2035

The Central City Plan District covers all of Downtown and many of the surrounding neighborhoods including Goose Hollow, the Central Eastside, the Pearl District, Old Town Chinatown, the Lloyd District, and the Rose Quarter. The City divided Central City Plan District into three project areas, the North/Northeast, the Southeast, and the West, and held separate outreach and stakeholder committee processes for each.

The plans that emerged from these processes addressed all aspects of development regulation including height, FAR, view protection, use allowances, and density bonuses. The changes are numerous and do not follow a common theme throughout the different areas within the Central City Plan District. The Central City 2035 code amendment package is still being reviewed in work sessions by the Planning and Sustainability Commission and is expected to be reviewed by City Council this summer.

6) Residential Infill Project

This project focused on regulatory improvement to accommodate increased new development and density in the single family residential zones, while at the same time trying to limit negative impact to the character of existing neighborhoods. Housing size, density, and design are the primary focus of these regulations.

7) Regulatory Improvement Plan 8

This project is the Bureau of Planning & Sustainability's ongoing effort to address code issues that come up through the review of actual projects. As such, the code amendments that result from this effort are diverse. Worth noting in the most recent effort (RICAP 8) is that the City adopted language that benefits developers trying to build-out all available FAR on a site. In short, the City now calculates FAR to include the area of a project site prior to any required dedication of land to the City for streets, sidewalks, or other pedestrian improvements. Previously, the FAR associated with dedicated land was lost. This change allows for greater development capacity (and land value) on a site. Sites with larger required dedication and FAR allowance will receive the greatest benefit.

8) Inclusionary Housing

This project requires inclusion of affordable housing units in any multi-family project that is greater than 20 units, irrespective of location or zoning. The following table summarizes the affordability requirements.

ON-SITE	
Location	Affordable Dwelling Units
Central City and Gateway Plan Districts	<ul style="list-style-type: none"> <li>• 10% of total dwelling units if affordable at 60% MFI, or</li> <li>• 20% of total dwelling units if affordable at 80% MFI.</li> </ul>
Everywhere Else	<p>Before Jan 1, 2019:</p> <ul style="list-style-type: none"> <li>• 8% of total dwelling units if affordable at 60% MFI, or</li> <li>• 15% of total dwelling units if affordable at 80% MFI.</li> </ul> <p>After January 1, 2019, the rates are the same as the Central City and Gateway Plan Districts.</p>
OFF-SITE	
New Affordable Units	Existing Affordable Units
<ul style="list-style-type: none"> <li>• 10% of total dwelling units if affordable at 30% MFI, or</li> <li>• 20% of total dwelling units if affordable at 60% MFI.</li> </ul>	<ul style="list-style-type: none"> <li>• 15 % of total dwelling units if affordable at 30% MFI, or</li> <li>• 25% of total dwelling units if affordable at 60% MFI.</li> </ul>

2017 REAL ESTATE AND LAND USE PROGRAM

BALL JANIK LLP

PANEL DISCUSSION RESOURCE MATERIALS

### **ISSUES FOR DISCUSSION**

- Market and Demographic Data
- Housing Emergency
- Renter Protection Provisions
- Inclusionary Zoning
- Rent Control

## **MARKET AND DEMOGRAPHICS DATA**

### 1. Recent Demographics

- 1.1 Portland's February, 2017 unemployment rate was 3.5% and was 3.9% in January, 2017.
- 1.2 In February, 2017 Portland gained 6,500 jobs according to the Oregon Employment Department.
- 1.3 The consensus forecast for the Portland Metro region for new jobs in 2017 is 24,000 to 29,000 and is 23,000 to 28,000 for 2018 according to the Barry Apartment Report.
- 1.4 The consensus forecast for population growth for the Portland Metro region for 2017 and 2018 is 25,000 to 30,000 according to the Barry Apartment Report.
- 1.5 Mayor Wheeler in his State of the City Address said that 111 people are moving to Portland each day, and if that is accurate, it implies a growth in population of 40,515 people per year, give or take a few people.
- 1.6 According to a report from United Van Lines, Portland has the highest percentage of net inbound moves of any city in the country.

### 2. Multifamily Market

- 2.1 The rate of apartment construction in 2016 is the highest in 20 years.
- 2.2 Multifamily building permits issued in the Portland Metro region in 2015 approved 6,650 units and in 2016 building permits approved 7,650 units, with 60% of those being in Multnomah County.
- 2.3 The projected number of apartment units likely to be permitted in the Portland Metro region in 2017 is 14,000 to 18,000, with a similar projection for 2018.

- 2.4 The City of Portland received land use applications for 14,000 units by February 1, 2017, from developers trying to file before inclusionary zoning became effective.
- 2.5 2016 was a record year for apartment sales, with a total of \$2.95 billion in sales, involving 264 projects totaling approximately 16,000 units.
- 2.6 In 2016, median cap rates declined from 5.75% in 2015 to 5.45%.
- 2.7 The Multifamily NW Apartment Report shows vacancies increasing to 4.1% compared to 3.5% in Q1 of 2016.
- 2.8 The Barry Apartment Report projects a vacancy rate of 4.5% by Q1 of 2017.

Source: Barry Apartment Report, Spring 2017

## **HOUSING EMERGENCY**

### **Summary of Facts**

3. On October 7, 2015, by a unanimous vote, the Portland City Council adopted Ordinance No. 187371 which declared a housing “emergency presented by the homeless situation throughout the City.”
4. The ordinance’s provisions will be in effect for one year, unless further extended by the City Council.
5. As justification for the declaration of an emergency, the Ordinance recites: a 30% increase in average rents over the prior 5 years, low vacancy rates of between 2.6% and 3.2% over the last 3 years; a decrease in inflation-adjusted wages for lower wage workers; 1,887 people homeless on any given night; and a 42% increase in people using emergency shelters.
6. The effect of the Ordinance was: (i) the waiver of all zoning code provisions that pertain to temporary housing, emergency mass shelters and day storage units and (ii) provision by the City of day storage units which include sanitization facilities, trash containers, storage areas, and disposal facilities for hazardous materials.

## **RENTER PROTECTION PROVISIONS**

### **Summary of Facts**

1. On October 14, 2015, by a unanimous vote, the Portland City Council adopted Ordinance No. 187380 which added a new section to City Code Chapter 30.01 captioned Affordable Housing Preservation, which previously only dealt with publicly owned or financed affordable housing.
2. As justification for the ordinance the City Council relied on the following cited facts: Portland vacancy rates in August, 2015 were only 3.2%, rents had increased in the last year by 15.4%, neighborhoods were gentrifying, and renters were being displaced by no-cause evictions and rent increases. The City Council found that the overall result of these factors had created “unprecedented housing uncertainty for many Portland families.”
3. The effect of the Ordinance was to give tenants a longer period of time to find replacement housing when displaced by no-cause terminations or unmanageable rent increases.
4. The amendments to the existing City Code Chapter 30.01 enacted by the Ordinance were called the “Portland Renter Protections.” These protections were more than what was already in the Oregon Residential Landlord Tenant Act (ORS Chapter 90).
5. The specific elements of the Portland Renter Protections are the following:
  - 5.1 A Landlord cannot terminate a tenancy without cause unless the tenant is given a 90 day notice of termination. (City Code § 30.01.085(B)). This applies to a situation where the lease is month-to-month, or the tenant’s lease expires and converts to a month-to-month tenancy or the lease allows termination without cause with a shorter notice of termination.
  - 5.2 A Landlord cannot increase a tenant’s rent by 5% or more over a 12 month period unless the Landlord gives the tenant written notice at least 90 days prior to the effective date of the rent increase which would put the rent increase over the 5% cap.

[NOTE: The draft of the ordinance submitted to the City Council required a 90 day notice. A motion to amend that to 120 days failed. The draft of the ordinance submitted to the City Council capped the rent increase at 10%. The 10% amount was reduced to 5% by a 4 to 1 vote.]

5.3 If a landlord fails to comply with the above requirements, the tenant can sue the landlord for three months' rent and "actual damages, reasonable attorneys' fees and costs."

6. On February 2, 2017, by Ordinance No. 188219, the City Council modified the penalties for a landlord for a no-cause termination. Under that Ordinance, even if the landlord gave the 90 day termination notice, then not less than 45 days prior to the effective date of termination the landlord must pay the tenant a Relocation Assistance payment: \$2,900.00 for a studio unit, \$3,300.00 for a one bedroom unit, \$4,200.00 for a two bedroom unit and \$4,500.00 for a three bedroom unit. With respect to a landlord increasing rent in addition to the required notice, if the rent is scheduled to increase by 10%, then the tenant has 14 days from the notice date to give notice terminating the lease and if the tenant gives that notice, the landlord has to pay the tenant the Relocation Assistance payment.

The Ordinance imposing relocation payments has been challenged in Court. A requested Temporary Restraining Order and Injunction were denied in Federal Court, so the Ordinance remains effective. A claim in Multnomah County Circuit Court remains ongoing.

## **INCLUSIONARY ZONING**

### **Summary of Facts**

1. Prior to March 13, 2016, ORS 197.309 prohibited a local government from adopting “a land use regulation or functional plan provision” or conditioning approval of any permit which would have the effect of “establishing the sales price for a housing unit or residential building lot or parcel that requires a housing unit or residential building lot to be designated for sale to any particular class or group of purchasers.”
2. ORS 197.309 did not prohibit, and therefore allowed, a local government to adopt an ordinance that granted an “incentive, contract commitment, density bonus or other voluntary regulation or provision or condition designed to increase the supply of moderate or lower cost housing units.” The law also allowed local governments to encourage affordable housing by entering into an affordable housing contract where the developer would receive a subsidy to build an affordable housing project and keep it affordable.
3. Prior to 2016, the City of Portland had not adopted ordinances that would broadly create an incentive, density bonus or other provisions to induce developers to build affordable housing except for: (i) a partial 10 year tax abatement for buildings including affordable units, which was a program authorized by state law but which had a low cumulative annual cap (set by the City) on foregone taxes and (ii) a floor area bonus for housing for middle income residents for projects in the Central City Plan District and, alternatively, a floor area bonus if the developer of a project in the Central City Plan District paid \$21.70 per square foot of additional floor area into a City fund to build affordable housing. Both of these were infrequently used.
4. On March 13, 2016, the Legislature passed amendments to ORS 197.309 (under Senate Bill 1533) which allowed local governments to require that new multifamily structures include affordable housing. The law is permissive and does not require that local governments adopt inclusionary zoning. The statute put limitations on a local government

that wants to adopt inclusionary zoning including the following: (i) the required number of affordable units is limited to 20% of the building's total units, (ii) the building must have at least 20 housing units, (iii) the developer must be allowed to pay a fee in-lieu of including affordable units, (iv) for those developers building affordable units, the local government must offer an incentive such as whole or partial fee waivers, whole or partial system development charge waivers, "financial based incentives," of a full or partial exemption from property taxes for affordable units for families with income less than 80% of median family incomes.

5. The March, 2016 law (SB 1533) also authorized local governments to impose a construction tax on all new residential, commercial, and industrial structures or new additional square footage. The tax may not exceed 1% of the building permit valuation for the new structure or expansion. The tax proceeds are to be allocated as follows: (i) 50% to fund any incentives to developers to build affordable housing, (ii) 15% to the State to fund home ownership programs and (iii) 35% to fund other programs of the local government related to affordable housing.

6. The City responded to the new State law by adopting Ordinance 188163 by unanimous vote on December 14, 2016. The Ordinance was effective on February 1, 2017. The Ordinance adopted a new section of the City Code, Title 30, designated as Section 30.01.120, Inclusionary Housing.

7. The City's inclusionary housing program is set forth in City Code Sections 30.01.120 and 33.245. The stated purpose of the program is to increase the number of housing units available to households earning less than 80% of the median family income ("MFI") with an emphasis on those households earning less than 60% of MFI. The Code Section 30.01.120 will be further clarified and implemented through administrative rules to be adopted by the Director of the Portland Housing Bureau.

8. The basic requirement is that after February 1, 2017, every newly applied for multifamily housing development of 20 or more units must provide a percentage of affordable units, either on-site or off-site.

ON-SITE	
Location	Affordable Dwelling Units
Central City and Gateway Plan Districts	<ul style="list-style-type: none"> <li>• 10% of total dwelling units if affordable at 60% MFI, or</li> <li>• 20% of total dwelling units if affordable at 80% MFI.</li> </ul>
Everywhere Else	<p>Before Jan 1, 2019:</p> <ul style="list-style-type: none"> <li>• 8% of total dwelling units if affordable at 60% MFI, or</li> <li>• 15% of total dwelling units if affordable at 80% MFI.</li> </ul> <p>After January 1, 2019, the rates are the same as the Central City and Gateway Plan Districts.</p>
OFF-SITE	
New Affordable Units	Existing Affordable Units
<ul style="list-style-type: none"> <li>• 10% of total dwelling units if affordable at 30% MFI, or</li> <li>• 20% of total dwelling units if affordable at 60% MFI.</li> </ul>	<ul style="list-style-type: none"> <li>• 15 % of total dwelling units if affordable at 30% MFI, or</li> <li>• 25% of total dwelling units if affordable at 60% MFI.</li> </ul>

9. Development of Inclusionary Housing (“IH”) units must meet the following standards: (i) the IH units must be “reasonably equivalent” to market rate units in the same building; (ii) the developer must sign a Regulatory Agreement with the City assuring that the IH units remain affordable for 99 years; (iii) the building owner must submit annual reports to the City demonstrating that the units are affordable, based on occupants’ income and rents.

10. The Code provides certain financial incentives: (i) for buildings with 20% of the units available to occupants earning 80% or less of MFI and for buildings outside the Central City Plan District, where the building has 15% of the units available to occupants earning 80% or less of MFI, the building can receive a 10 year property tax exemption for the IH units and

an exemption from the 1% construction tax; (ii) if the building is in the Central City Plan District and is built to a 5:1 FAR or greater, then the 10 year tax exemption applies to all units, including market rate units, and the 1% construction tax is waived for the IH units; (iii) when the building includes 10% of the units affordable to families earning less than 60% of MFI, or 8% for buildings outside the Central City Plan District, then the IH units receive the 10 year partial tax exemption, exemption for the IH units from the 1% construction tax and an SDC exemption for the IH units, and (iv) if the building is in the Central City Plan District and is built to a 5:1 FAR or greater and has 10% of the units affordable to families earning less than 60% of MFI, then the tax exemption applies to all residential units, including market rate units, and the IH units are exempt from the 1% construction tax and from SDC's.

11. A developer of a multifamily building can elect not to include any IH units in the building, if the developer pays a "fee-in-lieu" based on the gross square footage of the "development." The per square foot fee varies by: (i) the zoning of the site, (ii) whether or not the building is in the Central City Plan District, (iii) whether the developer received any bonus FAR, and (iv) the total FAR of the building. The amount of the per square feet fee-in-lieu varies from a low of \$19.50 per square foot to a high of \$29.85 per square foot. For example, a building in the EX zone, outside the Central City Plan District built to the maximum FAR of 6:1, on a 40,000 square foot site, would require an in-lieu-fee of \$4,680,000.00. In the case of a building in the Central City Plan District on a 40,000 square foot site, built to the maximum FAR of 8:1, that building would require an in-lieu-fee of \$9,276,800.00.

## RENT CONTROL

### Summary of Facts

1. In 1985, the State Legislature adopted ORS 91.225 which provides that “a city or county shall not enact any ordinance or resolution which controls the rent that may be charged for the rental of any dwelling unit.” This prohibition was subject to only three very limited exceptions: (i) rent control was allowed where the city and the developer voluntarily entered into a contract for a public subsidy inducing the developer to build the project; (ii) in the case a “natural or man-made disaster” “materially eliminates a significant portion of the rental housing supply”; and (iii) in the case of apartments being converted to condos (ORS 91.225) (3) through (5)).
2. The Legislature relied on the following findings of fact with respect to the condition of the multifamily housing market in 1985:

“(1) The Legislative Assembly finds that there is a social and economic need to insure an adequate supply of affordable housing for Oregonians. The Legislative Assembly also finds that the imposition of general restrictions on housing rents will disrupt an orderly housing market, increase deferred maintenance of existing housing stock, lead to abandonment of existing rental units and create a property tax shift from rental-owned to owner-occupied housing. Therefore, the Legislative Assembly declares that the imposition of rent control on housing in the State of Oregon is a matter of statewide concern.”

We should consider the condition of the multifamily housing market in 2017, relative to those findings in 1985.

3. In the 2017 legislative session, three Bills amending or repealing the ORS 91.225 ban on rent control were submitted to the Oregon House of Representatives by three Representatives, House Bills 2001, 2003, and 2004. Currently only HB 2004 has moved through Committee. The Bill dealt with two related subjects: (i) limitations on the ability of landlords to terminate residential tenancies and (ii) rent control. The two are clearly related because rent control would be less effective in protecting existing tenants if landlords could

readily terminate existing tenancies so as to increase rents. The Bill as originally submitted would have simply repealed ORS 91.225 with no replacement program for what form of rent control would be allowed.

4. The Bill was substantially amended in hearings before the House Committee on Human Services and Housing. Hearings were held on March 2, 2017 and March 30, 2017 and testimony, either written or oral, was presented by over 380 witnesses. The amended Bill, HB 2004 A was approved by the Committee and reported out to the House Floor on March 30, 2017 and then was adopted by the House on April 4, 2017. Both Committee and House votes were along party lines. Obviously, HB 2004 A will not become law until approved by the Senate and signed by the Governor. HB 2004 is scheduled to be heard on the Senate floor on April 5, 2017. The summary of the effect of HB 2004 A, prepared by the Committee's staff is attached as Exhibit A.

5. It is useful to review the substantive elements of HB 2004 A with respect to rent control to preview what might become law in this legislative session. First, the Legislature's findings in 1985, which were the basis for prohibiting rent control, would be repealed. Second, the Bill specifically allows a city or county the right to "adopt an ordinance or resolution that implements a rent stabilization program for the rental of dwelling units..." Third, any locally adopted rent stabilization program must comply with the following: (i) the program must provide landlords with "a fair rate of return for the rental of dwelling units, as determined by the city or the county"; (ii) the program must allow the landlord to petition the city or county for permission to increase rents "in excess of the increase allowed under the program when necessary for the landlord to achieve a fair rate of return"; and (iii) the program must contain an exemption for all newly constructed buildings for the first five years after the building received its "first certificate of occupancy."

6. [Commentary]. We offer a few comments on HB 2004 A. First, if some version of it becomes law, it is important to recognize that it does not constitute a program of rent stabilization or rent control, nor does it require each city and county to have a program of

rent stabilization. Rather, the Bill is simply permission to local governments to develop each local government's own program of rent "stabilization" as long as that local governments program meets the generalized restrictions in the Bill. So, rent stabilization in Portland may be entirely different than rent stabilization in Cannon Beach and there could be no program of rent stabilization in Roseburg. The real battles over rent "stabilization" or rent control will be fought over a local government's adoption of a specific plan of rent "stabilization." Second, the process of establishing a "fair rate of return" will likely be an administrative process that is likely to ultimately be established by elected officials with little experience in picking a "fair rate of return." Third, it will be necessary to decide whether a "fair rate of return" will be uniform throughout a city, or whether there will be a different "fair rate of return" for each market segment or district, or even each class of multifamily buildings. Fourth, one has to wonder whether a city's rent stabilization program would or even should address rents in the more or most expensive buildings. Fifth, the process of a landlord petitioning for a rent increase to achieve a "fair rate of return" is likely to be a quasi-judicial process with appraisers, and even lawyers, and with judicial appeals. Sixth, the determination of a "fair rate of return" will have to deal with market fluctuations in the overall supply of multifamily housing. A "fair rate of return" could be different in a market with too much multifamily housing versus a market with a shortage of multifamily housing. Finally, there is the issue of whether and how frequently, a "fair rate of return" will be adjusted city-wide as market based rates of return fluctuate.

7. Cities such as New York and San Francisco have long had detailed rent control or rent stabilization programs and each city's program is quite different, but both are complicated. We attach as Exhibit B a fairly brief explanation of the rent control provisions for those two cities. For those so inclined, a more in-depth analysis of the History and Economic Impacts of Rent Control in the United States can be found here:

[https://econjwatch.org/file\\_download/238/2009-01-jenkins-reach\\_concl.pdf](https://econjwatch.org/file_download/238/2009-01-jenkins-reach_concl.pdf)

**EXHIBIT A**

**HB 2004 A STAFF MEASURE SUMMARY**

**Carrier:** Rep. Power, Rep. Piluso

**House Committee On Human Services and Housing**

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**Action Date:** 03/30/17  
**Action:** Do pass with amendments. (Printed A-Eng.)  
**Vote:** 5-4-0-0  
**Yeas:** 5 - Gorsek, Keny-Guyer, Meek, Piluso, Sanchez  
**Nays:** 4 - Nearman, Noble, Olson, Stark  
**Fiscal:** Has minimal fiscal impact  
**Revenue:** No revenue impact  
**Prepared By:** Cassandra Soucy, LPRO Analyst

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**WHAT THE MEASURE DOES:**

Allows landlord to terminate month-to-month tenancy any time for no cause during the first six months of occupancy with 30-day written notice. Requires landlord to provide cause and 30-day notice when terminating a month-to-month tenancy after first six months. Requires landlord to provide cause and 30-day written notice prior to the specified end date for a fixed term tenancy. Allows landlord living on property with two units or less to terminate tenancy at any time for no cause providing a 30-day notice during first year or 60-day notice after first year of tenancy to tenant.

Allows tenant of month-to-month tenancy to terminate the tenancy with no cause providing a 30-day written notice to landlord. Allows tenant of fixed term tenancy to terminate tenancy with no cause providing written notice 30 days prior to either specified end date of tenancy or designated date in notice, whichever is later. Requires a fixed term tenancy become month-to-month upon end of original fixed term if landlord does not offer renewal of fixed term tenancy.

Provides exceptions for landlord providing cause for termination of month-to-month tenancy or avoidance of fixed term renewal if landlord provides 90-day written notice. Requires landlord of more than four dwelling units terminating tenancy under exception to state reasoning in notice and pay tenant one month's periodic rent. Requires landlord terminating tenancy under repair exemption to offer previous tenant a new rental agreement prior to new tenants. Requires landlord of more than four dwelling units terminating tenancy under an exception to give notice to tenant about reason and pay equal to one month's periodic rent. Requires landlord terminating tenancy in violation of measure provisions to pay equal to three month's rent in addition to damages to tenant. Allows tenant to recover payment for violation and damages within one year after knowing the violation occurred. Applies to new or renewed fixed term tenancies after the effective date. Applies to month-to-month tenancy 30 days after the effective date.

Amends statute allowing city or county to adopt ordinance or resolution implementing a rent stabilization program within jurisdiction. Specifies provisions of rent stabilization program including providing landlord fair rate of return, process for landlord to petition an increase in rent and exempts new residential developments for five years.

**ISSUES DISCUSSED:**

- Rental costs for individuals and families
- Availability and supply of housing in Oregon
- Use of no-cause evictions

## HB 2004 A STAFF MEASURE SUMMARY

### EFFECT OF AMENDMENT:

Allows landlord to terminate month-to-month tenancy any time for no cause during the first six months of occupancy with 30-day written notice. Requires landlord to provide cause and 30-day notice when terminating a month-to-month tenancy after first six months. Requires landlord to provide cause and 30-day written notice prior to the specified end date for a fixed term tenancy. Allows landlord living on property with two units or less to terminate tenancy at any time for no cause providing a 30-day notice during first year or 60-day notice after first year of tenancy to tenant.

Allows tenant of month-to-month tenancy to terminate the tenancy with no cause providing a 30-day written notice to landlord. Allows tenant of fixed term tenancy to terminate tenancy with no cause providing written notice 30 days prior to either specified end date of tenancy or designated date in notice, whichever is later. Requires a fixed term tenancy become month-to-month upon end of original fixed term if landlord does not offer renewal of fixed term tenancy.

Provides exceptions for landlord providing cause for termination of month-to-month tenancy or avoidance of fixed term renewal if landlord provides 90-day written notice. Requires landlord of more than four dwelling units terminating tenancy under exception to state reasoning in notice and pay tenant one month's periodic rent. Requires landlord terminating tenancy under repair exemption to offer previous tenant a new rental agreement prior to new tenants. Requires landlord of more than four dwelling units terminating tenancy under an exception to give notice to tenant about reason and pay equal to one month's periodic rent. Requires landlord terminating tenancy in violation of measure provisions to pay equal to three month's rent in addition to damages to tenant. Allows tenant to recover payment for violation and damages within one year after knowing the violation occurred. Applies to new or renewed fixed term tenancies after the effective date. Applies to month-to-month tenancy 30 days after the effective date.

Removes repeal of the prohibition on a city or county ordinance regulating rent of a dwelling unit. Amends statute allowing city or county to adopt ordinance or resolution implementing a rent stabilization program within jurisdiction. Specifies provisions of rent stabilization program including providing landlord fair rate of return, process for landlord to petition an increase in rent and exempts new residential developments for five years.

Removes definition of relocation assistance.

### BACKGROUND:

Current Oregon law (ORS 90.427) allows landlords to terminate month-to-month tenancy by giving the tenant notice in writing not less than 30 days prior to the date. Oregon law (ORS 91.225) also prohibits cities and counties from enacting ordinances or resolutions regulating rent charged to the rental of any dwelling unit.

House Bill 2004 A allows a landlord to terminate a month-to-month tenancy at any time for no cause during the first six months of occupancy with 30-day written notice. For a month-to-month tenancy after first six months, a landlord is required to provide cause and a 30-day notice when terminating a tenancy. A landlord with a tenant on a fixed term tenancy is also required to provide cause and 30-day written notice prior to the specified end date for the fixed term. Additionally, a landlord living on a property with two units or less is allowed to terminate tenancy at any time for no cause providing a 30-day notice during the first year or 60-day notice after the first year of tenancy to tenant.

House Bill 2004 A also allows a tenant of month-to-month tenancy to terminate the tenancy with no cause providing a 30-day written notice to landlord. A tenant of a fixed term tenancy is allowed to terminate their tenancy with no cause providing written notice to the landlord 30 days prior to either specified the end date of tenancy or the designated date in notice, whichever is later. Fixed term tenancies are required to become month-to-month upon end of original fixed term if landlord does not offer renewal of fixed term tenancy to tenant.

The measure provides exceptions for landlords to providing cause when terminating a month-to-month tenancy or avoiding renewal of a fixed term tenancy if a landlord provides 90-day written notice. The exceptions for landlords

## **HB 2004 A STAFF MEASURE SUMMARY**

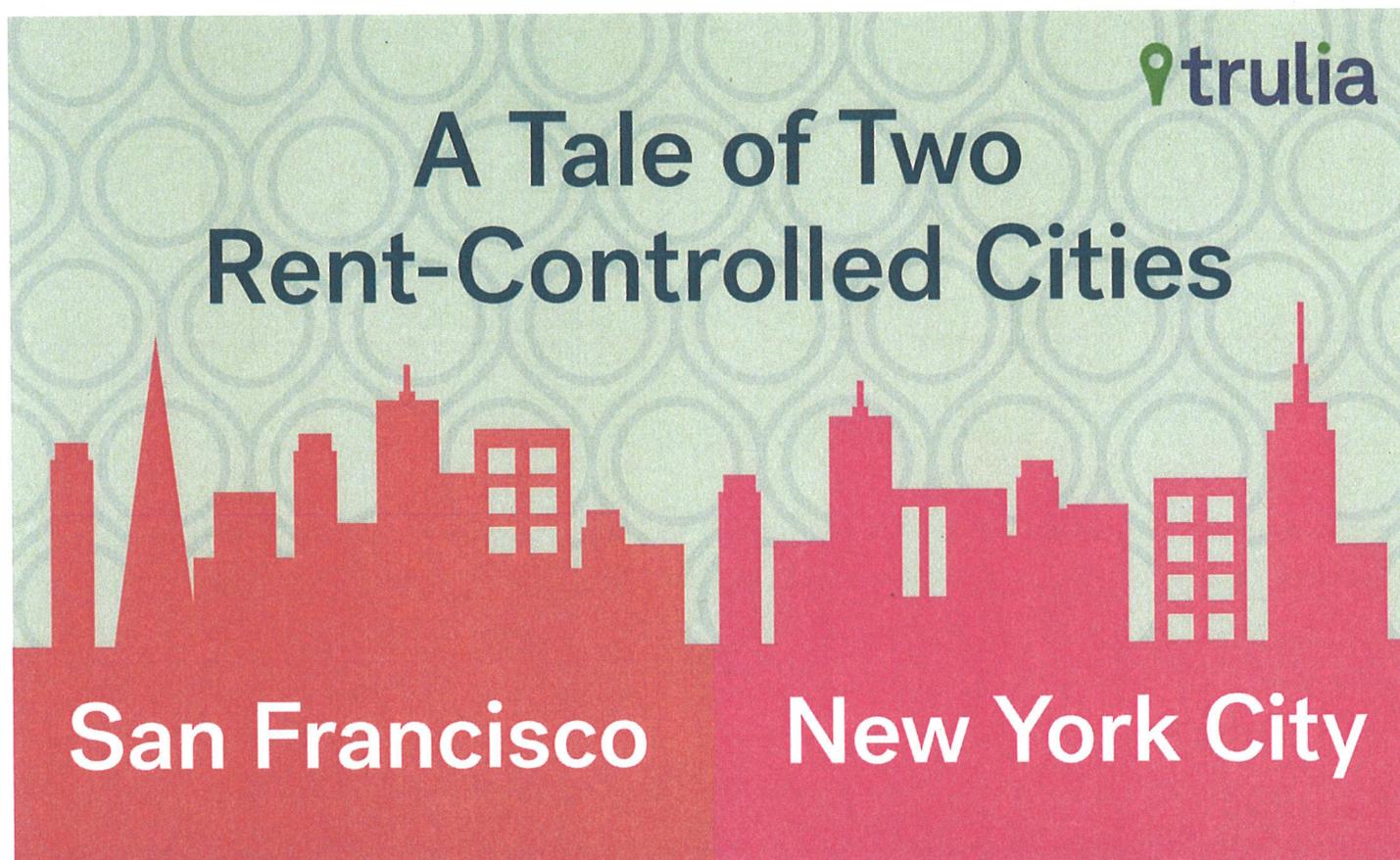
providing cause for termination include intending in good faith to undertake repairs or renovations, conversion of the dwelling to other use, demolition of the unit, safety reasons for dwelling unit and intention to repair unit, acceptance of purchase offer for unit providing notice and evidence of purchase and occupation of the unit as primary dwelling unit for the landlord if no other unit is available. A landlord of more than four dwelling units terminating tenancy under an exception is required to state the reasoning in the written notice and pay the tenant one month's periodic rent. Landlord terminating tenancy under the repair exemption is required to offer the previous tenant a new rental agreement prior to offering unit to new tenants.

If a landlord terminates a tenancy in violation of the measure provisions, the landlord is required to pay equal to three month's rent in addition to any damages to the tenant. When a violation of the measure provisions occurs, a tenant is allowed to recover three month's rent and damages within one year after knowing the violation occurred. This measure applies to new or renewed fixed term tenancies after the effective date and applies to month-to-month tenancy 30 days after the effective date.

House Bill 2004 A amends Oregon statute allowing city or county to adopt an ordinance or resolution implementing a rent stabilization program within their jurisdiction. The measure specifies provisions of rent stabilization program including providing landlord fair rate of return, process for landlord to petition an increase in rent and exempts new residential developments for five years.

**EXHIBIT B**

# A Tale of Two Rent-Controlled Cities: New York City and San Francisco



By Mark Uh | Aug 20, 2015 9:33AM

**Renters in Manhattan are more likely to find a rent-stabilized apartment in cheaper neighborhoods while San Franciscans can find a rent-controlled apartment in neighborhoods with little new construction.**

Ask any renter in New York City and San Francisco and they'll tell you that the rents are too damn high. Sadly, they aren't exaggerating. The median rent for both cities now exceed \$3,000 a month — higher than any other rental market in the country. To put that into perspective, you'd need to make well over \$120,000 to afford the median rent.

So what's a renter to do? Well, some renters believe that their best bet is to find a rent-controlled apartment. Unfortunately, this doesn't mean what most people think this means. Despite what you may have heard, a rent controlled apartment does not prevent a landlord from raising rents. Instead it just "controls" how much landlords can raise rents over the course of a renter's tenancy in an apartment.

## Not All Rent Increase Regulations Are Created Equal

Rent controls are local housing policies that differ from city to city, if they even exist at all. In New York City, there are two types of rent increase restrictions: (1) **Rent-stabilization** and (2) **Rent-control**.

For a unit to qualify as rent-stabilized, the rental must be:

- In a building with at least six units or more
- In a building that was built between February 1, 1947 and January 1, 1974

Meanwhile, a rent-controlled unit must:

- Be in a building that was constructed before February 1947
- Have a tenant that has lived in that apartment continuously since before July 1, 1971

Here's where it can get complicated: When a rent-controlled tenant moves out, that apartment ceases to be rent-controlled. If the building it's in has more than six units, the apartment becomes rent-stabilized. Conversely, if it has less than six units, it becomes deregulated — which means future rents will be determined by the free market and the next tenant will likely be in for some serious sticker shock.

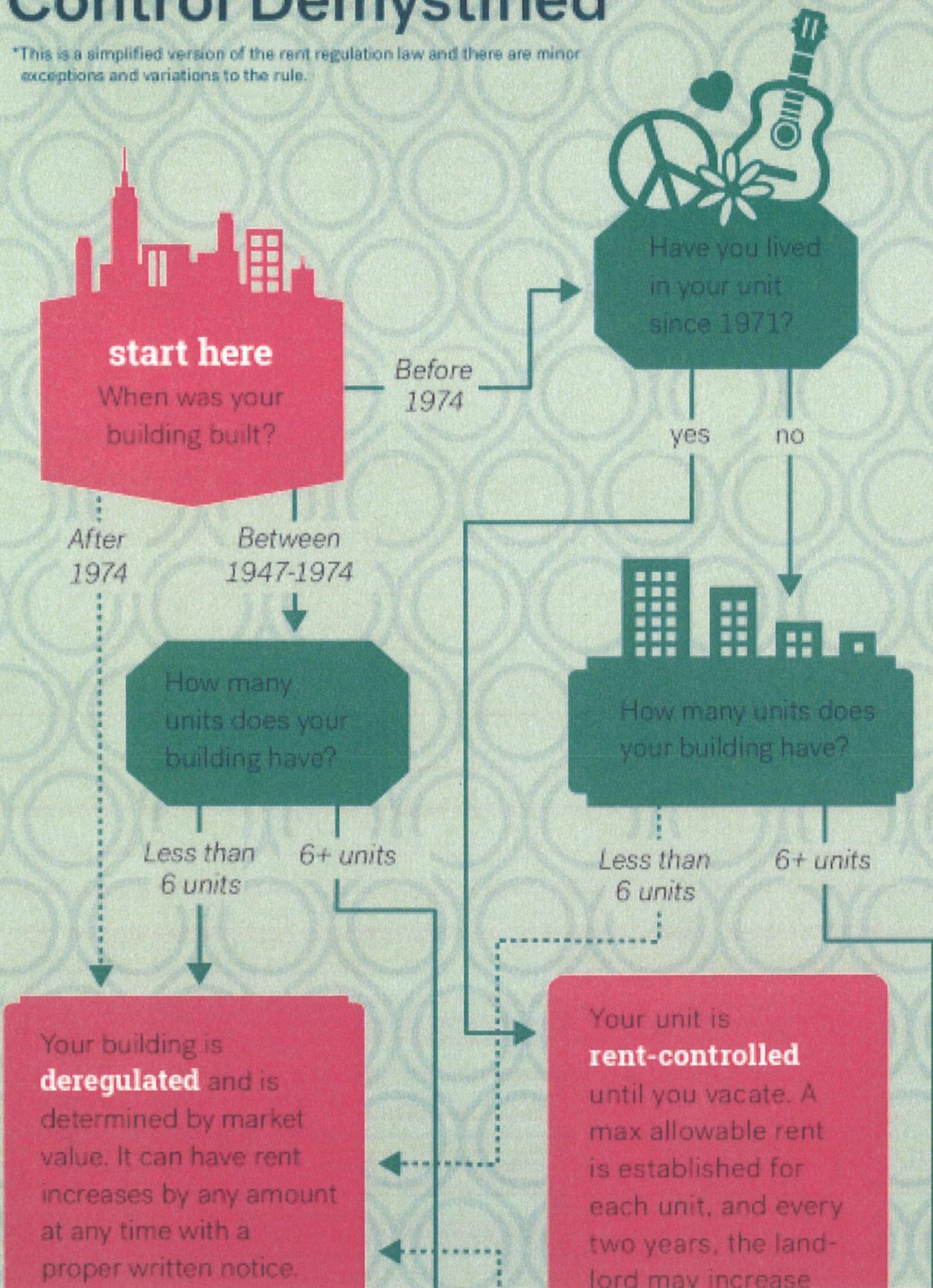
There are two exceptions for both rent-stabilized and rent-controlled apartments that may deregulate that unit. First, if the legal rent exceeded \$2,700. Or, if the building was converted into a co-op after the current tenant moves out.

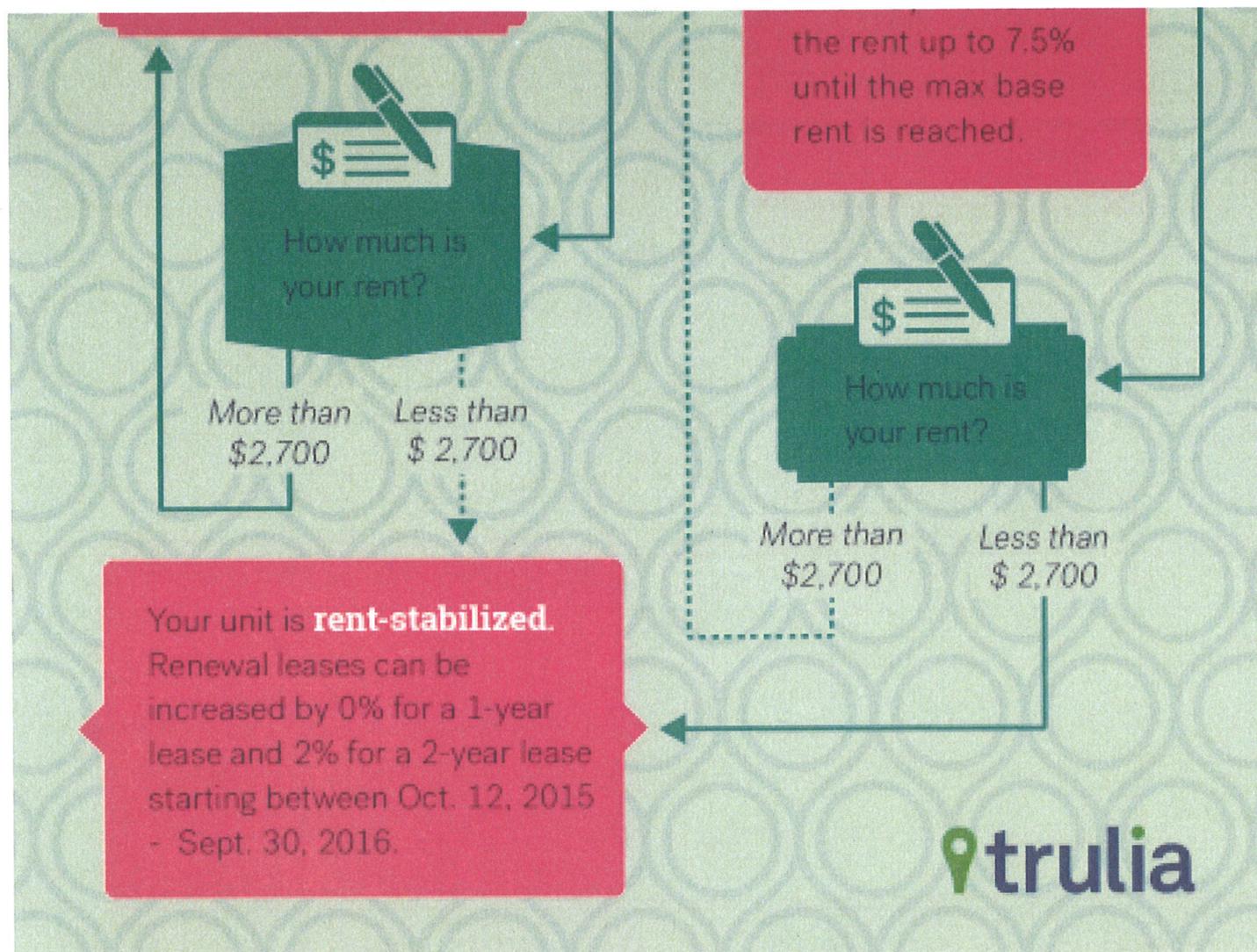
Now for the burning question —how much can landlords increase rents in rent-stabilized and rent-controlled apartments? Well, for rent-stabilized units, rent increases are determined by an annual vote among the city's nine member Rent Guidelines Board. This year, the Board made an **unprecedented decision to freeze rents** on one-year leases starting between Oct 1, 2015 and Sept 30, 2016, meaning, rent increases are not allowed. This is the first time in the board's 46-year history to approve a rent freeze. But for 2-year renewal leases beginning between Oct 1, 2015 and Sept 30, 2016, a 2% increase is allowed.

In rent-controlled units, on the other hand, landlords are entitled to raise rents up to 7.5% each year until they have reached the maximum base rent. Rent increases can only happen under the condition that landlords have certified they are providing an essential service (e.g., heat, hot and cold water, maintenance, painting and janitorial services, elevator service, etc.) and have removed housing code violations (e.g., lack of heat and hot water, mold, pests, etc.). That said, maximum base rents are specific to each property.

# New York City Rent Control Demystified\*

\*This is a simplified version of the rent regulation law and there are minor exceptions and variations to the rule.





By contrast, the rent control rules in San Francisco are a bit more black and white. Under the Rent Ordinance of 1979, only rentals that were issued a certificate of occupancy (i.e., the building is up to code and fit for habitation) before June 13, 1979 are rent-controlled. But if the paperwork for a building was issued after this date, landlords can raise rents however much they please, whenever they want. However, there are several types of housing that are not protected by rent control laws:

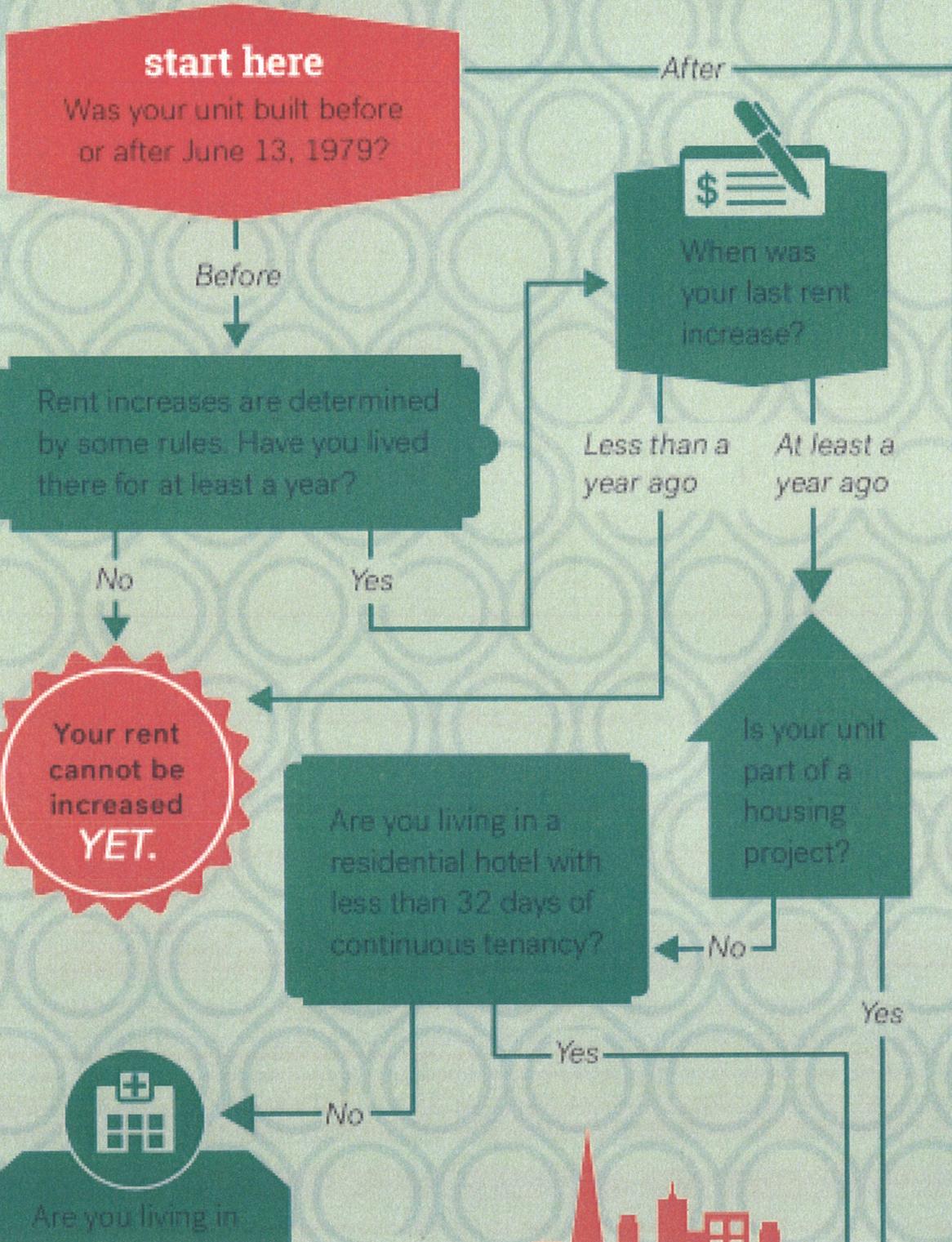
- Government-subsidized housing
- Residential hotels with less than 32 days of continuous tenancy
- Dorms, hospitals, monasteries, nunneries
- Single-family homes or condos — these units usually do not have limits on rent increases if you moved in on or after Jan 1, 1996

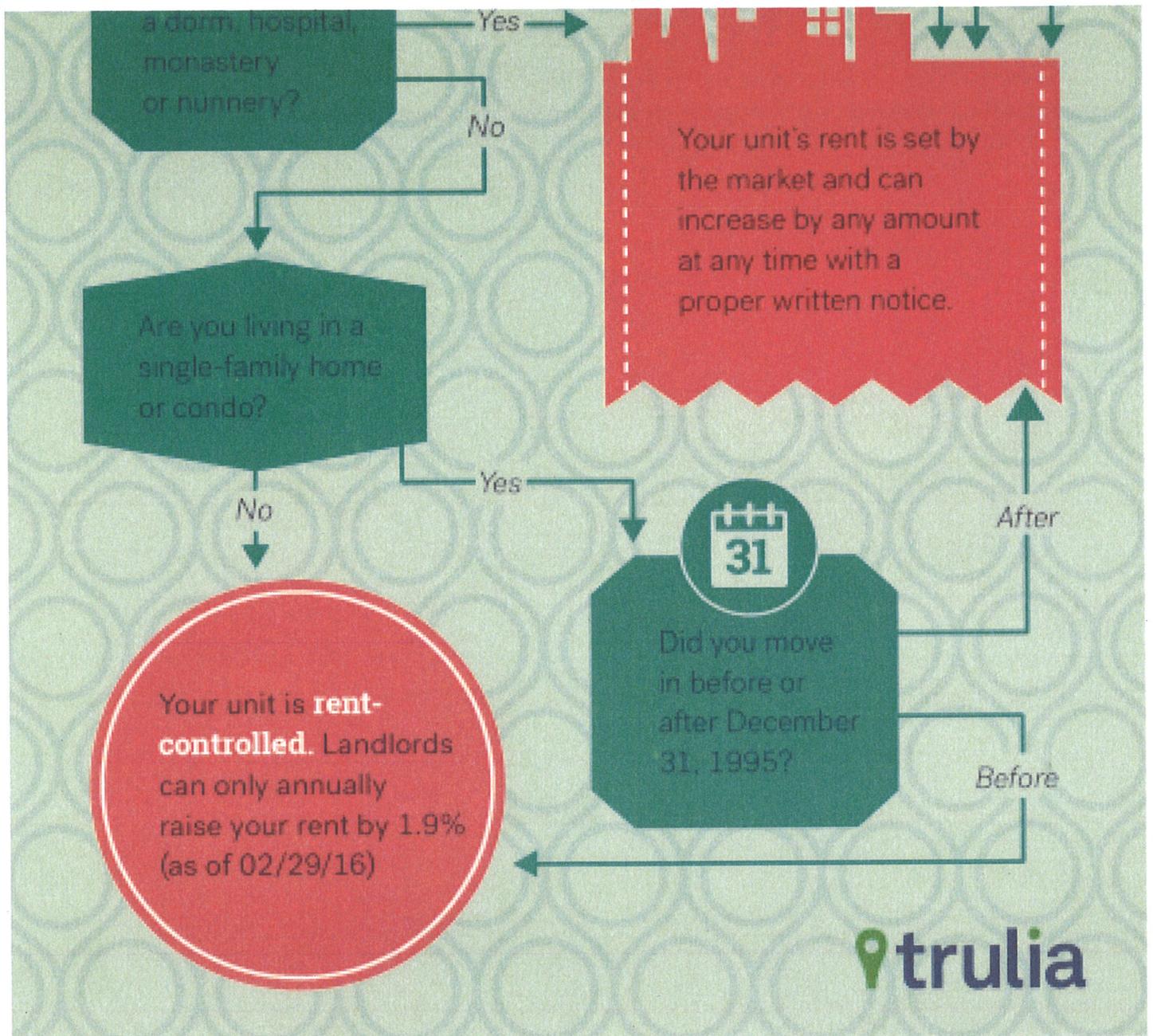
Let's cut to the chase, again—how much can landlords increase rents in rent-controlled apartments? In San Francisco, there are very specific rules. First, landlords can only increase rents by **60% of the increase in the Bay Area Consumer Price Index**. Currently, this is equivalent to a 1.9% annual increase,

effective March 1, 2015 through February 29, 2016. Moreover, landlords cannot increase rents until the tenant has lived in the property for a full year, nor can they increase the rent sooner than 12 months from the last increase.

# San Francisco Rent Control Demystified\*

\*This is a simplified version of the rent regulation law and there are minor exceptions and variations to the rule.





### Want a Rent Stabilized Apartment in Manhattan? Move to Inwood.

Knowing the difference between rent control and rent stabilization in New York City, it is clear that getting a rent-controlled apartment as a new renter is pretty much impossible. But this isn't the case for a rent-stabilized apartment. So, where can you find this unicorn of a rental home?

To figure out which Manhattan neighborhoods have the most rent-controlled apartments, we looked at a combination of the 2012 Assessor's database and Trulia's rental listings from the past two years, and estimated the percentage of multi-family rental units that are under rent stabilization for each neighborhood in the Manhattan borough of New York City.

To calculate this percentage, we looked at whether or not a given multi-family home on Trulia was (1) listed with a monthly rent that was less than \$2,700 and (2) belonged to a building constructed before 1974 with six or more units. We then ranked the neighborhoods by this percentage. Neighborhoods

with less than 100 rentals on the market were excluded from the rankings. This is clearly a very rough approximation. There are various exceptions to New York City's rent-stabilization rules; therefore, not all units that belong to a pre-1974 building with six or more units and rents for less than \$2,700 classify as a rent-stabilized rental.

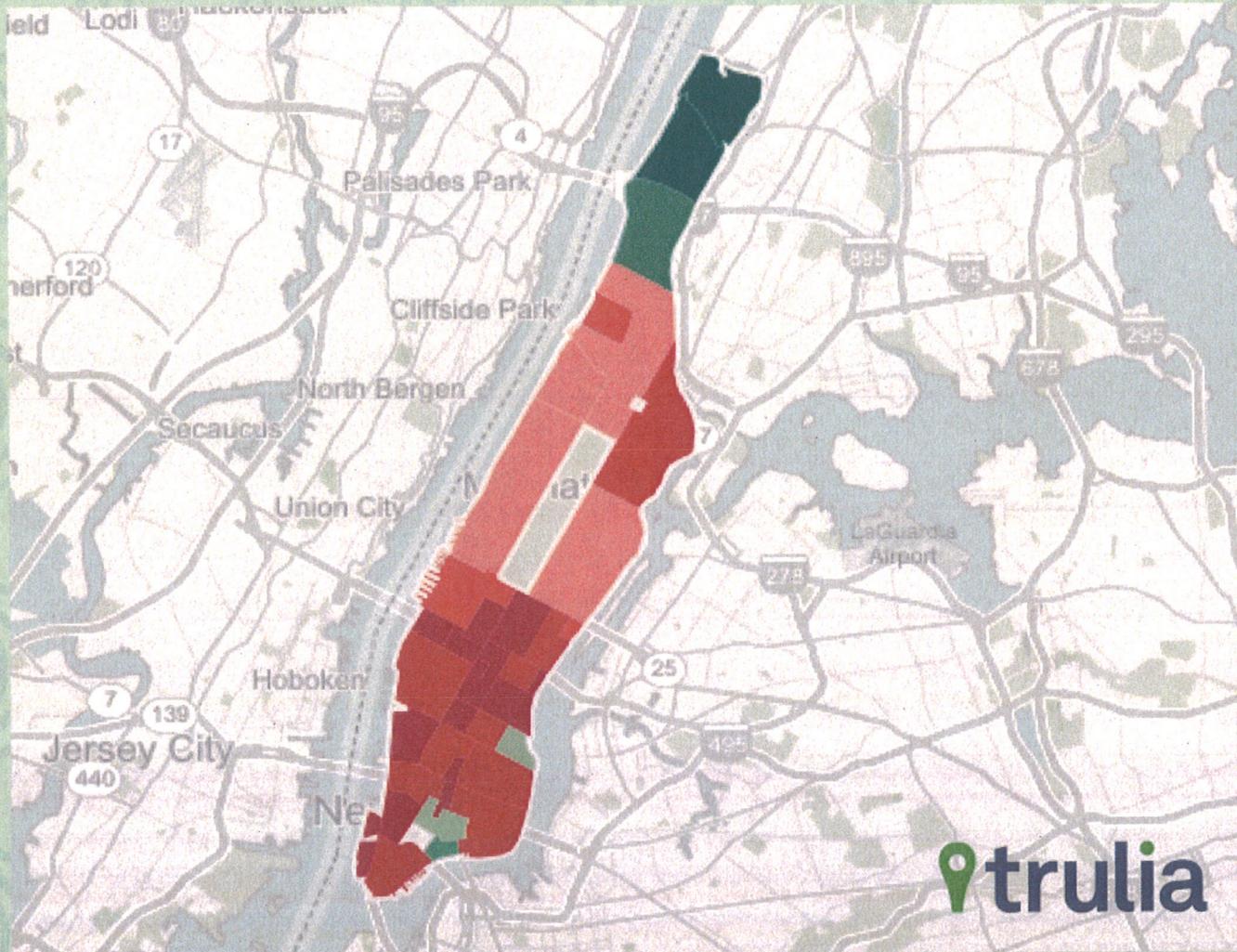
# Where to Find a Rent-Stabilized Apartment in New York

% of listings that are multi-family, rent-controlled



0%

81.68%



As you can see from the map above, less expensive neighborhoods such as **Inwood**, **Harlem**, and **Washington Heights** have a higher percentage of rent-stabilized units. This is primarily because these cheaper neighborhoods have more units that would rent for less than the \$2,700 threshold (remember:

units that rent for more than \$2,700 become deregulated). These days, finding units that rent for under \$2,700 are rare in expensive neighborhoods such as **TriBeCa** and the **West Village**, making it less likely for new renters to find rent-stabilized apartments.

Keep in mind that the figures above are based on **Trulia rentals** listings from the past two years. Therefore, our analysis does not capture units that have been occupied for longer than two years. Some of these units might still be rent-stabilized, and this limitation might have the greatest impact (i.e., the underestimation of the percentage of multifamily units for rent on Trulia that are rent-stabilized) on more expensive neighborhoods such as TriBeCa where residents may have lived in a rent-stabilized unit, whose rent is still below \$2,700, for a long time.

### **Best and Worst SF Neighborhoods to Find Rent Controlled Apartments**

Let's now turn our attention to the **San Francisco rental market**, where most of the apartments are rent-controlled. Similar to what we did for Manhattan, we used the 2012 Assessor's database to estimate the percentage of multifamily rental units that are under rent control for each neighborhood in San Francisco. This percentage calculation was based on the simple rule of whether or not a given multifamily building was built before 1979. We then ranked the neighborhoods by this percentage. Neighborhoods with less than 100 rentals on the market were excluded from the rankings. The screenshot of the table below hyperlinks to the actual tableau table.

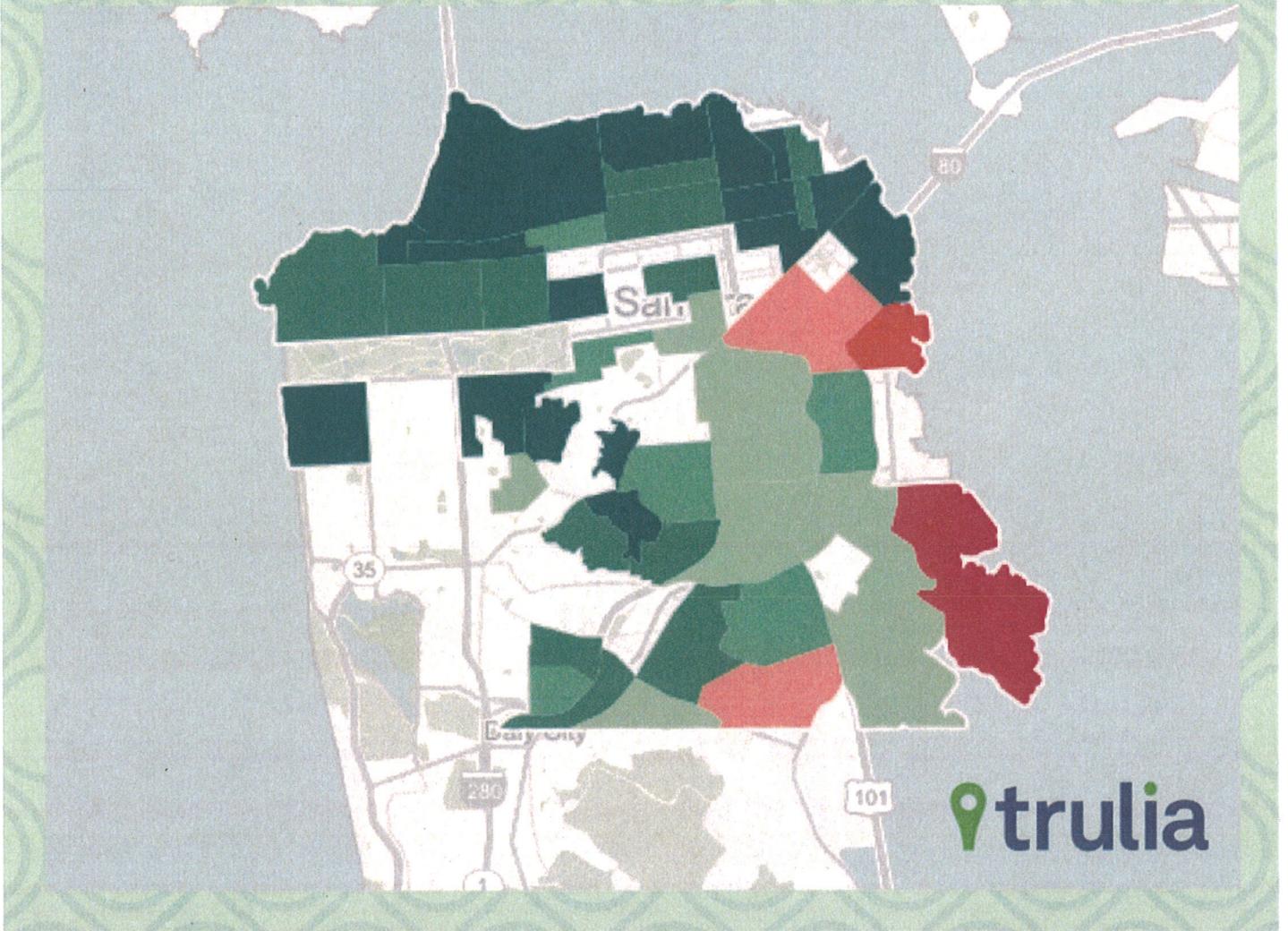
# Where to Find Rent-Controlled Apartment in San Francisco

% of listings that are multi-family, rent-stabilized



11%

100%



As you can see from the table and map above, 82% of multifamily units in San Francisco are under rent control. Older neighborhoods, such as Downtown, the Marina, Russian Hill, and Nob Hill which feature more historic buildings, rank higher on the list. On the flipside, **SoMa** and **Mission Bay**, where much of the newer luxury residential homes are being built right now, ranks lower. Meanwhile, **Hunter's Point**, home to the city's public housing projects which are exempted from rent control, ranks last.

Overall, what this analysis shows is that rent regulation is much stronger in San Francisco than it is in New York City. This is mainly due to the \$2,700 rent threshold for New York City, where once a rental unit's legal rent exceeds this amount, it becomes fully de-regulated. As a result, rent-stabilized units are difficult to come by, particularly in Manhattan, unless one considers apartments in neighborhoods that are less central and less expensive, such as Inwood or Harlem.

In San Francisco, however, upscale neighborhoods such as **Pacific Heights** and **Nob Hill** have plenty of rent-controlled units. But the one thing that readers should note is that rent control is not the same thing as having an affordable rent. We often hear about San Francisco rents being the highest in the nation, even higher than rents in **Manhattan** despite the widespread existence of rent-controlled units. That's because San Francisco's rent laws do not regulate the starting rent for a new tenant. So, let's say a renter signed his lease in 1990 at \$500 a month. When he moves out in 2015, a new tenant would start a new lease at the current market rent, which may be much higher than it was in the past. As a result, rent-control has essentially trapped some tenants in their current rentals because they don't want to start a new lease at a higher rent — even if a new location and home size is better suited for their current life.



## Got a Question?

Email us at [pr@trulia.com](mailto:pr@trulia.com)

## Want to Share a Comment?(1)



### Mark Uh

Mark Uh is a data scientist at Trulia who conducts research on rental market trends and millennial behavior. His educational background includes a B.S. in Economics and Mathematics from Duke University and a Masters of Financial Engineering from the Haas School of Business at UC Berkeley.

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## Legislation of Interest

Bill No.	Status (as of 4/9/17)	Description
HB 2004	Passed by House, on Senate President's desk awaiting assignment.	Prohibits landlord from terminating month-to-month tenancy without cause after first six months of occupancy except under certain circumstances with 90 days' written notice and payment of relocation expenses amount equal to one month's periodic rent. Provides exception for certain tenancies for occupancy of dwelling unit in building or on property occupied by landlord as primary residence. Makes violation defense against action for possession by landlord. Requires fixed term tenancy to become month-to-month tenancy upon reaching specific ending date, unless tenant elects to renew or terminate tenancy. Requires landlord to make tenant offer to renew fixed term tenancy. Repeals statewide prohibition on city and county ordinances controlling rents. Permits city or county to implement rent stabilization program for rental of dwelling units. Declares emergency, effective on passage.
HB 2007	Work session scheduled for 4/13 before House Committee on Human Services and Housing.	Establishes standards of review for city or county decision on application for certain housing developments containing affordable housing units. Directs Housing and Community Services Department to develop and implement program to produce standard housing development designs. Requires department to submit designs to Department of Consumer and Business Services for review and approval. Program becomes operative on September 15, 2017. Directs Department of Consumer and Business Services to review and approve housing development designs produced under program within 30 days after submission. Provides city or county with population of 25,000 or fewer with expedited review and approval process for applications for housing development design. Requires city and county to allow nonresidential place of worship to use real property for affordable housing. Declares emergency, effective on passage.
HB 2010	House Committee on Housing and Human Services recommended adoption, referred to Ways and Means Committee by order of Speaker.	Establishes Task Force on Addressing Racial Disparities in Home Ownership. Directs task force to compile data concerning levels of home ownership among people of color in this state and identify barriers to home ownership. Requires task force to recommend solutions, including legislation, to modify practices or procedures for mortgage loan applications and approvals to eliminate any impermissible discrimination or barriers. Requires task force to report to Legislative Assembly by September 15, 2018. Sunsets December 31, 2018. Declares emergency, effective on passage.

Bill No.	Status (as of 4/9/17)	Description
HB 2011	House Committee on Housing and Human Services recommended adoption, referred to Ways and Means Committee by order of Speaker.	Directs Housing and Community Services Department to administer study to assess disparities between federal and local calculations of fair market rent. Establishes Task Force on Housing Authority Capacity. Directs task force to assess capacity of housing authorities to provide services, determine methods to enhance capacity to provide services and examine feasibility of implementing state-sponsored housing voucher program, estimate difference between Housing Choice Voucher Program voucher recipient eligibility and existing Housing Choice Voucher Program resources. Sunsets task force on December 31, 2018. Declares emergency, effective on passage.
HB 2095	Passed by House, assigned to Senate Business and Transportation Committee.	Allows metropolitan service district to revise determination and analysis of sufficient buildable lands for purpose of expanding urban growth boundary ("UGB") on single occasion, three years after completing its most recent review. Applies only when a city within the metropolitan service district proposes development that would provide needed housing and would require expansion of UGB into urban reserves adjacent to that city. Limits UGB expansion under such revision to 1000 acres or less. Stipulates that metropolitan service district (district) may not revise determination and analysis of sufficient buildable lands as allowed in the measure until district has entered into intergovernmental agreement, has designated rural and urban reserves with each county located within district and has acknowledgement from Land Conservation and Development Commission of rural and urban reserve designations. Requires district using this revision to adopt urban growth boundary expansion within four years of completing most recent demonstration of sufficient buildable lands. Exempts district from boundary location requirements in statewide land use planning goals relating to urbanization if expanding UGB according to these rules.
HB 2510	Passed by House, assigned to Senate Business and Transportation Committee.	Authorizes commercial tenant to install on premises and use electric vehicle charging station. Declares charging station to be personal property of tenant unless different result is negotiated between parties. Declares emergency, effective on passage.

Bill No.	Status (as of 4/9/17)	Description
HB 2879	Public hearing scheduled for 4/12 before House Committee on Revenue.	Exempts from taxation amounts received from sale of real property to nonprofit corporation or housing authority.
HB 2912	House Committee on Human Services and Housing recommended adoption and referred to Ways and Means Committee.	Establishes Affordable Housing Land Acquisition Revolving Loan Fund Program within Housing and Community Services Department to make loans to eligible organizations to purchase land for affordable housing development and to provide supportive services to residents and low income households. Authorizes department to contract with nonprofit organization to serve as program administrator. Provides for repayment of loans for noncompliance with development plans. Requires completion of development within eight years. Requires development of performance measures and report to Legislative Assembly on December 1st of each year. Establishes Affordable Housing Land Acquisition Revolving Loan Fund and continuously appropriates moneys in fund to department.
HB 2939	Hearing held on 4/4 before House Committee on Revenue.	Limits rate of tax that city or county may impose on commercial construction.
HB 3330	Hearing held on 4/4 before House Committee on Human Services and Housing.	Permits city or county to impose controls on rental rates and rental rate increases applicable to spaces in facilities for manufactured or floating homes.
HB 3331	Work session scheduled for 4/13 before House Committee on Human Services and Housing.	Directs Office of Manufactured Dwelling Park Community Relations to establish and administer landlord-tenant dispute resolution program for disputes arising from notices of certain rent increases.
HB 3394	Hearing held on 4/4 before House Committee on Veterans and Emergency Preparedness.	Authorizes local governments to assess system development charges for disaster resilience and mitigation. Requires 10 percent of system development charges for disaster resilience and mitigation to be spent on state disaster resilience and mitigation priorities and 90 percent to be spent on local and regional disaster resilience and mitigation priorities.

Bill No.	Status (as of 4/9/17)	Description
SB 149	Passed by House, referred to Senate Revenue Committee.	Provides that property of limited liability company qualifies for property tax exemption or special assessment if limited liability company is wholly owned by nonprofit corporations or public bodies and property, if held directly by owners, each nonprofit corporation owner of limited liability company, would qualify for such exemption or special assessment. Limits exemption or special assessment to least extent that would be granted to property in hands of any of nonprofit corporation owners. Takes effect on 91st day following adjournment sine die.
SB 1024	Work session scheduled for 4/17 before the Senate Committee on Human Services.	Requires county to allow siting of accessory dwelling unit in area zoned rural residential.