

NOV
2023



The Advocate for Berkeley's Rental Housing Providers

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Is National Rent Control Coming?

Mark Tarses, President, BPOA

The threats to our business are not just coming from Sacramento and City Hall. Several federal agencies are now considering rules and regulations that would effectively create national rent control. The Federal Housing Finance Agency (FHFA) is one of them. The FHFA has requested public input for rule changes in Fannie-Mae and Freddie-Mac backed mortgages. Seventeen members of Congress signed a letter sent to the FHFA recommending that future federally insured or backed mortgages on residential rental properties include 'tenant protections' including 'limiting egregious rent increases.' Of course the big question is: "Who will decide if a rent increase is egregious?" Proposals also include preventing corporate landlords from obtaining government-backed financing unless they agree to 'reasonable' rent increases in the future. But again, the question is: "Who will decide if a rent increase is reasonable?" It certainly won't be us!

The appeal of national rent control at this time is understandable. According to Harvard's Center for Housing Studies, the percent of renters spending more than 30% of their income on rent rose from 46% to 49% between 2019 and 2021. In many big cities in the U.S., there are a lot of empty office buildings and a shortage of rental housing. The office vacancy rate in San Francisco, Oakland, New York, Los Angeles, Houston, Dallas, and many other cities is over 30%. Politicians in all of these cities have been talking about converting empty office buildings into apartments, but that is very expensive. I do not get the feeling that most people understand just how expensive that is. Putting kitchens, bathrooms, and HVAC systems into high-rise buildings that weren't designed to have them costs a lot of money. Who is going to make a huge investment like that if a federal agency will decide if the current rents as well as future rent increases are 'reasonable'?

NOVEMBER EVENTS

Is Your Most Valuable Asset Properly Insured?

Thursday, November 2, 3:00 pm

*The Rental Market: A Year in Review
& Emerging Trends*

Thursday, November 30, 12:00 pm

Diversifying Your Financial Portfolio

Wednesday, December 6, 12:00 pm

Holiday Party

Thursday, December 14, 5:30 pm

See pages 13 & 14 for details & more events!

Issue Highlights

Editorial.....	Page 2
Coalition Corner	Page 3
State Law Allows ADU Sales.....	Page 4
The Continuing Saga of Office Conversions	Page 5
60 New California Housing Laws.....	Page 6
The Nuts & Bolts.....	Page 8
Oakland Rent Drop is Steepest in Nation.....	Page 9
Year-over-year Rent Slide in 24 Metros: Table ...	Page 11
Viral LA Tenant Has Oakland Record	Page 12
Monthly Event Calendar	Page 13
BPOA Event Details.....	Page 14
.....	Page 16



BPOA Monthly is a regular publication of the Berkeley Property Owners Association, a trade association dedicated to assisting rental housing providers with upkeep and management of residential rental property and coping with Berkeley's rent law.

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Our Office Location:

2041 Bancroft Way, Suite 203
Berkeley, CA 94704
Phone 510.525.3666
Email bpoa@bpoa.org
Website <http://www.bpoa.org>

Office Hours:

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About the Newsletter

Our articles are contributed on a volunteer basis by members and other interested parties, although we do accept paid advertising. We are always happy to include material submitted by members and welcome suggestions on how to improve our publication.

All articles in this publication represent the author's viewpoint and not necessarily the position of our organization.

Direct comments and material to our Bancroft Way office or to bpoa@bpoa.org

Editorial

Rental Housing is Cheaper in Texas than in California. Surprise, Surprise.

Albert Sukoff, Editor

Zumper publishes rental data for the top one hundred rental markets in the US. (<https://www.zumper.com/blog/rental-price-data/>) Rents for a one-bedroom apartment in major Texas cities are Dallas (ranked 42 of 100) at \$1,410, Ft. Worth (50) at \$1,320, Houston (57) at \$1,300 and San Antonio (78) at \$1,070.

Comparable numbers for California are San Francisco (3) at \$3,000, San Jose (6) at \$2,610, San Diego (7) at \$2,450, Los Angeles (8) at \$2,420, Oakland (11) at \$2,200 and Sacramento (30) at \$1,550.

(Just for the record the top spot is, as one would expect, New York at \$4,080. One-hundredth on the list is Wichita at \$690.)

So what's the difference between Texas and California?

It is irrefutable that, compared to free-wheeling Texas, California has made the production of housing difficult and expensive. Unless the Law of Supply and Demand has been repealed, artificially restricting supply causes higher prices. California land use policies are the principal reason housing in California is expensive. *Everything else is secondary.*

Secondary, however, does not mean inconsequential. Here are some other reasons why housing — rental and owner both — is expensive to produce.

- Land prices in California are way higher than Texas because of land use restrictions.
- Processing for permits is exhaustive and time consuming. If the upfront costs of a project are \$200,000 (land and soft costs) and it takes two years to process rather than one (or likely just months in Texas), the added interest cost could be \$10,000.
- Direct processing costs for planning approval and building permits can be \$30,000/unit.
- Impact fees are straightforward fees assessed on the construction of a unit of housing. In Oakland, for example, they can be \$35,000/unit. The "logic" here is that new housing exacerbates the housing crisis. As the opposite is true, this is absolutely Orwellian. (To impose this fee, a study is required to establish a nexus between the fee and the problem. For Oakland, the study says that new housing brings in more residents who require goods and services which requires more services workers who can't afford the new housing and therefore an impact fee is justified.)
- Inclusionary housing can require below-market-rate units. The rents on the market rate units must compensate to cover the loss due to the inadequate rent from the below-market units.
- Citizen review of permits, and the appeals that often happen thereafter, can take months with a concomitant loss of money.
- Government review can be excessive and time consuming. On a seven-unit condo project in Piedmont, we lost a month (of clear, dry September weather) while a county agency waited for citizen comments on a soils re-

continued on page 16

❖ THE COALITION CORNER ❖

Krista Gulbransen, BRHC Executive Director

**The Berkeley Rental Housing Coalition (BRHC)
is the political and legal voice of Berkeley's rental housing providers.**

Increasing Insurance Woes

It's at the top of everyone's mind — steep increases in insurance premiums and the risk that your insurance company may drop you. While the Berkeley Rental Housing Coalition does not typically address best practices for property management, our statewide organization (the California Rental Housing Association) does work on the broader issues of concern to rental housing providers in the state. More than a year ago CalRHA's board of directors began work to address the insurance issue at the state level. They met with other partners in the industry, as well as the Insurance Commissioner's office, to better ascertain industry struggles.

Unfortunately, the Insurance Commissioner's office was woefully out of touch, believing that only those in highly impacted fire areas were being dropped or having difficulty getting insurance. Most everyone at the discussion table conveyed a significant increase in their insurance costs. While this major insurance problem is going to take a while to solve from the political perspective, there are some things you can do in the meantime to protect your coverage.

1. **Work with an insurance broker.** It's hard to shop around for different insurance policies, especially if you have a building with five or more units. But even those with a duplex or single-family home can benefit from using a broker whose job it is to shop around and find your coverage.
2. **Do your annual Rental Housing Safety Inspection.** Many insurance companies are now requiring detailed information as to how you are maintaining and improving the property. Rather than send an insurance surveyor out to assess the scenario, they will put the onus on you to provide proof of the condition of the property. The annual inspection program required by the city of Berkeley helps you prove that you regularly look for potential problems and maintain the property. Make sure to take pictures to further showcase your efforts to stay ahead of issues. Nowadays this can mean the difference between continued coverage and getting dropped.
3. **Encourage your tenants to have insurance policies of their own.** Tenants should always maintain

insurance for purposes of protecting their personal effects within the unit. But did you know that there are many different types of insurance tenants can get? Sometimes their insurance will cover a loss that your insurance may not, and it may help to show your insurance company that there is additional coverage on the property.

4. **Know the difference between Additional Insured vs. Additional Interest.** If you utilize a property management company to oversee your rentals, you may have been asked to name the property management company as an additional insured on your insurance policy. "Additional insured" means the property management company is covered under the liability section of your property insurance policy. "Additional interest" simply means that when the policy experiences a change, such as a renewal or cancellation notice, the property manager will get a copy of that notice. It does not offer any liability protection at all. There is no protection when a management company is named as additional interest. In addition, tenants may have previously added the owner as an "additional insured" on their policy. But nowadays, insurance companies are reluctant to add an additional insured because it only increases their liability. In California, where underwriting costs are extraordinary and insurance companies are looking to cut costs, you may find that your insurance company is no longer willing to take on the added risk of an additional insured.

continued on page 17

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A New Law Allows Homeowners to Sell ADUs Like Condos

Karen Garcia, Los Angeles Times, October 14, 2023

Accessory dwelling units, also referred to as ADUs and “granny flats,” have been available in California only as rentals. But a new law, Assembly Bill 1033, is giving Californians the opportunity to buy and sell them as condominiums.

ADUs come in all shapes and sizes — for example, a converted garage, a small home in the backyard, or, as often seen in San Francisco, an unused portion of the main house, said Assemblyman Phil Ting (D-San Francisco), who drafted the legislation.

Under AB 1033, which was signed into law this week, property owners in participating cities will be able to construct an ADU on their land and sell it separately, following the same rules that apply to condominiums. It gives homeowners more options for building on their property, and “the hope is, it would create more homeownership,” said Ting.

Under the new law, local governments need to opt in to the ADU-as-condominium approach for it to be an option in their cities.

Here’s how the new rules will work in participating cities: As with new condominiums, homeowners building ADUs must notify the local utilities, including water, sewer, gas and electric, of the creation and separate conveyance of the unit. Each property will also have to form a homeowners association to assess dues to cover the cost of caring for the property’s exterior and shared spaces, such as the driveway, a pool or a common roof.

Similar to condominiums on one property, the home and the ADU will have two different property taxes, Ting said. He says he believes that many of the initial ADUs going through this process will be sold to the family members or close friends of the homeowner.

“And then as people are more comfortable with this and you see more ADUs being sold, and it’s more prevalent, then I could see this being more of a traditional real estate transaction,” he said.

Meredith Stowers, a loan officer at CrossCountry Mortgage in San Diego who specializes in ADUs, said AB 1033 benefits both homeowners and new buyers.

“The typical homeowners we see are retirees who have long since paid off their mortgage, but are maybe living on a pittance of Social Security and meager retirement funds,” she said.

Under this law, the retirees can earn supplemental income and young families can buy an affordable starter home.

Stowers said the problem that retirees are facing is that, “after so many years of loan modifications in high rates, it doesn’t make financial sense for the retiree to move out of their home.”

She argues it’s more expensive for them to downsize to a smaller house, and this new piece of legislation opens opportunities for retirees to leverage the equity they’ve built up in their homes while also creating affordable housing. “We’re even seeing some retirees add ADUs in their backyard that they then move into and potentially selling off their home,” she said.

Selling ADUs as condominiums is having success in places such as Oregon, Texas and Seattle.

When Seattle removed regulatory barriers that discouraged property owners from constructing ADUs in 2019, the city issued nearly 1,000 ADU permits, more than four times the number permitted in 2018, according to a report released in March.

The report also found that in 2022, the city permitted 437 attached ADUs and 551 detached ADUs, which it referred to as backyard cottages. Just under half were on sites with multiple ADUs and one-third were part of a development that included a new single-family residence.

Included in the report were sample sales for neighbor residential parcels with detached ADUs, reporting that a unit of more than 1,000 square feet sold for an average of anywhere between \$500,000 to \$800,000.

AB 976 Extends ADU Incentives

Cayimby.Org

California Assembly Bill 976 extends the ability of property owners to build affordable, rental accessory dwelling units (ADUs), also known as “granny flats,” by extending the rental unit provisions of 2020’s AB 881, which expire in 2025. The provisions allow owners to build rental ADUs on the same property as their existing rentals.

Accessory Dwelling Units (ADUs), or “granny flats,” are homes that are built on an existing property to expand the supply of housing. While ADUs can be built at both single — unit and multi-family housing, they cannot be sold as a separate unit — meaning they tend to be used as lower-cost rentals, and play a key role in increasing the supply of housing in neighborhoods across California.

According to a report from the Turner Center for Housing Innovation, homeowners cite the ability to offer ADUs for

continued on page 8

Converting S.F.'S Empty Offices to Housing Could Finally Be Starting

J.K. Dineen, September 28, 2023

The much-discussed push to revive downtown San Francisco by converting empty office buildings to housing is starting to gather real-world momentum, with property owners looking to take advantage of a political climate in which the mayor and Board of Supervisors are desperate to activate the city's struggling central neighborhoods.

Eight office building owners have responded to the city's "request for information" aimed at identifying landlords interested in converting their properties to apartments or condos, according to Anne Taupier, director of development for the city's Office of Economic and Workforce Development.

Five of the buildings are in the greater Mid-Market and Civic Center neighborhoods; two are in the Financial District and one near Yerba Buena. The buildings were constructed between 1900 and 1967.

If all eight properties were to be converted, it would create around 1,100 units. The biggest building on the list would accommodate 300 units, while the smallest would yield 40. While converting eight commercial buildings totaling less than 1 million square feet would not put much of a dent in the historic 33.9% office vacancy — more than 30 million square feet of space — the interest is indicative that an increasing number of landlords are accepting the reality that the pandemic and remote work has rendered some buildings obsolete.

"We were pleased with the responses — it was more than we had expected, and there was a good variety of buildings," Taupier said. "We think there is a chance to see some game-changing activation."

For more than two years city officials have grappled with the likelihood that many of the city's smaller office buildings would be difficult to fill in a post-pandemic world of remote work. Yet, the high cost of turning office buildings into housing, along with the city's burdensome approval process, has meant that most property owners have been reluctant to spend money on plans to convert.

But that has started to change as the city has passed legislation relaxing zoning, reducing red tape and cutting fees, and both state and local elected officials have expressed

a willingness to make additional changes to spur conversions.

State Sen. Scott Wiener plans to introduce downtown revitalization legislation in January that would include tax breaks for conversions.

"Revitalizing and reimagining downtown San Francisco is critical for our city's future. We're exploring various policy ideas to help breathe new life into downtown by making it less of an office monolith and more mixed use, with office, housing, entertainment, nightlife and other diverse activities," Weiner said in a statement. "I'm optimistic about downtown's future, and we need to facilitate that shift with smart policy."

Taupier said the solicitation was part of a "fact-finding mission" to better understand what financial or bureaucratic obstacles exist that currently make conversions infeasible.

"We were pleased with the responses — it was more than we had expected, and there was a good variety of buildings. We think there is a chance to see some game-changing activation."

"We are trying to get a sense of what are the common themes around financial shortfalls and how those shortfalls could be made up ... what we can do legislatively and what would need to be accomplished at the ballot box," she said.

The city agreed to keep the addresses of the buildings that are being considered confidential because the discussions are so preliminary and, in some cases, there are existing tenants that could be

impacted. City planners and development officials from the mayor's office are conducting one-on-one interviews with property owners, Taupier said.

"Some are vacant, some are partially vacant, and some have tenants but have leases expiring and there are questions about whether they will renew," said Taupier.

She said that all of the property owners said that recent legislation streamlining and lowering affordable housing requirements would be key to making conversions possible. Most of them would be candidates for Mills Act tax credits, which allows cities to reduce taxes for 10 years or more to owners of historic properties.

Supervisor Aaron Peskin, who worked with Mayor London Breed on legislation to make it easier and cheaper to do conversions, said he thinks the efforts around the issue would take time to bear fruit.

continued on page 7

Sixty Laws to Change California Housing

Alfred Twu, San Francisco Chronicle, October 24, 2023

From enforcing tenant protections to making it possible to build faster, the legislative housing package was its largest yet.

From enforcing tenant protections to making it possible to build faster and taller, California's 2023 legislative housing package was the largest yet, with over 60 housing bills signed by Gov. Gavin Newsom. Many of this year's bills build on previous legislation, expanding the impact and reach of those laws. Others took successful local programs and brought them statewide.

Here's how these new laws are poised to change the Bay Area. With pandemic eviction moratoriums ending, tenant protections were a priority this session. SB567, by state Sen. María Elena Durazo, D-Los Angeles, strengthened the Tenant Protection Act of 2019, which brought rent increase limits and other protections to municipalities without local rent ordinances. AB548, by Assembly Member Tasha Boerner, D-Encinitas (San Diego County), allowed inspectors to check the rest of a building if they find problems in one apartment, such as mold, that is likely to affect other residents.

AB1218, from Assembly Member Josh Lowenthal, D-Long Beach, expanded requirements for replacement housing when rent-controlled apartments are demolished. Repealing Costa-Hawkins, the 1995 state law that limits the reach and impact of local rent control laws, has been a longtime goal of tenant groups. One small but important reform just passed in this pursuit. AB1620, from Assembly Member Rick Chavez Zbur, D-Los Angeles, will allow tenants with permanent disabilities living in a rent-controlled unit to switch units while keeping their low rent — for example, by moving to a ground floor unit in a walkup building. The governor also signed bills to help low-income people who are homeless, living in overcrowded conditions or paying higher prices for short-term rentals. AB12 from Assembly Member Matt Haney, D-San Francisco, reduced the maximum security deposit a landlord can charge — from two months rent to one month. This will help those who can afford rent but not a deposit.

Many Section 8 vouchers for low-income renters going unused because prospective tenants lack the credit score to qualify for an apartment, SB267, by state Sen. Susan Talamantes Eggman, D-Stockton, will allow Section 8 tenants to use alternatives to credit score, such as proof of having paid rent on time in the past. With the state facing lower revenues, the governor vetoed many bills for fund-

ing low-income housing. However, Newsom did sign every bill to streamline the approval of affordable housing.

The most significant of these is SB4, a bill from State Sen. Scott Wiener, D-San Francisco. It streamlines approvals and rezones land owned by religious organizations to allow affordable housing. Other bills such as SB91, from state Sen. Thomas Umberg, D-Santa Ana; AB1490, from Assembly Member Alex Lee, D-San Jose; and AB529, from Assembly Member Jesse Gabriel, D-Los Angeles, encourage conversion of motels and other commercial properties to affordable housing. YIMBYs celebrated the signing of numerous bills that will allow more homes to be built faster.

The flagship bill was Wiener's SB423, which, backed by the carpenters union, will speed the approval of housing in cities that aren't meeting their state-mandated housing goals.

A last-minute amendment also made sure it would go into effect in San Francisco first, in 2024.

Two other bills close loopholes that San Francisco has been using to delay project approvals. One addresses the California Environmental Quality Act, AB1633, by Assembly Member Phil Ting, D-San Francisco, and another building permits, AB1114 from Haney.

Earlier this year, Newsom also signed AB130 from Assembly Member Buffy Wicks, D-Oakland, which clarified that students are not considered pollution under state environmental law and that student housing cannot be blocked by anti-pollution laws.

Single-family zones went mostly untouched this year, with a bill to strengthen last year's SB9 duplex bill put on hold. A bill to allow more medium-density homeownership opportunities such as townhouses, SB684, by state Sen. Anna Caballero, D-Merced, was amended at the last minute to exclude single-family zones.

Instead, California will double down — literally — on existing apartment and mixed-use zones. Based on a successful San Diego program, AB1287, from Assembly Member David Alvarez D-San Diego, allows more height and homes in exchange for providing some very low, low and moderate-income housing. Previously, such buildings could be up to 50% larger than allowed by zoning. Under

continued on page 11

Converting S.F.'S Empty Offices

"I never held this out as something that, presto, would create 10,000 units instantaneously," he said. "But I think it will yield results over time."

So far, the biggest conversion application is Group I's proposal to put 27 units in the historic Warfield office building at 988 Market St.

Group I principal Mark Shkolnikov said the company has submitted construction drawings and will start on interior demolition work as soon as next month. He said construction would start in the first quarter of next year and would take nine months. The company has applied for Mills Act tax credits and would be going before the city's Historic Preservation Commission next week.

Group I completed several office-to-residential conversions in the past, but the Warfield project has taken on a sense of urgency because of the dire state of downtown. He said Group I would look for other conversion opportunities.

"The support from the city has just been remarkable," said Shkolnikov. "They have been frequently checking in to see what they can do to help move this along. It's obviously a timely conversion — we've sort of become this poster child."

One developer that has been scouring the city for conversion opportunities is Emerald Fund, which converted 100 Van Ness about a decade ago. On Tuesday, Emerald Fund Chairman Oz Erickson was touring 201 Spear St., a building that is facing foreclosure.

Erickson, who has looked at several conversions, said he thinks at least 7 million square feet of San Francisco office buildings would have to be converted in order to reestablish

the vitality and bustle that existed downtown prior to the pandemic. San Francisco's downtown has lost roughly 150,000 daily workers since the pandemic.

He said the city would have to get rid of all exactions and taxes in order to make

these projects attractive enough that the union pension funds, which finance much of San Francisco new housing, will be willing to invest. If that happens, conversions can be done for \$700,000 a unit, more than 30% less than new, ground-up construction.

"There is not a choice — we have 30 million square feet of vacant office space," he said. "This has to happen. The politicians have to stop thinking this is about giving away something for free — it's about saving downtown."

"There is not a choice — we have 30 million square feet of vacant office space."



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Tiffany Van Buren, BPOA Deputy Director

Maximizing Your Membership Experience: Touring the BPOA Website Part Three: Examining Resources

We delved into the Member Compass™ and the Content Library in our previous issues. This time, we'll take a closer look at the Resources tab, its functionality, and the content that can be found in the drop-down menu. Explore this feature to discover how it can enhance your membership experience.

To fully utilize the features of the Resources tab, hover your cursor over it to reveal the drop-down menu. Each item serves a specific function; let's explore them one-by-one to see how they can benefit you.

Resident Application & Screening: Click this menu item to access information about Intellirent, BPOA's partner application and screening product. From this page, you can "click to launch" into your Intellirent account, watch a playback webinar, download the BPOA-specific Member Toolkit, and read FAQs.

Renters Insurance: Here you'll find information about Toggle®, a division of Farmers Insurance Group, offering customizable renters insurance policies at affordable rates. There are two versions of their flier, each containing a QR code, which, when scanned, will take them to the Toggle website where they can get a no-obligation quote, or purchase a policy. Promote lease compliance — print our fliers to hand out at your showings or copy & paste the flier link in your email communications with prospective renters.

Industry Partner Directory: If you're in the market for business services, hit this menu item where you'll find a list of our associate members. Click on any listing, and voila! Their profile unfolds, revealing everything from their address and phone number to website links and social media accounts they've chosen to share.

Rent Registry: This menu item takes you out of the BPOA website and over to the City's Online Rent Registry. Nearly all Berkeley rental properties are required to register with the Rent Board with a few exemptions. If you're uncertain about whether you're required to register, read about Measure MM and Rental Unit Registration on the City Laws & Ordinances page.

City Laws & Ordinances: Your go-to resource for laws, ordinances, and departmental guidelines governing rental housing. Plus, easy access to key California Civil codes for rental housing. It's all here, at your fingertips!

Rental Housing Q&A: E-commerce stores aren't the only websites with FAQs! This is where we post the answers to our members' most commonly asked questions.

Eviction Moratorium: The Moratorium officially ended on September 1, 2023. Yet to be retired, this page will eventually be replaced by another topic relevant to our membership.

from page 4

AB 976

rent as one of the main reasons they build these types of homes. Rental income can serve as an important source of financial security, and since ADU rent typically offsets the cost of construction, ADUs are more accessible for lower-income homeowners.

AB 881, (Bloom), passed in 2020, prohibits local governments from imposing owner-occupancy requirements on properties where ADUs are built until 2025. Prior to AB 881's enactment, many local governments required the property owner to live in either the ADU or primary home — which killed construction of many affordable rental ADUs.

AB 976 would remove the sunset provision in AB 881, and make permanent the ability for property owners to provide more rental homes with the construction of low-cost ADUs.

Updates: AB 976 passed the State Assembly on 5/31/23 with a 54-0 vote. It passed the State Senate on 9/6/23 by a 22-9 vote, and passed a concurrence vote in the Assembly on 9/11/23. AB 976 was signed into law by the Governor on 10/11/23.

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Rents in Oakland Have Fallen More than in Any of the Largest U.S. Towns

Christian Leonard, San Francisco Chronicle, October 8, 2023

Rents for one-bedroom units in Oakland were down 7.2% in September from a year earlier, the biggest drop among the United States' 100 largest cities.

Median asking rent was about \$1,430 in Oakland for a one-bedroom rental, according to data from Apartment List. That's the lowest rent for the city since at least 2017, the earliest year of data available from the listing site and more than \$100 lower than the price in September 2022.

The San Francisco metropolitan area overall, which has higher rents than in Oakland, saw a smaller year-over-year decline, just 4.1%. That reflects a dip in median prices from about \$1,960 to \$1,880.

Many renters left urban cores at the beginning of the pandemic as remote work options gave some the ability to find cheaper or more spacious housing, according to Apartment List. And while some Bay Area cities such as Fremont and San Jose eventually saw rents rise again as many tech companies recalled workers to their offices,

Oakland's rents showed little sign of increasing.

The national rental market is now following that trend, Apartment List said in a recent report, though to a much smaller extent. Median rent for a one-bedroom rental in the United States fell from about \$1,190 to \$1,170 from September 2022 to September 2023, a 1.2% dip.

Out of the 100 largest U.S. cities, 71 saw rents fall over that period.

Oakland isn't the only Bay Area city seeing a significant reduction in median rents. Prices in San Francisco remain well below pre-pandemic levels, falling by 4.3% over the past year. In Fremont, where rent prices exploded in 2022, they've dipped by the same percentage.

Rents tend to decline in the fall and winter months, Apartment List said, but September's drop was particularly steep and will probably be followed by more decreases.

Supreme Court Turns Away Challenge to New York's Rent Regulations

Adam Liptak, New York Times, October 2, 2023

The Supreme Court announced on Monday that it would not hear a challenge to New York's rent-stabilization regulations, under which the government sets maximum permissible rent increases and generally allows tenants to renew their leases indefinitely.

The challengers had argued that the regulations, which cover about a million dwellings in New York City, amount to an unconstitutional government taking of landlords' property.

Other petitions asking the Supreme Court to rule on aspects of the regulations are pending, and the justices may yet agree to consider one or more of those cases.

In a pair of decisions in February, a unanimous three-judge panel of the U.S. Court of Appeals for the Second Circuit rejected that argument.

"We acknowledge that some property owners may be legitimately aggrieved by the diminished value of their rent-stabilized properties as compared with their market-rate units," Judge Barrington D. Parker Jr. wrote in one of them. "Furthermore, we understand that many economists argue that rent control laws are an inefficient way of ensuring a supply of affordable housing."

But Judge Parker said Supreme Court precedents allowed legislators to strike the appropriate balance. The Supreme

Court has said that government regulation of private property can be "so onerous that its effect is tantamount to a direct appropriation or ouster."

But the court upheld rent regulations in a unanimous ruling in a 1992 case concerning a mobile-home park in Escondido, Calif. The justices reasoned that regulation of the terms of a lease did not amount to the sort of complete government takeover of property that is barred by the takings clause.

In a petition asking the justices to hear the new case, lawyers for the challengers wrote that "the easily demonized owners of New York City rental units" are "vastly overwhelmed in New York's political process by the combined voting power of the tenant-beneficiaries of those million subsidized apartments and the 4.3 million working taxpayers in the city who would otherwise foot the bill for providing affordable housing."

"Politicians can make tenants and taxpayers alike happy," the petition said, "by shifting the cost of providing below-market-rate housing onto a minority of building owners."

Redmond Haskins, a spokesman for the Legal Aid Society, which represented tenants' groups defending the regulations, said in a statement that "we welcome this decision,

continued on page 17

Larkspur Rent-Control Ordinance Opponents Seek Referendum

Giuseppe Ricapito, Marin Independent Journal, October 22, 2023

A referendum petition has been filed challenging Larkspur's rent-control ordinance. An attorney filed the petition on behalf of Lauren Baxter. Shannon O'Hare, the city clerk, said the document was delivered to the county on Sept. 28. A preliminary review found enough unverified signatures to possibly qualify the referendum for the ballot, but the petition must still undergo county review, O'Hare said.

If the referendum qualifies for the ballot, the City Council must schedule a discussion at its next meeting, O'Hare said. The council could place the referendum on the ballot for an election or might choose to rescind the rent-control ordinance. The issue will likely return to the council this month or next.

In September, Larkspur became the second municipality in Marin to adopt a rent-control ordinance, following Fairfax. The City Council capped rent increases at 5% plus inflation, or 7%, whichever is lower.

The rent-control ordinance was intended to take effect on Oct. 6, but it was postponed pending the conclusion of the referendum process. The ordinance would have been retroactive to the base rent as of May 8. The ordinance in Larkspur was considered stronger than state Assembly

Bill 1482, or the Tenant Protection Act, which sets the bar at 5% plus inflation, or 10%, whichever is lower. The state law expires on Jan. 1, 2030.

Larkspur Councilmember Catherine Way cast the dissenting vote, arguing that rent control should be considered by the voters.

Lynda Roberts, the county registrar of voters, said the office is "close" to completing the signature verification and will likely return the petition in the coming week. The referendum petition includes 1,102 signatures, Baxter's lawyer, Hilary Gibson, said in a letter to the city. Gibson and Baxter did not return requests for comment.

The petition was paid for by Hummingbird Hill LP, according to the referendum. Hummingbird owns apartments that had an assessed value of about \$11 million in the 2019-2020 fiscal year, placing it among the top 20 property tax sources in the city, according to a staff report.

The rent-control ordinance also establishes a petition process for landlords seeking a "fair rate of return" that justifies an increase above the ceiling, but landlords cannot exceed the state rent increase cap. The rent-control ordinance also allows the city to charge a fee to administer the program. The city planned to create a rental registry

continued on page 17

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Year over Year Drop in Rents in 24 Metropolitan Areas

METRO AREA	MEDIAN RENT, 0-2 BR	YOY%, 0-2 BR
Austin-Round Rock, TX	\$1,638	-7.30%
Dallas-Fort Worth-Arlington, TX	\$1,530	-6.20%
Orlando-Kissimmee-Sanford, FL	\$1,710	-5.40%
Portland-Vancouver-Hillsboro, OR-WA	\$1,681	-5.40%
Phoenix-Mesa-Scottsdale, AZ	\$1,563	-5.20%
Atlanta-Sandy Springs-Roswell, GA	\$1,659	-4.90%
San Francisco-Oakland-Hayward, CA	\$2,925	-4.80%
Raleigh, NC	\$1,562	-4.30%
Seattle-Tacoma-Bellevue, WA	\$2,058	-3.90%
Tampa-St. Petersburg-Clearwater, FL	\$1,720	-3.90%
Los Angeles-Long Beach-Anaheim, CA	\$2,887	-3.40%
Las Vegas-Henderson-Paradise, NV	\$1,509	-3.30%
Memphis, TN-MS-AR	\$1,293	-3.30%
Sacramento-Roseville-Arden-Arcade, CA	\$1,864	-3.30%
Miami-Fort Lauderdale-West Palm Beach, FL	\$2,486	-2.40%
San Antonio-New Braunfels, TX	\$1,279	-2.40%
Charlotte-Concord-Gastonia, NC-SC	\$1,604	-2.20%
San Diego-Carlsbad, CA	\$2,891	-2.00%
Riverside-San Bernardino-Ontario, CA	\$2,316	-1.60%
Denver-Aurora-Lakewood, CO	\$1,957	-1.00%
Chicago-Naperville-Elgin, IL-IN-WI	\$1,801	-0.60%
San Jose-Sunnyvale-Santa Clara, CA	\$3,305	-0.60%
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	\$1,790	-0.40%
Nashville-Davidson-Murfreesboro-Franklin, TN	\$1,649	-0.20%

from page 6

Sixty Laws to Change California Housing

AB1287, by providing additional income-restricted units, they can now be 100% larger. Accessory Dwelling Units had another bright year.

Many cities such as San Jose already have pre-approved ADU plans, where a homeowner can select a design and get a permit the same day.

AB1332, from Assembly Member Juan Carrillo, D-Palmdale, will bring this initiative statewide. While many of today's ADUs are used as rentals, condo ADUs — already common in Seattle — are coming soon. AB671, from Assembly Member Chris Ward, D-San Diego, allows

Community Land Trusts, a type of affordable housing nonprofit, to sell a house, ADU and junior ADU on a single property to three separate low-income families. Ting's AB1033 gives cities and counties the option of allowing anyone to buy an ADU as a condo. Legislators and the governor are not the only ones who get to weigh in on housing policy; California voters will have many ballot measures to decide in 2024. First, during the March presidential primary, there will be a proposition to reduce homelessness by funding housing and treatment.

Michael Cabanatuan, San Francisco Chronicle, October 10, 2023

The woman who's been labeled across the internet as the "tenant from hell" for allegedly staying in her Southern California Airbnb rental for a year and a half without paying had previously squatted in an Oakland home for at least that long, according to court records.

Elizabeth Hirschhorn rented a long-term Airbnb from a wealthy periodontist on his estate in Los Angeles' exclusive Brentwood neighborhood in 2021, according to the Los Angeles Times. But when her stay was over, she reportedly refused to move out and hasn't paid rent in the more than 540 days since. According to a settlement offer viewed by the Times, she has offered to move for \$100,000 in relocation money.

The story of her overstay and the landlord's struggles to eject her have gone viral, with her landlord's lawyer labeling her "the tenant from hell." Their back-and-forth in court has caused the dispute to drag on.

According to court documents, Hirschhorn has been involved in at least one other similar incident — in a house in Oakland's leafy Rockridge neighborhood.

According to Alameda County Superior Court records, Hirschhorn in 2019 moved into a Rock-ridge bungalow on 63rd Street that was rented to a primary tenant and owned by a family trust managed by Brian Bishop and Gordon Bishop. The story of the Oakland dispute, which involved a suit by the landlord seeking to evict Hirschhorn and her countersuit, was first reported by the Daily Mail.

In her October 2020 suit, Hirschhorn said she started subleasing a room in the house at an undisclosed date in 2019, though no rental agreement or lease was signed. In November 2019, she said, the homeowner sprayed an undisclosed substance she considered hazardous throughout

the house. Hirschhorn said she is sensitive to chemical substances.

A dispute over cleanup developed, Hirschhorn said in her suit, and she was forced to move out in December. When she returned in February 2020, the house was still not cleaned to her satisfaction.

Brian Bishop says in his suit that Hirschhorn instructed the primary tenant, Alex Lewin, to "clean the premises in a very specific manner due to her hypersensitivity to allergens."

Lewin made numerous attempts to clean the property in an acceptable manner, including hiring professional cleaners, Bishop said, but they weren't acceptable to Hirschhorn.

In March 2020, Lewin ended his tenancy and moved out, citing a "hostile environment" and Hirschhorn's "excessive demands," according to Bishop's lawsuit. But Hirschhorn remained without paying rent, according to Bishop's suit, filed in August 2020. He sought to have her evicted, claiming she was trespassing and had no right to remain in the house.

The case was settled in July 2021, though court documents do not disclose the details. Neither Hirschhorn nor Bishop and his attorney responded to requests for comments.

Hirschhorn soon relocated to Southern California, moving into the guesthouse of a Brentwood mansion in September 2021 for a six-month stay that expired in March 2022 but was extended into April 2022, according to the Times.

The house's owner says she's been living there and refusing to pay rent or to move ever since. His efforts to have her removed have so far been unsuccessful.

Berkeley/Bay Area Geography Quiz (answers on page 16)

1. Name the Three Highest Peaks in the Inner Bay Area by County and in Order of Height.
2. Which is bigger, Central Park in NYC or Golden Gate Park in San Francisco?
3. Going east-to-west, Interstate-80 ends just south of downtown San Francisco. Where does it begin?
4. Is more or less than half of the UC Campus within the municipal limits of Berkeley?
5. Has Berkeley ever had a different name?
6. How big is physical Berkeley?
7. What are the temperature extremes recorded in Berkeley over time?
8. By area, which are the largest and smallest of the nine-Bay Area counties?
9. By population, which are the largest and smallest of the nine-Bay Area counties?
10. How many Sister Cities does Berkeley have?

Legislative Year Wrap-up from California Rental Housing Association

The California Legislature finished their year out having considered hundreds of housing bills. Overall, CalRHA had a successful legislative year and held back several problematic bills from passing earlier in the year.

However, the passage of the following three bills will impact the way you do business in Berkeley.

AB 12 (Haney) — Security Deposits — Prohibits a rental housing provider from receiving a security deposit for a rental agreement in an amount in excess of one month's rent, regardless of whether the residential property is unfurnished or furnished. Exemptions for owners of up to four units, on no more than two parcels. The law will take effect on July 1, 2024, and will be for any tenancy created *after* that date. It will not apply retroactively or to any tenancy already in place by June 30, 2024. Owner who previously took both a security deposit equal to one month's rent *and* last month's rent will no longer be able to take both. The new law will not affect pet deposits. BPOA's website will have more details and guidance as we draw closer to the start date of the new law.

AB 1620 (Zbur) — Comparable Units for Tenants with Permanent Disabilities — Allows a jurisdiction with rent control to require an owner of a rent-controlled unit to allow a tenant with a permanent physical disability to relocate to an available comparable or smaller unit located on an accessible floor of the property while retaining their same rental rate. This does not mean a permanently

disabled tenant could displace an existing tenant. Rather it means that if a bottom floor unit becomes vacant, an existing disabled tenant on a higher floor could request to move to the ground floor unit so long as that unit is comparable or smaller than the unit they currently occupy. This could greatly impact an owner's decision to rehab the vacated unit upon a turnover, especially if the disabled tenant has a significantly below-market rent.

SB 267 (Eggman) — Credit of Persons Receiving Government Subsidies — Would prohibit the use of a person's credit history as part of the application process for a rental housing accommodation without offering the applicant the option of providing alternative evidence of financial responsibility. This will impact any prospective resident who holds a voucher from a government subsidy program such as Section 8). The rental housing provider will need to consider alternative evidence of a resident's ability to pay rent in lieu of the person's credit history. The law defines the alternative evidence as, "...including, but not limited to, government benefit payments, pay records, and bank statements." It also prohibits use of a financial or income standard in assessing eligibility for the rental of housing that is *not* based on the portion of the rent to be paid by the tenant. Paired this with Berkeley's Income Source Discrimination Ordinance, this will make considering prospective residents a very tricky venture in Berkeley.

Join Us for Quarterly Social Mixers with Fellow Members

<https://www.bpoa.org/events/>

DATE	TOPIC
Thursday, November 2, 3:00 pm	Is Your Most Valuable Asset Properly Insured?
Thursday, November 30, 12:00 pm	The Rental Market: A Year in Review & Emerging Trends
Wednesday, December 6, 12:00 pm	Diversifying Your Financial Portfolio
Thursday, December 14, 5:30 pm	Holiday Party at Berkeley Yacht Club

And...check out our Rental Housing Provider 101 series. Whether you're new to rental housing or just want to brush up on your skills, we'll teach you the basics of being a housing provider in Berkeley. This series is available for playback in the members-only Content Library on our website.

San Anselmo to Consider Rent Control Ordinance

Giuseppe Ricapito, Marin Independent Journal, October 25,

Discussion in San Anselmo follows recent rent control enactment in Larkspur

San Anselmo is poised to consider a rent control ordinance similar to Larkspur and Fairfax.

The Town Council on Tuesday directed staff to prepare a draft ordinance with a rent cap of 5% or 75% of the consumer price index, whichever is lower.

The council did not vote, but signaled openness to consider the new protections and a corresponding appeal process, though some expressed a preference to put the issue to a ballot vote. The draft ordinance could be reviewed at a meeting as early as December.

"These protections are still needed because they keep people who are currently housed, housed," said Councilmember Tarrell Kullaway.

Vice Mayor Eileen Burke, who said she rents out an accessory dwelling unit, suggested a ballot vote would be the best gauge of public opinion.

"I think we should be really honest that if we pass rent control we're benefitting a current small group but we're not doing anything related to affordable housing over the long term in San Anselmo," Burke said.

The council bifurcated a potential just-cause-for-eviction ordinance and said it would require further discussion if an ordinance was developed.

Town Manager Dave Donery said staff has engaged the community since summer to research if residents were interested in additional protections beyond the state's rent control law, known as Assembly Bill 1482, or the Tenant Protection Act of 2019.

The bill caps rent increases in California at 5% plus the consumer price index. The maximum annual increase permitted under state law is 10%. The law expires at the end of 2030.

The act also includes provisions for no-fault evictions, which require payment to the tenant of at least one month's rent.

"The primary goal of each of these forums was to solicit input," Donery said.

Much of the staff discussion compared San Anselmo's rent control discussions to that of neighboring towns Larkspur and Fairfax.

Heidi Scoble, planning director, said a meeting on Sept. 14 had 52 public comments and was a "packed house." A meeting on Oct. 5 was focused on the perspective of landlords and garnered a little over 30 public comments.

Larkspur passed a rent control ordinance that caps increases at 5% plus inflation, or 7%, whichever is lower.

continued on page 17

NOVEMBER MEETINGS & EVENTS

Is Your Most Valuable Asset Properly Insured?

Thursday, November 2, 3:00 pm

The Rental Market: A Year in Review & Emerging Trends

Thursday, November 30, 12:00 pm

Diversifying Your Financial Portfolio

Wednesday, December 6, 12:00 pm

Holiday Party

Berkeley Yacht Club

Thursday, December 14, 5:30 pm

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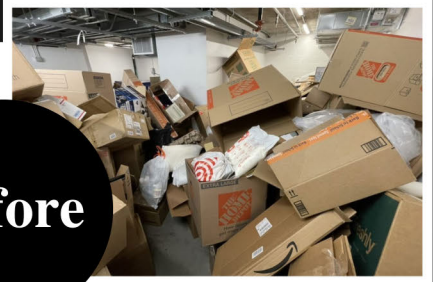
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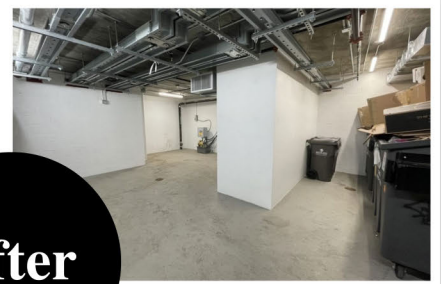
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port which the agency had already deemed sufficient. No one in the public was qualified to comment, or cared. This pushed critical ground work into the rainy season and was very costly.

- Projects with government subsidies may require Davis-Bacon wage levels for construction; these are essentially union labor costs.
- Temporary or permanent relocation payments to displaced tenants are sometimes required. These are based on CalTrans standards and are what only a public agency with no bottom line could pay. Berkeley requires the boarding of pets if appropriate.
- Upfront utility costs are assessed, likely at more than the cost to install them. It can be over \$30,000 for EBMUD to hook up a sewer line. Before Proposition 13, these installations were generally not charged at construction but amortized over time in the usage charges.
- Building codes are excessive. Review is unnecessarily expensive. After a credentialed structural engi-

neer specifies engineering parameters, then another engineer — an agency employee who is no-more and maybe less qualified — reviews the specs anew.

- Inspection services are income-producing for government and excessive. I remember watching a \$200/hour private welding inspector watch a trained welder for hours as the later did specialized welding.

I see new, 3,000-square-foot houses for sale in Texas for \$400,000. Comparable homes in California are more than double. These are some of the reasons why.

Remember that ultimately the cost of production is borne by the users of the new housing, be they renters or owners. The real or opportunity cost of money is arguably the mortgage rate. A San Francisco Chronicle article estimated that the processing costs for a unit of housing in San Francisco were about \$75,000. The cost of just the processing then is over \$400/month for 30 years at a 5% mortgage rate. All superfluous costs can be said to result in added cost to the housing consumer of about \$6-7 a month per \$1,000 of added cost.

Berkeley/Bay Area Geography Quiz Answers

1. Mt. Hamilton in Santa Clara County at 4,265 Feet; Mt. Diablo in Contra Costa County at 3,849 Feet; Mt. Tamalpais in Marin County at 2,579 Feet.
2. Golden Gate Park, with 1,017 Acres, is 20% Bigger than the 853 Acres in Central Park.
3. The end of I-80 is 2,900 miles east in Teaneck, NJ, less than a mile from the George Washington Bridge to Manhattan.
4. According to Wikipedia: *The Berkeley campus encompasses approximately 1,232 acres, though the "central campus" occupies only the low-lying western 178 acres of this area.* Different sources show slightly different numbers but clearly, that part of the campus in Berkeley is way less than half the total campus. By way of contrast, Tilden Park has 2,079 acres.
5. With the obligatory acknowledgement of 5,000 years of Ohlone occupation before that . . . the first physical development of what we now know as Berkeley was along San Francisco Bay in 1853 and was called OCEAN VIEW.
6. The land area of Berkeley covers 10.42 sq mi. Additionally, 7.22 square miles of the Bay are within the municipal limits of Berkeley.
7. Highest temp ever recorded was 107 degrees; lowest 24 degrees.
8. The largest and smallest Bay Area counties are Sonoma at 1,576 square miles and San Francisco at 47 square miles.
9. The most and least populous Bay Area Counties are Santa Clara at 1,900,000 and Napa at 140,000 persons.
10. Seventeen.

QUOTE OF THE MONTH

*...still a man hears what he wants
to hear and disregards the rest.*

— Paul Simon, in *The Boxer*

When shopping for your insurance, ask your broker if they know of policies where additional insured can be added.

5. Stay ahead of renewal dates. You don't want to be caught by surprise if your insurance company decides to drop you. Make sure to be in contact with your insurance company and/or broker to identify any possible risks for loss of coverage so you can start shopping around.

By supporting the BRHC with an upgraded membership, you help to secure a seat at the California legislative table. Between local politics and state politics, there is always a threat to your business that we are working hard to fight. To learn more about upgrading your membership contact Krista Gulbransen, krista@bpoa.org.

one rooted in the law and longstanding legal precedent.”

The trade associations that brought the challenge — Community Housing Improvement Program and Rent Stabilization Association of N.Y.C. — vowed to continue to fight.

“We see the Supreme Court’s decision not to take our case as a signal to bring more targeted challenges to specific provisions of the law illustrating direct impacts on housing providers,” the associations said in a statement. “This is not the end of the road.”

program, requiring landlords to make annual filings that would be maintained in a database. The web page would include information for both tenants and landlords.

The rent-control law complemented a just-cause-for-eviction ordinance, which is also retroactive to May 8 and expires Dec. 31, 2030. That ordinance establishes relocation assistance payments equal to three months’ rent or \$5,000, whichever is greater, for a no-fault eviction. The ordinance establishes a tenant’s right to return to a dwelling if the landlord chooses to rent the residence within 12 months of eviction. It also has protections for those who are elderly, disabled or terminally ill.

The rent-control ordinance was intended to take effect on Oct. 6, but was postponed pending the conclusion of a referendum process that was initiated at the end of September. The ordinance would have been retroactive to the base rent as of May 8.

Larkspur also established a just-cause-for-eviction ordinance, which establishes relocation assistance payments equal to three months’ rent or \$5,000, whichever is greater, for a no-fault eviction. The ordinance also establishes a tenant’s right to return to a dwelling if the landlord chooses to rent the residence within 12 months of eviction. It also has protections for those who are elderly, disabled or terminally ill.



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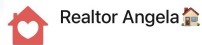
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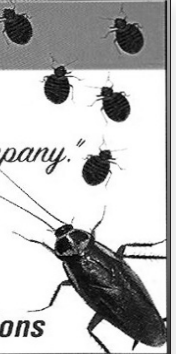
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Thursday, November 2, 3:00 pm

*The Rental Market: A Year in Review
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Thursday, November 30, 12:00 pm

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Wednesday, December 6, 12:00 pm

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