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The Advocate for
Berkeley's Rental Housing Providers

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Looking Ahead with Optimism and Determination

Dan Lieberman, President, BPOA

As we prepare to welcome 2025, let's take a moment to pause and reflect on our shared journey. This past year has brought its share of challenges, but it has also revealed opportunities for growth, collaboration and renewal. And, the turning of the calendar offers us a fresh start — a chance to recommit to our goals, build on our successes, and embrace the challenges that lie ahead.

In 2024, we were tested in many ways. For the third time, we had to fight to defeat the attempted repeal of Costa-Hawkins, and with it the re-implementation of vacancy controls. We had the rent board do an end-run around us and get the city council to place their measure on the ballot (Measure BB) even though they had not received the required number of signatures from the public. Despite these hurdles, we remain steadfast in our commitment to protecting housing providers and fostering sustainable housing solutions.

Small rental property owners are more than landlords. We are providers of housing (much of it affordable,) we are your neighbors, and we are contributors to the fabric of our community. It is our job to change the old narrative about who we are in Berkeley. And with a new mayor and city council, we have an opportunity to build bridges in 2025.

Celebrating Victories

Even in a year full of challenges, there have been bright spots worth celebrating. Together, we've accomplished much:

- Legislative Wins: Proposition 33 was soundly defeated — gaining support from barely 40% of the voters. In addition, Proposition 34 passed, which should hopefully end our need to rally every two-to-four years to protect Costa-Hawkins.
- Local Government Change: One of the most hopeful signs of progress has been the shift in the city council. Thanks to our collective efforts, we helped bring in fresh voices — leaders who are more open to balanced and fair housing policies. This change gives us reason to hope for a brighter, more collaborative future.
- Strengthened Relationships: We've deepened relationships with policymakers and community leaders, positioning us to better advocate for sustainable housing solutions that benefit everyone.

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COMING ATTRACTIONS

*Webinar: Prepare Your Rental Business
for 2025 Success*

Wednesday, January 8, 3:00 PM

Friday, January 10, Noon

Tuesday, January 14, 5:00 PM

Event: On-Site Owner Discussion Group

Thursday, January 23, 2:00 PM

*How to Keep Property in the Family for
Multiple Generations*

Thursday, February 27, 3:00 PM

See page 14 for details & more events!

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Editorial

Swan Song

Albert Sukoff, Editor

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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Open Monday – Friday, with dedicated one-on-one appointments for your convenience.

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

Acknowledging the contribution of my partners, I can fairly say there are almost 150 housing units in the East Bay for which I can claim credit. Were it not for my impetus and effort, they would not exist. I am grateful for having found an economic activity which is creative, satisfying and which has been, at least until recently, remunerative.

Real estate development is the confluence of art, science and money, three things for which I have a particular proclivity. It has been with great dismay that, over the years, I have found that this trio is in fact a quartet. Metaphorically, art, science and money can blend together in sweet harmony. When the fourth voice is added, cacophony prevails. The unwelcome member of the quartet is government.

I bought a church in Oakland in 2021 to convert to housing. It is 2025 and I finally have a building permit. The most frustrating aspect of this experience is that the project as finally approved is exactly what was proposed three plus years ago. All of the tribulations and contortions endured did not result in a better project.

Superfluous City requirements and untold delays have likely turned this project into a loser. While it may marginally work out in the long run, I am now at a point where breaking even will be a relief. For years, I have wanted to convert a school or church to housing. I have looked at a dozen properties. There were always zoning issues. As enamored as I am of this project, I wish I had never started it. The cacophony of the quartet has drowned out my swan song.

First off, I financed half the purchase price of the church. Interest payments have been about a half-million dollars. Assuming the opportunity cost of the cash half of the purchase price is as good as the bank's interest rates, my opportunity cost is another half-million dollars.

Added to this are normal carrying costs, except they have been endured for four years rather than a more reasonable one year. This includes insurance, property taxes, utilities, etc.

Then there were the impact fees. The acknowledged need for more new housing notwithstanding, cities opt to add impact fees to permit fees, ostensibly to compensate for the negative impacts of added housing. For example, there is a transportation impact fee. Even though the four new townhouses proposed will generate less vehicular traffic than the church did, it is just assumed that there is a negative impact of transportation and a mitigating fee is justified.

The most annoying cost which the City assessed, however, was Affordable Housing Impact Fees. For the four units proposed, the bill was \$120,000. Economics 101, of course, says that when there is shortage, adding to supply lowers prices. The justification for the Affordable Housing Impact Fees was just the opposite. It is hypothesized that adding more housing exacerbates the housing crisis.

When imposing these fees, a mere assertion of a linkage does not suffice. There has to be a nexus study. When imposing the Affordable Housing Impact Fee,

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❖ 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.

A first look into the details of Measure BB. Be sure to attend one of our January Webinars to get the detailed info you'll need to succeed in 2025.

The votes have been counted and Measure CC (the BRHC sponsored ballot measure) failed and Measure BB (the City Council sponsored ballot measure) has passed.

Measure BB modifies language in the Rent Stabilization Ordinance and goes into effect on December 20, 2024.

Let's take a quick look at the key changes to the ordinance.

Modification to Just Cause Reasons to Evict

Previously, good cause #4 for terminating a tenancy stated: "On the expiration of a fixed-term lease, the tenant refuses to sign a new lease that is substantially identical to the expired one." This provision allowed landlords to require tenants to renew their lease under the same terms. If a tenant declined to sign the renewal for another fixed term, the landlord could notify them to vacate by the lease's end. In such cases, the landlord had the right to pursue eviction if the tenant remained in the unit without signing the new lease.

While most rental housing providers would never pursue eviction over a tenant's refusal to sign a renewed lease, some relied on the possibility of termination as a way to prompt tenants to clarify their plans. This approach was particularly useful with student tenants, who are notoriously poor at communicating their intentions to stay or move out. However, under the new regulations, tenants are no longer required to renew a lease for your preferred term. If they choose not to renew, you cannot evict them. In essence, tenants now have the option to switch to a month-to-month arrangement if that's their preference.

Modification to Evictions for Nonpayment of Rent

The primary good cause for eviction is nonpayment of rent. Previously, landlords could serve a Three-Day Notice to Pay or Quit regardless of the amount owed. However, the law now restricts this right, allowing you to serve such a notice only when the tenant's unpaid rent equals or exceeds one month of the HUD Fair Market Rent (FMR) for a comparable unit. For instance, if the HUD FMR for a one-bedroom apartment in 2025 is \$2,201, and your ten-

ant pays \$1,500 per month for their one-bedroom unit, you cannot serve a notice until their unpaid rent totals \$2,201.

Prohibition of Ratio Utility Billing System Usage

This new regulation applies to leases starting after February 6, 2024, and to all future leases in Berkeley. If you typically charge tenants for utilities separately from the base rent because the utilities at your property are not individually metered, and your units are subject to rent control, you will no longer be allowed to do so. To recover utility costs, each unit must have separate utility meters, and tenants must be able to place the utility accounts in their own names. For leases that began between February 6, 2024, and December 19, 2024, you can no longer collect utility charges as a separate cost, even if you have been calculating and billing tenants monthly for them.

Modification of Eviction for Violation of a Lease Term

Before the law was modified, landlords could evict tenants for breaching the lease as long as the violation was deemed "substantial." For instance, if your lease prohibited pets and a tenant brought one into the unit, you could serve a notice requiring them to remedy the violation or face eviction. Measure BB has tightened this rule, allowing eviction for breaching a material term of the lease only if it involves a "substantial violation of a material term of the lease causing actual injury to the landlord."

The definition of "actual injury to the landlord" remains unclear. For example, if a tenant brings a pet onto the property and the landlord doesn't reside there, does that cause actual injury? Likely not. Additionally, landlords must demonstrate that "the tenant's behavior was unreasonable." Is bringing a pet onto the property an unreasonable action? This will ultimately depend on how courts interpret and apply these terms in future cases.

Financial Penalties for Failure to Register a New Tenancy

Current law requires that you file a Vacancy Registration when a new tenancy takes place. You must do so within

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New Year's Resolutions for Landlords, Property Managers and Real Estate Professionals

It's that time of year — time to reboot. In an annual tradition, we suggest best practices to commit to. Here's some of the top items that made our list, courtesy of Daniel Bornstein of Bornstein Law:

Resolution #1: I will familiarize myself with the new photo-taking requirements under a new law going into effect in 2025.

Photo documentation requirements are triggered in three events:

- Before a tenant moves in
- At the end of the tenancy
- Before and after any necessary repairs or cleaning

Many of you have smartphones and are tech-savvy. If not, invest in a good digital camera and come up with a system to capture photos, easily organize them, and store them to be retrieved later.

We have always thought it was good practice to take photos to document before-and-after conditions in the rental unit but with a new law being ushered into 2025, this is no longer optional.

Resolution #2: Knowing that the eviction process will take longer, I will demand rent as soon as it becomes due.

Under current law, tenants have five days to file an answer to an eviction action answer, excluding weekends and judicial holidays. Yet a new law will give tenants ten days to respond, elongating the eviction process, which is a concerning topic.

This means that if an owner hesitates in serving a 3-day notice to pay rent or quit, they can potentially lose months of unpaid rent.

Housing providers should have a blanket policy (and process) to demand rent whenever it is late, explaining to all renters that out of fairness to everyone in the building, the policy applies to all residents.

Resolution #3: I will be involved in lobbying efforts and be a voice for all housing providers.

It's been said that if you are not part of the solution, you are part of the problem. Political rhetoric falls squarely on the side of tenants' advocates, but landlords can provide a counter-narrative to fight for the rights of property owners.

In 2024, state and local lawmakers enacted several cumbersome laws for housing providers, but because of the advocacy of landlords and organizations dedicated to their rights, several measures were defeated or watered down.

Whether it is calling and emailing elected officials or joining an industry trade group, your voice matters.

Resolution #4: I will document every interaction I have with my tenants.

In the event that the rental relationship sours, we want a paper trail that documents the forensic history of that tenancy.

For example, if a repair request is made and the landlord effectuated the repair, send a letter to the tenant summarizing the date and nature of the request, what work was performed, and when the job was completed.

This does not mean that housing providers need to capitulate to unreasonable requests. If the request is unreasonable or the tenant can perform the work on their own, put the response in writing, acknowledging the request and explaining why the accommodation cannot be made.

Another example is when a tenant denies or obstructs access to the unit, perhaps out of inconvenience or because there is something he or she is trying to hide from prying eyes. We want to inform the tenant in writing that proper notice was served to allow the owner or their agent to gain entry and they were unable to enter.

If the tenant has an inoperable vehicle parked, document that, as well. If it is believed that there is an unauthorized subletter who has their vehicle parked overnight every night, put this in writing. When a tenant complains of loud music at night, note it and if it continues, document the reoccurrence. The list goes on and on.

But the quintessential point is we want to put pen to paper, drawing a timeline and creating a snapshot of the issues in case any disputes arise. Of course, this is an administrative task and expense but one that is well worth it to avoid trouble down the road.

Resolution #5: I will stipulate that all repair requests be made in writing and respond promptly to repair requests.

As a cautionary note, we have to be careful because when a problem arises in the rental unit, housing providers need to attend to it, whether or not there is a written request alerting the landlord to the problem.

Nonetheless, it is best practice to require repair requests be made formally in case the tenant uses habitability issues as a defense in an eviction action or worse, sues the landlord. The message we'd like to convey to the court is that the landlord was unaware of the issue, rendering it impossible for them to fix something when the tenant did

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Calmmatters.org, December 2, 2024

If you've hunted for apartments recently and felt like all the rents were equally high, you're not crazy: Many landlords now use a single company's software — which uses an algorithm based on proprietary lease information — to help set rent prices.

Federal prosecutors say the practice amounts to “an unlawful information-sharing scheme” and some lawmakers throughout California are moving to curb it. San Diego's city council president is the latest to do so, proposing to prevent local apartment owners from using the pricing software, which he maintains is driving up housing costs.

San Diego's proposed ordinance, now being drafted by the city attorney, comes after San Francisco supervisors in July enacted a similar, first-in-the-nation ban on “the sale or use of algorithmic devices to set rents or manage occupancy levels” for residences. San Jose is considering a similar approach.

And California and seven other states have also joined the federal prosecutors' antitrust suit, which targets the leading rental pricing platform, Texas-based RealPage. The complaint alleges that “RealPage is an algorithmic intermediary that collects, combines, and exploits landlords' competitively sensitive information. And in so doing, it enriches itself and compliant landlords at the expense of renters who pay inflated prices...”

But state lawmakers this year failed to advance legislation by Bakersfield Democratic Sen. Melissa Hurtado that would have banned the use of any pricing algorithms based on nonpublic data provided by competing companies. She said she plans to bring the bill back during the next legislative session because of what she described as ongoing harms from such algorithms.

“We've got to make sure the economy is fair and ... that every individual who wants a shot at creating a business has a shot without being destroyed along the way, and that we're also protecting consumers because it is hurting the pocketbooks of everybody in one way or another,” said Hurtado.

RealPage has been a major impetus for all of the actions. The company counts as its customers landlords with thousands of apartment units across California. Some officials accuse the company of thwarting competition that would otherwise drive rents down, exacerbating the state's housing shortage and driving up rents in the process.

“Every day, millions of Californians worry about keeping

a roof over their head and RealPage has directly made it more difficult to do so,” said California Attorney General Rob Bonta in a written statement.

A RealPage spokesperson, Jennifer Bowcock, told CalMatters that a lack of housing supply, not the company's technology, is the real problem — and that its technology benefits residents, property managers, and others associated with the rental market. The spokesperson later wrote that a “misplaced focus on nonpublic information is a distraction... that will only make San Francisco and San Diego's historical problems worse.”

As for the federal lawsuit, the company called the claims in it “devoid of merit” and said it plans to “vigorously defend ourselves against these accusations.”

“We are disappointed that, after multiple years of education and cooperation on the antitrust matters concerning RealPage, the (Justice Department) has chosen this moment to pursue a lawsuit that seeks to scapegoat pro-competitive technology that has been used responsibly for years,” the company's statement read in part. “RealPage's revenue management software is purposely built to be legally compliant, and we have a long history of working constructively with the (department) to show that.”

The company's challenges will only grow if pricing software becomes another instance in which California lawmakers lead the nation. Following San Francisco's ban, the Philadelphia City Council passed a ban on algorithmic rental price-fixing with a veto-proof vote last month. New Jersey has been considering its own ban.

Is it price fixing — or coaching landlords?

According to federal prosecutors, RealPage controls 80% of the market for commercial revenue management software. Its product is called YieldStar, and its successor is AI Revenue Management, which uses much of the same codebase as YieldStar, but has more precise forecasting. RealPage told CalMatters it serves only 10% of the rental markets in both San Francisco and San Diego, across its three revenue management software products.

Here's how it works:

In order to use YieldStar and AIRM, landlords have historically provided RealPage with their own private data from their rental applications, rent prices, executed new leases, renewal offers and acceptances, and estimates of future occupancy, although a recent change allows land-

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City Approves Plan for North Berkeley BART Housing

Nico Savidge, *Berkeleyside*, December 13, 2024

The Plan to Build More than 700 Apartments at the North Berkeley Bart Station Has Long Been One of the Biggest and Most Closely Watched Housing Projects.

Planning officials signed off this week on a proposal to transform the parking lots atop the North Berkeley BART station into a dense new transit-oriented village of more than 700 homes, clearing the way for one of the city's largest and most closely watched housing projects to be built.

Planning Director Jordan Klein wrote in a letter to the development team known as North Berkeley Housing Partners on Wednesday that the city has approved its application for the station site.

The group plans to build 377 subsidized affordable apartments and 358 market-rate homes at the 8-acre site, spread across 13 buildings that will range from three to eight stories tall. More than 50,000 square feet of new open space will knit the development together with pedestrian plazas, bike paths and gardens. It also includes a parking garage with 120 spaces for BART riders and another 176 for residents.

The development group is made up of the market-rate builder Avalon Bay and three affordable housing nonprofits: BRIDGE Housing Corporation, East Bay Asian Local Development Corporation and Insight Housing.

The approval this week was years in the making — the prospect of redeveloping the station's parking lots has been discussed and debated at dozens of hearings dating back to early 2018.

"On long-term projects like this one you don't get many moments to stop and celebrate a big milestone, and this is one of them," Klein said in an interview. "Our team is incredibly proud that we have gotten to this point."

Once zoning rules and design standards for the station site were finalized, a years-long process that wrapped up last December, new state housing laws meant North Berkeley Housing Partners' proposal had a simpler path to

approval without any further public hearings.

But even that expedited process took longer than expected. When the development team submitted its proposal to the city last February, Klein estimated it would be approved within four months; it wound up taking nearly 10. Klein attributed the longer process to a range of factors, including the complexity of the proposal — which involved four developers and reviews by staff from both the city and BART — as well as the need for documentation to show it was eligible to take advantage of a 2022 state law that streamlines approvals for affordable housing.

The next question is when will the project break ground.



A rendering depicts the view along Acton Street of the proposed North Berkeley BART housing complex. Credit: David Baker Architects, Yes Duffy Architects, and Einwiller Kuehl Landscape Architecture

Officials from BRIDGE, which led the development team, said in the past that they planned to start construction next year. Reached by email this week, Randy James, a spokesperson for BRIDGE, did not directly address whether a 2025 start is still feasible, but said the development team is working to begin building "as swiftly as possible."



Tiffany Van Buren, BPOA Deputy Director

Unlocking the Benefits of Berkeley's ADU and JADU Amnesty Program

Attention Berkeley rental property owners! If you have an unpermitted Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling Unit (JADU) constructed or converted before January 1, 2020, the City of Berkeley's **Amnesty Program for Unpermitted Dwelling Units** offers a rare opportunity to bring your unit into compliance without fear of penalties or enforcement actions. Here's what you need to know about this unique program and how it can benefit you.

Who Qualifies?

Currently, **Phase One** of this pilot program is focused on **owner-occupied properties** with:

- **One single-family home**, and
- **One unpermitted ADU/JADU** (attached or detached).

Property owners must establish that the unpermitted unit was constructed or converted before January 1, 2020, and provide documentation verifying the date to qualify.

Key Benefits

- **Anonymity and Confidentiality:** The program offers **free and anonymous consultations** with Planning Department staff before you even apply. These sessions allow you to explore pathways to legalization without disclosing personal information or property details.
- **Flexibility with Code Requirements:** The program accepts **reasonable alternatives** to current or prior code requirements, potentially reducing costly upgrades.
- **Personalized Guidance:** Program staff provide **extensive support** throughout the legalization process, ensuring you understand the steps and requirements.
- **Enforcement Delay Options:** Owners can request a **5-year code enforcement penalty delay for violations unrelated** to fire, life, or health safety issues.

Critical Violations That Cannot Be Delayed

While the program allows for a delay of penalties for certain code violations, issues that present **threats to fire, life, and health safety** must be addressed immediately.

Examples of these violations may include:

- **Fire Hazards:** Missing or non-functioning smoke and carbon monoxide detectors, faulty electrical wiring, or inadequate fire separation between units.
- **Structural Instability:** Sagging floors, damaged support beams, or other defects compromising the unit's structural integrity.

- **Improper Egress:** Blocked, undersized, or missing windows and doors that prevent safe escape in an emergency.
- **Plumbing Issues:** Cross-connections or backflow risks contaminating drinking water.
- **Unsafe Heating Devices:** Unvented gas heaters, space heaters, or malfunctioning HVAC systems.
- **Mold or Pest Infestations:** Evidence of water damage, mold growth, or infestations that pose health risks to occupants.

Two Legalization Pathways

1. **Certificate of Occupancy:** For fully legalized units, this certification ensures the property meets all applicable zoning and building codes.
2. **Certificate of Compliance:** This alternative certifies the unit as compliant for limited purposes but does not fully legalize it.

Costs to Consider

While the program is designed to be accessible, there are associated fees, including:

- **Amnesty Program Application Fee:** \$590
- **Address Assignment Fee:** \$250
- **Building Permit and Additional Fees:** Vary depending on the scope of work required to bring the unit into compliance.

Act Now to Take Advantage

This program offers eligible units a unique chance to bring unpermitted ADUs and JADUs into compliance without immediate penalties. However, **life safety violations** must be resolved immediately and cannot be deferred.

Whether you want to increase your property's marketability, ensure long-term compliance, or reduce liability, this program provides a valuable opportunity to legalize your unpermitted unit with expert guidance and flexible solutions.

For more information, including detailed program rules, eligibility requirements, and application materials, visit the BPOA website, or contact the Amnesty Program Coordinator, Galadriel Burr, (510) 981-7475, UDUAmnesty@BerkeleyCA.gov.

This program represents a golden opportunity for BPOA members with qualifying properties — don't let it pass you by!

For Landlords, Property Managers and Real Estate Professionals

not alert the landlord to any problem. We want to create a culture where tenants understand the process by which they can request repairs.

Unfortunately, there are savvy and unscrupulous tenants who will have any number of problems in the rental unit, whether it is a leak, a suspicion of mold, pest infestations, broken appliances, and so forth, but withhold this information from their landlord because they want to get out of their obligation to pay rent, if not bring a lawsuit against the landlord.

However, when the issue is discovered, housing providers should not wait to solve it.

Rather than setting up an appointment with a contractor to come over next week, why not dispatch a worker the same day? We want to debunk the notion that landlords neglect their properties and demonstrate that owners respond to habitability issues promptly.

Landlords are vilified in the media and in the courts, so we need to be diligent in showing that in fact, we are good custodians of the properties we own and/or manage and that we care about the well-being of our tenants.

Resolution #6: I will name every adult occupant on the lease and conduct screening on every one of those adults.

If there are minor children, we want to list those minor children, but each adult occupant should be properly vetted and responsible for signing the lease.

Oftentimes one of the adults has something to hide and wants the landlord to overlook his or her background, so they will deflect scrutiny onto someone else.

For example, the husband might say, "I don't want my wife to undergo the credit check, just run mine," and the answer by the rental housing provider should be "no, we require each adult occupying the unit to complete the application process."

We need to know who is occupying the premises and get a sense of who they are, their background, and their credit history. Sometimes this becomes a game of musical chairs with occupants being swapped out and this is what we want to avoid. Who is living in the rental unit, and what is their worthiness as a tenant?

Resolution #7: I will require my tenants to obtain renters insurance to insulate myself from liability.

The requirement that a tenant obtains renters insurance is so we can ensure peace of mind for landlords and

tenants alike. Yet even if required in the lease, a tenant cannot be evicted for the failure to get renters insurance because this breach does not rise to the level of a good cause for eviction.

Nonetheless, if the landlord is sued after a calamity strikes, we want to create a narrative that the tenant was required to take out a policy that insured their Persian rug, electronics, and other belongings and that the owner is not responsible for damages. Rest assured that when a tenant's possessions are ruined, they will want to be made whole.

An added benefit to renters' insurance is that many policies will pay for temporary relocation payments if the unit is uninhabitable. Otherwise, the tenant will ask their landlord to put them up at a four-star hotel.

Having said that, our strong preference is compliance, not enforcement. What we find is that tenants who care about their belongings and take out a renters insurance policy of their own volition also care about the property they live in. They generally tend to be better tenants.

from page 3

Corner

15 days of the beginning of the lease term. There were no financial penalties if you failed to register the unit, although you would be considered out of compliance with the Rent Board and therefore unable to evict or raise rent.

Measure BB gives the Rent Board the power to levy a fine for tenancies they know have not been registered with the Rent Board. While those fines have yet to be established, rest assured this is the Rent Board's way of forcing you to provide information for their records about each of your tenancies.

Make certain to attend BPOA's January webinars on these changes to learn more about how to navigate the new regulations as well as learn best practices for managing in light of these changes.

The Berkeley Rental Housing Coalition is the political and legal arm of the BPOA. We fight against unbalanced, unfair, and poorly thought-out rental housing policy. To support this work, please consider upgrading your membership. The BHRC employs the feet-on-the-ground who hold the elected officials' feet to the fire. To lend your support, contact Executive Director Krista Gulbransen, krista@bpoa.org or (510) 304-3575.



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Landlords Using AI-Based Services for Rent Pricing

lords to choose to share only public data. This information from all participating landlords in an area is then pooled and run through mathematical forecasting to generate pricing recommendations for the landlords and for their competitors.

The San Diego council president, Sean Elo-Rivera, explained it like this:

“In the simplest terms, what this platform is doing is providing what we think of as that dark, smoky room for big companies to get together and set prices,” he said. “The technology is being used as a way of keeping an arm’s length from one big company to the other. But that’s an illusion.”

“Our tool ensures that [landlords] are driving every possible opportunity to increase price even in the most downward trending or unexpected conditions.”

RealPage document included in federal antitrust lawsuit

In the company’s own words, from company documents included in the lawsuit, RealPage “ensures that (landlords) are driving every possible opportunity to increase price even in the most downward trending or unexpected conditions.” The company also said in the documents that it “helps curb (landlords’) instincts to respond to down-market conditions by either dramatically lowering price or by holding price... Our tool ensures that [landlords] are driving every possible opportunity to increase price even in the most downward trending or unexpected conditions.”

Providing rent guidance isn’t the only service RealPage has offered landlords. In 2020, a Markup and New York Times investigation found that RealPage, alongside other companies, used faulty computer algorithms to do automated background checks on tenants. As a result, tenants were associated with criminal charges they never faced and denied homes.

MEASURE BB GOES INTO EFFECT DECEMBER 20, 2024

New Law Alert: Preparing Your Rental Business for 2025 Success

January 8, 2025 @ 3:00 pm
January 10, 2025 @ Noon
January 14, 2025 @ 5:00 pm

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Renting to Pet Owners is a “Win-Win-Win”

Marcia Mayeada, Director, Animal Care for the County of Los Angeles

There Are Numerous Benefits in Housing Pets for Housing Providers, Pet Owners, and Pets!

Allowing pets in rental properties has been a topic of debate among rental housing providers for decades. While concerns about potential damage and disturbances are valid, there are compelling reasons why landlords should consider permitting tenants to have pets.

There is a shortage of pet-friendly rental housing which has driven up admissions at animal shelters because pet owners have been forced to choose between keeping their pet or becoming unhouse. Most importantly, large dogs have felt the brunt of this challenge and have been surrendered to shelters in increasing numbers. There are harder dogs to place and have created increased challenges for animal shelters.

One of the most significant advantages to allowing pets, especially larger dogs, is the expansion of the potential tenant pool. A large portion of renters are pet owners, and for many, their pets are integral members of their families. By accommodating these tenants, landlords can attract a broader range of renters who are otherwise limited by strict no-pet policies.

Pet-friendly properties tend to experience lower vacancy rates and shorter turnover times. This is because pet owners often face challenges finding suitable housing that allows their furry companions. Consequently, properties that welcome pets are in higher demand and can attract tenants who are willing to stay longer to avoid the hassle of relocating their pets.

Pet owners are often perceived as more responsible and reliable tenants. The commitment required to care for a pet can translate into a more conscientious approach to property upkeep and adherence to lease terms. Responsible pet owners are motivated to maintain a clean and

well-maintained living environment to ensure the comfort and safety of their pets. They will also often report other tenants who are not complying with the landlord's regulations, to ensure pet privileges are not revoked for all. This self-policing can aid landlords in ensuring their property is being properly maintained and tenants are following the requirements.



Photo by Richard Brutyo (unsplash.com/@richardbrutyo)

While concerns about property damage are valid, landlords can mitigate potential risks by implementing clear pet policies and conducting thorough tenant screenings. Include an addendum that outlines tenant responsibilities regarding pet care and maintenance. Other requirements, such as requiring the dog to have passed an obedience test, be spayed or neutered, remain on monthly flea and tick prevention, and receive their regular wellness vaccines, can be required of non-Emotional Support Animals or Assistive Animals.

Rental housing providers who allow pets can benefit from increased demand for their property and more responsible tenants. By implementing thoughtful pet policies and screening procedures, landlords can minimize risks while creating a more attractive and inclusive rental environment. Allowing larger

dogs, at least up to 70 pounds, can dramatically expand the pool of grateful and responsible pet owners. Ultimately, embracing pet-friendly rental properties can enhance property appeal, profitability, and tenant satisfaction.



Each of these achievements is a reminder that our efforts matter. As we look ahead, we see new opportunities to advocate and to strengthen our community. In a city that prides itself on being 'progressive' (frankly, I'm not really sure what that term means), we will face many challenges, but there is hope for meaningful change.

A Call for Greater Involvement

None of our achievements would have been possible without your help. Your engagement — attending meetings, writing to councilmembers and state legislators, and sharing your experiences — makes all the difference. In order to advance our cause in this new year, we need more voices, more stories and more participation to help us in shaping the future.

BPOA is your association, and its strength comes from your participation. Here are a few ways you can strengthen the organization and make an impact:

- **Get Educated:** Staying informed is the first step to making a difference. Join us to learn about the latest issues and to connect with your fellow members. This year there are going to be a lot of adjustments between the implementation of Measure BB and new state law changes.
- **Commit to Attending Events and Meetings:** Plan to attend city council meetings to advocate for our positions. Politicians need to see turnout in order to make the hard choices. We have strength in numbers.
- **Share Your Story:** Your experiences as a housing provider are powerful. Whether it's a success, a lesson learned, or a current challenge, your story can inspire others and influence decision makers.

- **Volunteer:** From helping with events to advocating on key issues, there are many ways to contribute. Contribute a little of your time and resources to support our initiatives.
- **Spread the Word:** Get at least one other property owner who is not a member to join BPOA this year.

Gratitude and Dedication

As I enter my second term as being your president, I want to thank everyone who contributed in 2024. As a long-time housing provider, I share your same concerns and challenges. This is our chance to build on the progress we've made and to create opportunities for growth and success. The future is not set in stone — it is shaped by what we do today, together.

Being a housing provider in Berkeley has its challenges. Thank you for your resilience, your dedication and your belief in the work we do. Remember: changing the narrative around housing is a marathon, not a sprint. I ask that in this new year you commit to 'upping your game' and getting more involved with BPOA.

The future remains uncertain, but one thing I know for sure is that we are stronger together. By continuing to support one another and advocating for responsible housing policies, we can build a future that benefits us all. Let's move into the new year with hope in our hearts and determination in our actions.

Let's make this new year one to remember.

Join Us for Quarterly Social Mixers with Fellow Members

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

DATE	TOPIC
Wednesday, January 8, 3:00 PM Friday, January 10, Noon Tuesday, January 14, 5:00 PM	Webinar: Prepare Your Rental Business for 2025 Success
Thursday, January 23, 2:00 PM	Event: On-Site Owner Discussion Group
Thursday, February 27, 3:00 PM	How to Keep Property in the Family for Multiple Generations

Missed a webinar? Members can visit our On-Demand Library to watch playback recordings of past webinars, available one week after the live stream. Please note that some recordings are available for a limited time of just two weeks, so be sure to catch them before they expire!

Vacancy Notes

Mark Tarses: Landlording with Mark

The rental market in Berkeley is weak, as we all know. When a rental market is weak, landlords have 3 choices: Cut rents, accept higher vacancy, or give tenants more value for the same rent. In my opinion, giving more value always beats rent cuts or more vacancy! Take a look at the new washers and dryers. New technology has made installing washers and dryers cheaper and easier today than it used to be. Also highly valued are a dishwasher and a bike/storage shed.

Make your apartment shine!

Spruce up your apartment when it becomes vacant! Make them look cheerful, clean, and well lit. **It's a buyer's market out there.**

Smellyour apartment. Very few landlords do this, but an apartment that smells bad is an instant turn-off.

Test all the **Lights**. Good lighting is essential when showing a vacant apartment. Are bulbs the right size? Put floor lamps in rooms without ceiling lights. Check out the bulbs in the oven, refrigerator and porch fixture too. Replace ceiling light fixtures that look worn out or that are funky.

Bathrooms must shine! It's the one room that must be absolutely clean for a tenant to feel comfortable. Fix leaky faucets and shower heads, slow drains, toilets that don't shut off properly. Replace shower curtains and rings unless they are perfect.

Kitchen drawers, counter tops, cabinets, and appliances must be thoroughly clean and sanitary! Ask yourself: Would I want to eat food that came out of this refrigerator? This stove? Off this countertop? The refrigerator must be spotless inside! The stove must also be spotless. Look in the oven with a flashlight. Clean under the burners. Vacuum the refrigerator coils to avoid burn-out. Vacuum inside the wall furnace too! Replace worn out appliances with new ones.

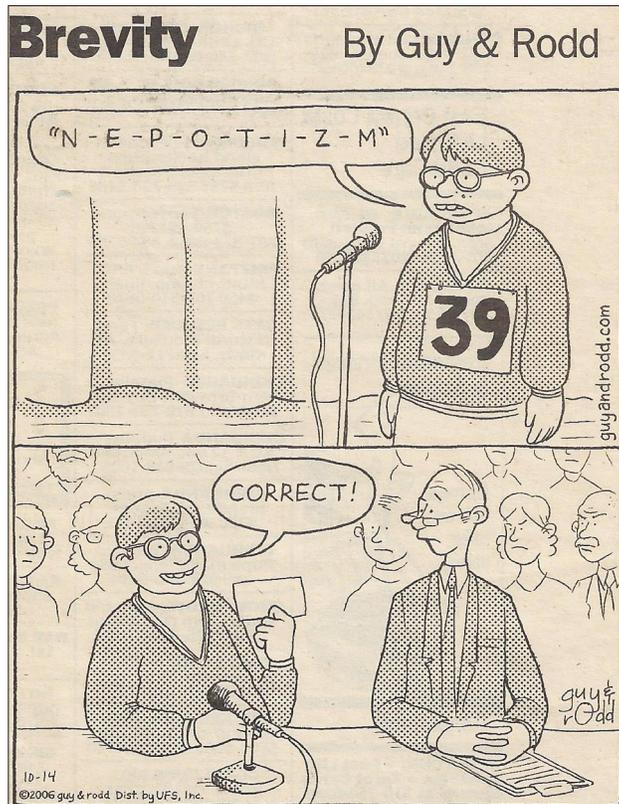
Replace worn out **Floor** and **Window** coverings. Mini blinds are cheap. Replace blinds with bent slats, strings with knots in them, and blinds that just look old.

Landlords are required to rekey locks or replace them between tenants. Change the door locks. Don't rekey them. A Schlage deadbolt & knob lock set costs \$50 and takes 20 minutes to install. Locks wear out inside. Tenants want to feel secure, and new sounds better than rekeyed.

You only get one chance to make a good first impression.

Look at your building from the street. From the entryway. From the hall. If a prospective tenant has a negative impression by the time he gets to the front door of your apartment, it will matter little how nice it is inside. You have already lost him.

Stock some basics in a vacant apartment. Avoid a barren look. The toilet and paper towel holders should have full rolls in them. Put pump soap and a wastepaper basket in the kitchen & bath. Put a doormat at the front door.



We Want to Hear From You!

BPOA is considering launching an electronic newsletter. This will help us to better respond to our members needs for relevant industry content.

The electronic version would look much like our current newsletter and would be accessed using a website address.

We want to know - would this be of interest to you? Would you prefer it to a printed newsletter that is mailed to you?

Tell us what you think! Email bpoa@bpoa.org

California Rental Housing Association

The Legislature came to Sacramento on December 5th to swear in new members. Legislators also took the opportunity to introduce bills for the new 2025-26 legislative session. Of note, Assemblymember Lee has reintroduced his Social Housing Act via AB 11. Republican Assemblymember DeMaio has introduced the Taxpayer Protection Act of 2025, AB 21. Senator Arreguin introduced SB 9, which would remove the owner-occupancy requirement for ADUs.

There will be many more bills introduced when the Legislature comes back in January, but the leaders of the Legislature, the Pro Tem of the Senate and Speaker of the Assembly did institute a lower limit on the amount of bills that a Legislator can introduce. Per the legislative leaders' press release, "This "bill limit" will allow legislators to invest additional energy on issues that matter most to Californians, such as lowering the cost of living, building more housing and improving public services. It also encourages legislators to spend more time on oversight and accountability, ensuring existing programs remain efficient and effective. So, this session, we are lowering the number of bills legislators can introduce from 50 to 35."

New Legislation being Enacted in 2025

As a reminder and so that you are prepared going into 2025, here is a list of rental housing related

legislation that passed and was signed by the Governor this year:

- **Assembly Bill 2347 (Kalra) Eviction Delay** — Extends the time for tenants to respond to an unlawful detain-er (eviction) from 5 court days to 10 court days.
- **Assembly Bill 2493 (Pellerin) Rental Application Fees** — Permits a landlord to charge a lease applicant an application screening fee only if the landlord offers an application screening process that considers applications in the order in which they are received or provides any applicant who is not selected for tenancy with a refund or credit for the application screening fee.
- **Assembly Bill 2579 (Quirk-Silva) Balcony Bill** — Ex-tends by one year the deadline for performing inspec-tions of exterior elevated element (balcony) in all buildings containing three or more multifamily dwell-ing units, from January 1, 2025, to January 1, 2026.
- **Assembly Bill 2747 (Haney) Positive Rental Credit Reporting-** Requires specified landlords of buildings

that have 15 or more rental units to offer each tenant the option of having the tenant's positive rental pay-ment information reported to at least one nationwide consumer reporting agency.

- **Assembly Bill 2801 (Friedman) Security Deposits-** Specifies that claims by a landlord against a tenant or deductions from a tenant's security deposit must be limited to reasonable amounts and be reasonable and necessary to restore the premises back to the condi-tion it was in before the tenancy, except for ordinary wear and tear. Requires that, beginning April 1, 2025, a landlord must take photographs of the unit within a reasonable time after the possession of the unit is returned to the landlord, but before any repairs or cleanings for which the landlord will deduct from the deposit are completed, and that the landlord take photographs of the unit within a reasonable time after the repairs or cleanings are completed. In addi-tion, for tenancies beginning on or after July 1, 2025, a landlord must take photographs of the leased unit immediately before, or at the inception of the ten-ancy.
- **Senate Bill 1103 (Menjivar) Commercial Tenancies** — Requires commercial landlords to provide "qualified commercial tenants" contract translation and notice for month-to-month rent increases or tenancy termi-nation, and places transparency and proportionality requirements on the fees a landlord may impose to re-cover building operating costs from qualified tenants.
- **Senate Bill 1211 (Skinner) Ministerial Approval of ADUs** — Increases the number of detached ADUs eli-gible for ministerial approval on a lot with an existing multifamily dwelling from no more than two de-tached ADUs to no more than eight detached ADUs. Prohibits a local agency from requiring replacement of uncovered parking spaces demolished to allow for the construction of an ADU.



Measure BB and Master Meter Properties

By Bryce Nesbitt, Obviously Inspects

The recent passage of Measure BB has brought a new rule regarding the cost of utilities outside of the cost of rent in rent-controlled properties. Measure BB modifies the Rent Stabilization Ordinance to read that:

A tenant may only be responsible for utilities if:

1. *The utility charge is included in the base rent and does not increase during the tenancy, OR*
2. *The utility service is separately or individually metered, and the lease agreement requires that the tenant registers the utility account in their own name.*

Gone is the common practice of RUBS (ratio utility billing systems). Using RUBS, owners would take a utility bill cost and split it amongst units at a property based on such data as number of bedrooms, square footage, occupancy count, etc.

The newly established prohibition on the use of RUBS will insulate tenants from the actual utility cost particular to their usage. Unfortunately, decades of research have proven that this often leads to higher consumption¹.

Submetering of Utilities

Measure BB does account for possible ration billing by nature of “other technologies”, under some yet-to-be-defined rules. Measure BB states that you could charge for utilities outside of the monthly rent if:

“The utility service is in compliance with Board regulations, specifying other technologies, mechanisms, or policies that the Rent Board deems functionally similar to separate and individual metering.”

A variety of companies offer sub-metering tools and services to apartment groups which are then typically billed to the tenant through a separate account and payment via credit card.

Unfortunately, physical installation of sub-meter equipment is building-specific and can be quite difficult and/or costly. In theory electricity, gas, water and even Internet/Wi-Fi can be metered separately, but can be made more

complicated by the path of water, pipes, or electrical lines. Submetering has the potential to make cost sharing more fair for tenants, but it adds total costs due to service and credit processing fees.

Seeking Investor ROI for Submetering

A bright spot in submetering is measuring the use of heated water. For the cost of one or two water tank replacements, an owner can pay for submetering equipment and start charging tenants for water heating service. As this is not a “utility” but rather a service related to a utility, it may not fall under the new regulations of Measure BB.

At that point a more readily maintained single water heater can be used or possibly even a heat pump.

Benchmarking

In part because tenant meter data is private (such as PG&E usage), owners may know very little about the energy use and performance of their building by unit.

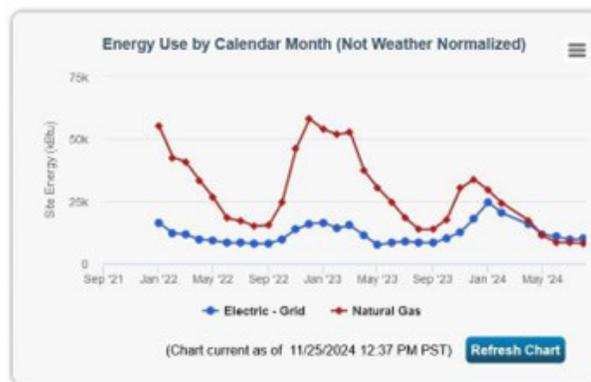
There’s now a free option to get the *aggregate* energy for a building and compare a building’s performance against other similar buildings. Below is an example of a 15-unit property that did a partial switch over from gas to electric in 2023:

This can be set up through the Environmental Protection Agency’s “portfolio manager” as long as proof of ownership for the building is given. Use of this product s mandatory for buildings over 15,000 square feet as outlined in the Berkeley Building Emissions Saving Ordinance (BESO).

Bryce Nesbitt, Obviously Inspects, is a property inspector, EV charging designer, and grant writer.

He can be reached at 510-383-6663 or bryce2@obviously.com

Measure BB does account for possible ration billing by nature of “other technologies”, under some yet-to-be-defined rules.



Footnote

1. For example the “**National multiple family submetering and allocation study**” in cooperation with UC Berkeley and EBMUD, published 2004.

Californians Appear to Reject Many Rent Control Measures

Vanessa Rancaño, *Kqed*, November 5, 2024

Rent control has been central to this election, statewide and around the Bay Area, but early returns suggest voters have little appetite to strengthen rent regulations — with one exception: Berkeley.

Californians seem to be voting down Proposition 33, which would repeal a 1995 law, known as the Costa-Hawkins Rental Housing Act, that limits how far local governments can go with their rent control laws. The state law prohibits cities and counties from imposing rent control on all single-family homes, condos and apartments built after 1995 and ensures landlords can bring rents up to market rate when a new tenant moves in.

In 2018 and 2020, voters rejected similar initiatives that would have gutted Costa-Hawkins, but advocates and political leaders have increasingly turned to rent control as they struggle to rein in housing costs, and polling in California has shown an increase in support among likely voters.

Russell Lowery, executive director of the California Rental Housing Association, said Prop 33's apparent defeat reflected the No campaign's successful messaging. "We're glad and relieved that the voters of California have not made our housing crisis worse," he said.

The group raised about \$3 million to support the No campaign, according to Lowery.

Rent control appears to be faring somewhat better in the Bay Area, at least in Berkeley. Preliminary tallies show 51.79% of Berkeley voters narrowly supporting Measure BB, which would expand rent control and renter protections and 62.45 % shutting down Measure CC, which would rein in rent regulations.

Marin County voters are a different story and appear to be pushing back on a range of rent control measures. Larkspur's Measure K, a bid to expand rent control, is losing by 64% to 35.9%. An effort to repeal Fairfax's rent cap, Measure I, is ahead 68% to 31.9%, and San Anselmo's Measure N, a referendum on local rent control, is down 65.9% to 34 %, while Measure O, to create new tenant protections, is down 69.3% to 30.6%.

In Marin County, the rent-related measures are also split on whether they would protect tenants or landlords. On the side of supporting tenants, Larkspur's Measure K would lower the city's rent cap from 7% to 3% and add new eviction protections, and San Anselmo's Measure O would strengthen tenant protections. Meanwhile, voters in San Anselmo will also decide on Measure N, a referendum on a rent control ordinance city leaders passed this spring. And Fairfax's Measure I would repeal the city's rent control and just cause eviction ordinance.



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the City hired an economist to establish this nexus. The logic supporting this fee is beyond faulty; it is just plain silly.

The argument goes like this:

- New housing draws more consumers,
- More consumers increase the demand for goods and services,
- More goods and services sold means more employment,
- Service employees don't make a lot of money,
- Therefore ...
- New housing should be taxed to provide affordable housing.

Somehow, the buying power of a couple dozen new Oakland residents warrants a \$30,000 per unit surcharge on development. Really? This is silly on its face but let's look at the alleged impact. If two dozen new residents spend half an hour a day shopping, they would demand about 2,000 hours a year from retail service providers. That's the equivalent of one full-time job. More accurately, however, it would be a demand for a hour a year on the part of 2000 already-employed workers. There is virtually no added housing demand for low-paid workers. Even if there were, does this justify impact fees totaling \$120,000?

The need for a meaningful nexus between the impact and the fee was reiterated by the US Supreme Court last session in the case of *Sheetz v County of El Dorado*. In this ruling the Court pretty much declared impact fees unconstitutional. Based on this case, I had protested the Oakland Affordable Housing Impact Fees as unconstitutional. My attorney is the LA lawyer who won the case before SCOTUS. While my case is strong, it remains to be seen

how Oakland will respond. I will keep you posted.

In the meantime Oakland, on the verge of bankruptcy for years, has tapped the fund for affordable housing funded for \$5.7 million so as to balance the current budget. I cannot explain the nexus between a housing impact fee collected one year but used to fund a budget shortfall years later.

Bottom line: Every cost in the development process is ultimately borne by the users of the property, be they buyers or renters. Every project is built with borrowed money or a cash investment. The buyers and/or renters ultimately pay for the cost of development. An extra charge of \$30,000 adds to the development cost. Based on a 6% mortgage rate, the cost to the ultimate user for an extra \$30,000 is about \$180 per month for 30 years. (This assumes the mortgage rate as a measure of real interest costs and the opportunity cost of any cash investment.)

But that is not the end. In addition to arbitrary fees, there is the cost of processing through the government bureaucracy and the added carrying and interest costs of excessive processing time. It hard to accurately measure the total cost of slow processing. Nevertheless, I believe the added cost of a four-year process compared to a more reasonable one-year process is well over a million dollars. This means the cost of the process adds about \$1,500 a month to ownership of the finished townhouses.

QUOTE OF THE MONTH

*You can fool too many of the people
too much of the time.*

— James Thurber

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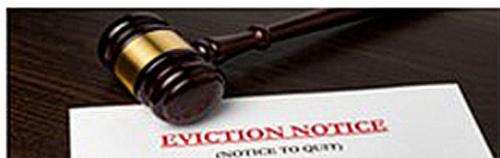
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