

MAR
2021



*The Advocate for
Berkeley's Rental Housing Providers*

*Founded 1980 • Charter Member, California Rental Housing Association
2041 Bancroft Way, Suite 203, Berkeley, CA • www.bpoa.org*

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It's Time to Get Ready for the Reopening of UC Berkeley

Mark Tarses, President, BPOA

In January, UC Berkeley announced that they plan to return to in-person classes in Fall of 2021 along with the rest of the entire University of California system. You may be assuming that when that happens, business will return to the way it was before the epidemic. That is probably just wishful thinking.

For one thing, the rental stock of Berkeley has increased dramatically since the epidemic began. Hundreds of new apartments are under construction right now in Berkeley and will be available for rent by Fall. In addition, many of the high-tech workers who used to work in San Francisco and commute from Berkeley have left the area and will never return. Many tech giants, like Twitter, have told their employees that they are now going to work from home forever.

What are you doing now to prepare for the reopening of UC Berkeley? If you want to fill your units, you should be doing things now to make your apartments more desirable than they were before the epidemic. You should be adding amenities that tenants would value and that will give you an edge in a more competitive rental market.

Probably the universally valued amenity is a washing machine and dryer in the apartment. Nobody wants to go to a laundry room or laundromat. New technology has made this easier and cheaper than it used to be. If space is a problem, consider an all-in-one machine, a machine that both washes and dries a load of clothes in the same machine. That cuts the amount of space you need in half. If there's no place for a dryer vent, that's okay too. Some dryers don't need vents. They can turn steam into liquid water and send the water down the washing machine's drainpipe. It's amazing what new washers and dryers can do, and adjusted for inflation, they are cheaper than they used to be.

Perhaps you have some unused land on your property. Think about putting it to use in a way that tenants would value. Tuff Shed can put up an all-wood bicycle shed in a couple of hours. Tenants don't want to store their bicycles in their living rooms.

My message is — spend some money on your property now — or have vacancies later.

MEMBERS ZOOM MEETING

Thursday, March 18th, 1:00pm

Legislative Perspective: What's on Deck for State Housing Bills in 2021

Check the event calendar at bpoa.org
for information & registration

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Editorial

The Girl, The Fig, and the Mask

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.

2021

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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

Kimi Stout was a server at a restaurant called *The Girl & the Fig* in Sonoma. Recently, a news story broke when her employment ended because of her on-the-job support for Black Lives Matter. She showed up to work with a Covid-required mask supporting BLM. She was told this was not compatible with the uniform required of staff and that it was unacceptable. She balked and ultimately resigned, claiming to have done so under pressure.

The news coverage dealt mainly with Ms. Stout's right to free speech as guaranteed by the First Amendment of the US constitution. This was a bogus issue. The First Amendment has no bearing in this case. It says that "*Congress shall make no law . . . abridging the freedom of speech.*" Restrictions on Congress were later determined to be restrictions on all levels of government, but there is no government control of speech here.

(However, even if the First Amendment did apply, one's right to free speech, which may be absolute as to content, is clearly not immune from limits as to time and place. Your right to free speech does not extend to my living room at 3am in the middle of the night. Your right to free speech in fact does not extend to private property if the property owner objects. It also does not protect the rights of individuals to unlimited free expression when acting in the employ of others. Even government workers do not have an unfettered right of free expression while on the job.)

The coverage of the *The Girl & the Fig* controversy mostly missed the point. At issue is whether a business has a right to keep its facilities apolitical. If employers have no control over expression by employees, consider the consequences. A butcher shop would have to let the counter help wear T-shirts which say *Meat Kills*. A property management firm would have to let the receptionist sport a button which says *Rent is Theft*. Who owns the stage here? Righteousness of his cause notwithstanding, did Colin Kaepernick have the right to usurp the NFL platform for his own political purposes?

When a restaurateur invests maybe a million dollars to start a restaurant, can the front-of-the-house employees, *by right*, set a political agenda so as to offend — and maybe lose — half the potential clientele? What if a second *The Girl & the Fig* server came in wearing a MAGA hat? If you hold your politics strongly, one of these two employees will offend. This could escalate into a food fight with patrons hurling \$2/bite food at each other. It is clear to me that the employees of a restaurant do not have the right to politicize an atmosphere so carefully and deliberately created by management.

Follow-up coverage in the Chronicle reports that some millennials demand political transparency as a prerequisite for patronage of a private business. Interesting proposition. Maybe every storefront should display a horizontal bar with *BLM* on the left and *MAGA* on the right. The owner would be required to mark his/her position on this political continuum and the millennials would know where to shop.

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❖ THE COALITION CORNER ❖

By Krista Gulbransen, Executive Director

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

Rent Debt 2020 and Beyond

Hard to believe we are creeping up on the one-year anniversary of our introduction to COVID-19. Some days it feels like it's been much more than 12 months and on other days, it's not clear what year we're in! What we do know is that rent debt continues to pile up for both tenant and rental housing provider. Estimates of California's total rent debt to date vary wildly and range from \$400m to \$3.6b. What we do know is that there are many of our members who continue to struggle month after month as tenant debt increases.

The state's "gift" to you — the provider of a tenant's place to shelter — is an extension of the state's Eviction Moratorium along with a sprinkling of rent relief in the form of financial assistance. Let's examine what the new state law Senate Bill 91 dictates for tenant and owner.

Eviction Moratorium Extension

Senate Bill 91 replaces Assembly Bill 3088 and extends the state's Eviction Moratorium through June 30, 2021. Tenants must pay at least 25% of the total rent due by June 30 to avoid *eventual* eviction for nonpayment of rent. Berkeley's Eviction Moratorium continues as is with no expiration date and prohibits ALL evictions across ALL units in the city. Additional components of SB 91 include:

- Delay of small claims court filings to August 1, 2021. For Berkeley owners, your tenants will have an additional one year to pay, and you will not be able to file a small claims court action until August 1, 2022
- Prohibits the use of COVID-19 rent debt as a screening factor in prospective tenancies.
- Prohibits decrease of services or amenities to a unit or property if tenants are not paying rent due to COVID financial distress
- Requires a housing provider to make a "good faith effort" to seek available government rental relief prior to taking any future action to reclaim debt
- Prohibits local jurisdictions from making changes to their Eviction Moratorium that would take place any earlier than July 1, 2021. This means Berkeley will not be able to prohibit Ellis Act evictions for the time being.

Important Notice Was Due February 28

If, as of February 1, 2021, your tenant owes one or more months of rent due to COVID financial distress (that includes any rent due from March 1, 2020) you were to have served an informational state notice advising tenants of their right to rental assistance. You can log on to your member account online to access the form in our Forms Library. *If you did not serve this notice by February 28, contact our offices for further guidance.*

Rent Relief Assistance Program

Many of you are wondering how you will be able to access this financial assistance. Right now, our only available look into the program is what we can glean from the text of Senate Bill 91. The state has committed to providing the information necessary to apply by March 15. You will be able to find it on their website www.landlordtenant.dre.ca.gov. We will notify members by email as soon as the website is updated and applications are being accepted.

We do know that the intent is to structure the program as follows:

- Tenant households that made 80% or less of Area Median Income (that's \$104,400 for a family of four or \$73,100 for one person) in 2020 will be eligible
- Priority will be given to tenants whose household incomes are no more than 50% of AMI (\$65,250 for a household of four)
- An owner does not need to have detailed knowledge of their tenant's 2020 income in order to apply
- Rental relief will be paid directly to the owner or property management company (proof of ownership and a W-9 provided by the owner will likely be required).
- Owners will receive 80 cents on the dollar for any debt incurred between April 1, 2020 and March 31, 2021. If you accept this funding, you agree to forgive the remaining unpaid rent for that covered period (20 cents on the dollar).
- This is only available to current and sitting tenants. If your tenant has since vacated the unit and give you possession, the only way you will be able to claim the debt is in small claims court during 2022 or 2023.

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Berkeley Weighs Major Housing Changes

Sarah Ravani, San Francisco Chronicle, February 21, 2021

Berkeley is considering ending single-family zoning by December 2022 — an effort to right the wrongs of the past and address the region's housing crisis, city leaders say.

On Tuesday, the City Council will vote on a symbolic resolution that calls for an end to single-family zoning in the city. But the controversial proposal has already upset some residents who've expressed concern that the change could ruin their neighborhoods.

Berkeley is the latest city looking at opening up these exclusive neighborhoods to more housing as the region struggles with exorbitant rents and home prices and increasing homelessness. Sacramento recently took a big step in allowing fourplexes in these neighborhoods and one San Francisco politician is pushing a similar plan.

Berkeley may also allow fourplexes in city neighborhoods. Next month, the council will consider that proposal, which will likely spark pushback from tenants groups fearful it could fuel displacement if more protections aren't included.

For Berkeley, which has historically been anti-development, the moves are the latest shift as the city slowly embraces more density, including plans to add housing around the North Berkeley and Ashby stations.

Councilwoman Lori Droste, who is introducing the resolution, said she's trying to undo the legacy of racism that created single-family neighborhoods, which cover 50% of the city.

In 1916, single-family zoning was born in Berkeley's Elmwood neighborhood, forbidding the construction of anything other than one home on each lot. At the time, an ordinance stated that its intent was to protect "the home against the intrusion of the less desirable and floating renter class."

"I live in the Elmwood area where it is sort of the birthplace of single-family zoning," Droste said. "I thought it was incumbent upon me as representing this neighborhood to say that I want to change something that I think is detrimental to the community."

Dean Metzger, the founder of the Berkeley Neighborhoods Council, a collective of nearly 40 neighborhoods, said he wants the opportunity to give more input before the city changes any zoning laws. He said he worries that if a developer builds a multistory building next to a single-family home, it could obstruct views, block solar panels and clog available parking.

Metzger said it's hard to specify what kind of design would be most appropriate for Berkeley's single-family neighborhoods. He said he wants developers to be required to seek input from neighbors before building.

"They've labeled us antigrowth; it's really not true," he said. "We are trying to find ways to accommodate the development and make our neighborhoods livable. (The council) just wants to build whatever they want to build."

After a year of racial reckoning, the same criticism of law enforcement practices should be applied to housing policies, said Councilman Terry Taplin, one of the authors of the resolution.

"This is really a historical moment for us in Berkeley because now the racial justice reckoning really has come home," Taplin said.

"It's important to be thoughtful about these decisions because they cannot be easily reversed," Garcia said. "Creating such a significant change of land use in such a large part of the city is going to involve a lot of planning and critical thinking on how to ensure the best policy outcome."

As the state grapples with a housing crisis, many housing advocates say city leaders have to undo decades' worth of anti-density housing policies. They say Berkeley's efforts are a necessary step in addressing the region's crisis even if it takes time. If the resolution passes, it will take years before the city sees a change in its housing stock.

"It will take time," said Grover Wehman-Brown, a spokesperson for East Bay Housing Organizations, which represents nonprofit builders. "It's many, many decades and centuries in the making. Building housing takes time, especially in areas like ours where there are not just wide open lots that you can drive large equipment up to and start digging to build one house."

David Garcia, the policy director at UC Berkeley's Turner Center for Housing Innovation, said the proposal was a "big deal."

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Bill to Ease Rules on Multi-Unit Housing

Alexei Koseff, *San Francisco Chronicle*, February 18, 2021

State Sen. Scott Wiener will seek to loosen restrictions on how much Californians can build on lots zoned for multifamily housing, hoping to clear the way for more small apartment buildings as the state tries to increase its housing supply.

A bill introduced Thursday by the San Francisco Democrat takes aim at local regulations that limit the square footage of a project based on its lot size, which Wiener calls a “poison pill” to block anything but single-family housing. “We should not tolerate a situation where a city makes it impossible to build,” Wiener said.

For properties zoned for multifamily housing of two to ten units, Wiener’s measure, SB478, would prohibit cities and counties from setting a floor area ratio of less than 1.5 - meaning the total square footage of the building could be 1½ times the size of the lot.

Under this scenario, a two-story building could cover three-quarters of the property and a building covering half the lot could be three stories tall, unless there are local height restrictions.

This would be far more what is now allowed in some Bay Area communities. In unincorporated areas of Marin County, for example, duplexes have a maximum floor area ratio of 0.3, or a fifth of what Wiener would require, and can be built only on a lot that is at least 7,500 square feet.

Wiener says such minimum lot size requirements make it too expensive to buy land for more modest multifam-

ily housing, preventing the development of anything but large single-family homes. His bill would lower those requirements for housing with two to ten units, though the new standards have not yet been determined.

Though these changes are technical, they could be significant as Wiener and other legislators push to boost the construction of small multifamily housing, particularly in places that have long resisted it.

State Senate President Pro Tem Toni Atkins, D-San Diego, revived a bill that would make it easier to split lots and convert homes into duplexes, building up residential neighborhoods in a more limited way.

Wiener is also trying again to pass a measure that would let cities rezone residential parcels for apartment or condominium projects of up to ten units without doing years-long environmental reviews. Cities could adopt the change for neighborhoods near public transit and in high-income areas with access to jobs and good schools, but would not be required to do so.

Both proposals emerged last year after the failure of SB50, Wiener’s bill to allow denser residential construction around public transit and in wealthy suburbs. Supporters say they are trying to increase housing production while respecting local control and neighborhood character, though these new measures have encountered resistance as well.

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The End of Single-Family Zoning in Berkeley?

“It wasn’t that long ago when Berkeley wasn’t considered the most forward-thinking on housing,” he said.

But he added that it’s crucial these policies don’t jeopardize existing housing. Outreach to residents is key, he said.

“It’s important to be thoughtful about these decisions because they cannot be easily reversed,” Garcia said. “Creating such a significant change of land use in such a large part of the city is going to involve a lot of planning and critical thinking on how to ensure the best policy outcome. You’re going to want to make sure the policy itself does result in the kind of housing city leadership wants to see.”

But change is coming. Recently, the Berkeley council approved rezoning the Adeline Street corridor and even

added an extra floor of height to what builders could do there. The plan allows 1,450 new housing units, about half for low-income families in an area that was once a thriving Black, working-class community, but has become increasingly white as the high cost of housing has driven out many families. Officials are now trying to undo that.

“I think it’s really easy to look at racism and injustice in other cities and other places, but it takes a lot more courage, introspection and vulnerability to look at the mistakes that we’ve made in these areas,” Taplin said. “We have to really take an honest look at our shortcomings and be open to changes that might make us uncomfortable.”

Berkeley's Progressive Revival: A Model For Other Cities?

Randy Shaw, February 9, 2021

When I was speaking across the country promoting the housing policy changes urged in *Generation Priced Out*, I did not foresee my hometown of Berkeley, California ending exclusionary zoning before Seattle, Denver and other cities. To the contrary, my book discusses how Berkeley's 1973 "Neighborhood Preservation Ordinance" became a national model for using "neighborhood character" and "public input" to stop new apartments.

Through most of 2020, Berkeley refused to end exclusionary zoning. City officials would not even back Councilmember Lori Droste's proposal to study allowing new "missing middle" fourplexes in many neighborhoods. But that was prior to last November's elections. Berkeley politics has since been transformed.

Today, Berkeley housing policies are on track to become a national model for inclusion. Last week, a council majority announced it had the votes to 1) *end exclusionary zoning*, 2) *legalize 4plexes in most areas if not citywide*, and 3) *do even more*.

Vice-Mayor Droste and her colleagues openly condemn exclusionary housing as racist, elitist and contrary to the goals of combating climate change. The council is expected to end exclusionary zoning on February 23; legalizing four-plexes is at the land use policy committee.

How did this huge change in Berkeley happen? What can advocates in other cities learn from Berkeley's shift?

Berkeley's Core Progressive Tradition

I wrote on October 6, "Berkeley's future as a city for people of all incomes will be significantly impacted by the outcome of the District 2 council race." Terry Taplin's victory unquestionably opened the door to Berkeley's new housing future.

But Taplin's surprisingly large victory over a staunchly anti-housing incumbent cannot be seen in a vacuum. Taplin's large volunteer campaign and electoral success reflected grassroots organizing by activists seeking to reverse Berkeley's anti-housing direction.

These activists tapped a voting base that reflects Berkeley's longstanding commitment to racial and social justice. And an electorate that wants to combat climate change. Berkeley activists awakened a long too silent majority that supports inclusive housing policies; a silent majority that still allows a vocal minority to maintain exclusionary zoning in other "progressive" cities.

Since I first moved to Berkeley in 1974 the city has had only two Congress members: progressive icons Ron Del-

lums and Barbara Lee. In 1971, Berkeley passed the first rent control law west of New York City. In 1979 I volunteered fulltime on the Berkeley campaign that elected Gus Newport as the nation's most openly left mayor. I was living in San Francisco when in 1980 Berkeley joined Santa Monica in passing the state's strongest rent control laws. Berkeley's left was still aligned with the Neighborhood Preservation Ordinance but new housing development was not a Berkeley political issue in the 1970's and 1980's. Berkeley's "housing crisis" was very severe for students, but that was due to UC's failure to build housing not the city's opposition. East Bay rents and home prices were still well below San Francisco's (when my family moved backed to Berkeley in 1989 the comparable San Francisco home prices were more than double).

But the 1990's changed Berkeley's affordability in two major ways.

First, the passage of the Costa-Hawkins law in 1995 ended the city's ability to impose rent control on vacant apartments by decade's end. This sharply drove up rents. Second, the late 1990's dot com boom brought increased housing demand to Berkeley. Berkeley was attracting people once deterred by its radical politics and eager to enjoy the city's great Bay views and amenities. This has caused Berkeley home prices to skyrocket ever since (the median price is now \$1.4 million).

Berkeley's growing unaffordability exposed how some of Berkeley's longtime progressives were staunchly anti-development. Tom Bates, who represented Berkeley in one capacity or another from 1971-2016, was solidly pro-housing. Bates' pro-housing views scrambled city political alignments. He got housing development in downtown passed by voters, but his 14 years as mayor (2002-16) also coincided with a sharp decline in student engagement in city politics and in overall public engagement.

Increasing Public Engagement/Education

I blame this lack of civic engagement for boosting the power of the city's vocal anti-housing minority. Berkeley meetings came to sound more like exclusive Palo Alto than a city whose political leaders in the 1980's sacrificed their jobs to build scattered site public housing.

I learned during book talks that most people don't realize they live in exclusionary neighborhoods. They see apartments are on their street and are not aware that similar buildings cannot be constructed today. I heard from so many people saying "Well I wouldn't want a highrise

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San Francisco Cannot Foist Pandemic's Economic Burden onto Landlords

Oliver Dunford, *San Francisco Chronicle*, February 10, 2021

In response to the COVID-19 pandemic, governments across the country have tried to limit the economic damage caused by the unprecedented lockdowns. That is certainly a worthy goal. But far too often, rather than providing assistance across the board — which might require unpopular tax hikes on everyone — governments stick only some people with the bill.

San Francisco, for example, recently adopted an ordinance that prohibits landlords from evicting certain business tenants that can't pay rent because of COVID-related impacts. The ordinance allows these tenants, upon a showing of financial hardship, to stop paying rent immediately and grants them a forbearance period to repay, during which time landlords cannot recover possession of their property. Businesses with less than 10 full-time employees are even permitted to cancel their leases altogether and avoid early-termination fees, regardless of what their leases say. The ordinance provides one meager sop to smaller landlords (those that own less than 25,000 square feet of rental space), who may proceed with eviction against non-paying tenants, but only if the landlords can prove that the inability to evict would cause them a "significant" financial hardship.

No one doubts that businesses are suffering, but the San Francisco ban ignores the suffering of landlords who — like their tenants — are also businesses that need income to pay bills. Nor does the ordinance consider that, precisely because of the economic downturn and the difficulty in finding new tenants, landlords have every incentive to work with their existing tenants to help them stay in business so that they can continue to pay rent over the long term.

In the eviction-ban ordinance itself, San Francisco acknowledges that it's facing an unprecedented public health and economic crisis due to the COVID-19 pandemic. Nonetheless, San Francisco targets innocent property owners for special — unfair — treatment. Why are landlords singled out to bear the burdens of the pandemic?

Aside from the questionable ethics of picking COVID winners and losers, San Francisco's ordinance is unconstitutional. First, the ordinance effectively rewrites the contracts between landlords and their tenants, in violation of the U.S. Constitution's contracts clause. This clause provides that "No State shall ... pass any ... Law impairing the Obligation of Contracts." According to the Supreme Court, a law that substantially impairs contractual rights will survive only if the government identifies a legitimate and significant

public interest and shows that the contractual impairment is reasonably related to that interest.

Assuming San Francisco has a legitimate interest in mitigating the economic effects of the COVID-19 lockdowns and the pandemic's public-health risks, the ordinance is not reasonably related to that interest.

First, a ban on evicting business tenants has nothing to do with responding to public-health risks — one could argue that closing shop and staying home would be a better response. Second, by imposing non-recoverable costs on the landlords, the ordinance increases net economic harm. Among other things, the ordinance encourages existing landlords to convert their properties to non-tenant uses, thereby causing an increase in rental prices. It also discourages non-landlord property owners from offering new spaces for rent, which would put downward pressure on rental prices. Any short-term gains to tenants, therefore, will be far outstripped by the immediate- and long-term harms to the broader economy — precisely the opposite of the ordinance's stated goal.

The second constitutional deficiency arises out of the Constitution's guarantee of due process. Here, because the landlords have not caused any harm, San Francisco's eviction moratorium deprives landlords of their property rights without due process of law. Of course, if a tenant or the city shows that a landlord engaged in illegal conduct to the detriment of the landlord's tenant, then the landlord can and should be held liable — after a court of law so determines. But the eviction-ban ordinance effectively declares that all commercial landlords in the city may be deprived of their property without any judicial process whatsoever.

In short, San Francisco's eviction ban is both unfair and illegal. Politicians may score some public relations points, but the ordinance does nothing to stop the spread of COVID-19 and it harms, rather than helps, the city's economy.

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If Houses Were Treated as Cars Are

Rick Cole, Whittier Daily News, February 13, 2021

For decades in Southern California, we've taken for granted that the way to get from Point A to Point B is to drive. Recently this ingrained assumption has been challenged, but this column is not about cars. It's about housing — how we take completely different approaches to regulating the cars we drive vs. the places we live.

Cars are regulated at the federal and state level. They are required to meet certain safety and pollution standards. The design, price and availability of cars is determined by the private market. We'd be outraged if cities tried to restrict the size, price and availability of, say, Toyotas or SUVs.

Now take housing. Regulating housing is the domain of cities, giving them almost total control over what gets built in their community. A city can outlaw apartments. It can forbid housing above stores — or require housing above stores. It can limit how large a house or apartment unit can be — or how small. It can insist new housing provide expensive parking, even if the occupant doesn't own a car. It can require a percentage of new housing be dedicated as "affordable" — or make it virtually impossible to build such affordable housing at all.

Neither the way we regulate cars nor the way we regulate housing is perfect. But notice the radical difference in approach. In California we have one system for regulating cars and 482 for regulating housing.

Consider this thought experiment: What if we reversed the two approaches? What if we allowed cities to strictly regulate cars and removed their power to control the availability of housing? We'd solve our traffic problems because far fewer people could afford cars. And we'd solve the affordable housing problem, because the supply of housing would quickly increase, bringing down the price.

Obviously such a radical reversal is not practical, nor necessarily smart. But it does highlight why we struggle with horrendous homelessness, and why many struggle to pay the rent or buy their first home.

In our Declaration of Independence, Jefferson noted "all experience hath shewn that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accus-

tomed." So it is when we cling to outmoded, counter-productive ways of planning cities.

In Alhambra, the City Council recently held what was supposed to be the final hearing on a proposed housing development called "the Villages at the Alhambra." The Ratkovich Company owns 56 acres. An historic office complex occupies 17 of them. Back in 2017, it presented a plan to develop the remaining 39 acres for condos and apartments.

The original plan envisioned more than 1,000 units. Predictably, it evoked significant controversy. Public concerns focused on traffic, density, environmental contamination and housing affordability. After five Planning Commission hearings, the developer reduced the plan to 839 units. The council then held three more hearings before deciding to appoint two members to negotiate with the developer to pursue further changes.

Regardless of your perspective, fights that consume four years for one project can't be the best way to plan cities, or provide adequate housing.

Everyone needs housing. Yet we've made a dysfunctional mess of providing it. Instead of reacting to developer proposals, what if we developed objective rules for developers to follow? Instead of fighting over specific projects, what if we pro-actively planned future housing growth across our region?

Rethinking how we regulate housing is not a crazy idea. It's a long overdue reform.

Rick Cole is the former mayor of Pasadena and city manager of Azusa, Ventura and Santa Monica.

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Coalition Corner

Additional Questions Related to SB 91

Q: *What if my tenant does not pay rent from April 1, 2021 forward?*

A: You may need to serve them a 15-day notice. This temporarily replaces the standard 3-day notice we are all accustomed to. While it does not guarantee an eviction for nonpayment of rent, it may preserve your right to evict at a later date. Especially if your tenant does not pay the 25% minimum required rent OR does not appear to have been financially impacted by COVID. Email us at bpoa@bpoa.org for recommended lawyers who can assist you in serving your tenant a 15-day notice.

Q: *When will I be able to evict for reasons other than nonpayment of rent?*

A: Berkeley's Eviction Moratorium still reigns king and is likely to be in effect through all of 2021. It prevents any evictions of any type in any unit across Berkeley. This includes owner move in evictions, violation or breach of lease evictions, or nuisance behavior evictions.

Q: *What if my tenant doesn't pay the 25% of rent due by June 30, 2021?*

A: We don't know the answer to that question yet. We do anticipate that the state legislators will likely extend

the Eviction Moratorium through the end of the year. By June, they will have a better idea of funding that will be available to further pay off rent debt and this may release additional funds for distribution to owners. We will learn more prior to the expiration of S.B. 91.

Q: *What if I am in a dire situation in which I need to gain possession of the unit my tenant is occupying?*

A: The Eviction Moratorium does allow for evictions related to "health and safety" as well as Ellis Act evictions (taking the building off the rental market for a period of at least ten years). While these are still exceedingly difficult evictions especially due to Alameda County still refusing to hear most eviction cases, there may be opportunity for you. Contact the BPOA offices for a list of recommended attorneys who can assist you.

The BRHC Corner is a way to keep our members connected to rental housing legislation both at the local level and the state level. The Berkeley Rental Housing Coalition is the political and legal arm of BPOA with its own membership. Membership provides support to our political efforts, lawsuits, and the employment of Executive Director Krista Gulbransen.

To lend your support, contact Executive Director Krista Gulbransen, krista@bpoa.org or (510) 304-3575.

For the safety of our members, our monthly member meetings will remain online through the end of this year. Please check our website for the most current dates and topics or shoot us an email at bpoa@bpoa.org and let us know about a topic you'd like to see covered.

<https://www.bpoa.org/eventcal.php>

DATE	TOPIC
February	Taxes & Your Rental Property
March 18, 1:00 pm	What's on Deck for State Housing Bills in 2021
April 15, 2:00 pm	Marijuana, Emotional Support Animals & Other ADA Pitfalls
May 20, 2:00 pm	Managing the Rising Cost of Rental Property Insurance Rates
June 17, 2:00 pm	Mid-Year Berkeley & State Rental Regulation Update

Are you a new member or new to being a landlord? In 2021 we are hosting a Beginning Landlords Series for new housing providers or anyone that needs to brush up on the basics of being a landlord in Berkeley. Each month we will take on a new topic in depth, examining everything you need to know to manage your own property.

Check the BPOA calendar for more details.

in my neighborhood but I certainly wouldn't oppose a fourplex." Yet a vocal minority in neighborhoods — overwhelmingly older white homeowners — opposes fourplexes and have controlled urban land use policies for decades.

Berkeley's strategy to change this dynamic was twofold. First, get students reengaged in Berkeley politics. Students were among the chief victims of the city's inadequate housing supply driving up rents. Yet few students were engaged in city housing politics. This began changing in fall 2017 when student Rigel Robinson used his student government post to expand student engagement; Robinson's 2018 election as the first student council member solidified this momentum.

Students began turning out to council and land use meetings as a counterbalance to the anti-housing speakers who long at the stage to themselves. At a February 2019 hearing involving efforts to stop downtown housing that allegedly blocked views of the Bay from the campus Campanile, every student speaker backed the project while virtually every opponent was an older white homeowner. The second dynamic was educating and mobilizing non-students about ending Berkeley's racist and elitist housing policies. Groups like North Berkeley Now! and South Berkeley Now! expanded focus from building housing on BART stations into broader discussions of why so many Berkeley neighborhoods banned new apartments (their efforts were aided by Councilmember Rashi Kesarwani, who represents the North Berkeley BART area). The Berkeley Now groups used lawn signs and twitter to

promote their message; council and land use hearings now had a lot more neighbors speaking in favor of new housing.

Other Cities

Berkeley's strategy to redirect housing policies is not unique; Cambridge mobilized residents to move in a similar pro-housing direction. While public education is easier in smaller cities, New York City has seen support for upzoning for affordable housing grow among diverse constituencies, including the current mayor. And Abundant Housing LA has secured state housing development mandates that will necessitate increase housing production in Los Angeles County and likely also within the city. Minneapolis, Portland and Sacramento have already ended exclusionary zoning. All three built the broad political coalitions necessary for success. Seattle was moving toward this goal in 2017 but its past and current mayors' let vocal homeowners and strong opposition from the *Seattle Times* intimidate them. The next mayor's race could determine if Seattle becomes a much more inclusive city. Austin had its land use reform thrown out by a terrible court ruling. Denver and San Diego are ripe for public education and organizing campaigns; in both cities ending exclusionary zoning seems just a matter of time. Berkeley's powerful vision of housing inclusion goes beyond ending exclusionary zoning. And based on what's happening as we speak, Berkeley's progressive revival has just begun.

MEMBERS ZOOM MEETING FOR MARCH

Legislative Perspective: What's on Deck for State Housing Bills in 2021

THURSDAY, MARCH 18TH AT 1:00 PM

Check the event calendar at www.bpoa.org for information & registration

○ — **BPOA WORKSHOPS** — *Go Beyond the Basics* — ○

Parts of People's Park Close Briefly for Pre-Development Testing

Sarah Ravani, San Francisco Chronicle, January 19, 2021

UC Berkeley will close parts of People's Park on Tuesday for about three weeks to test the soil in preparation for building student and permanent supportive housing on three acres of the park.

Crews will put up fences, and a team of engineers and geologists will test the soil in certain parts of the park, causing closures that will probably last until Feb. 16 depending on weather conditions.

The tests will be done to ensure the park is seismically safe for construction, said Kyle Gibson, a spokesman for the university's Capital Strategies, which oversees campus design, planning construction and real estate.

The project will build up to 1,200 beds for sophomores, juniors and seniors and up to 150 beds for the homeless. The project's environmental impact report will look at a student building that goes up to 17 stories.

The closures will not affect public restrooms or street parking at the park. The park's trees will also remain untouched during the analysis, Gibson added.

Once the soil samples are collected, the closed areas of the park will reopen.

The campus is 6,900 beds short of its goal to house half of its undergraduates and a quarter of its graduate students, according to UC Berkeley. The campus has about 42,000 students.

Discussions to build student housing at the park began in 2017. UC Berkeley officially kicked off design plans to develop housing at the park — known as a safe space for the homeless — in July 2019. The architectural design and The development plan for the park, which is on land owned by the university, will be presented to the UC regents this summer for approval. Construction is not expected to begin until 2022.

The park has a complicated history. It has been the site for student protests for decades and is the place where deputies killed a man and blinded another on infamous "Bloody Thursday" in 1969.



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These political tests are not the same as an old-fashioned boycott. A boycott addresses a specific grievance at a specific point in time toward a specific end. What these millennials propose is a general litmus test for patronage. This of course would split the country, which is already woefully divided politically, into one which is economically divided as well. *We shop at our stores; they shop at theirs.* There are areas of the country — you know one well — which so clearly lean one way rather than the other, that someone subscribing to the out-of-favor flavor would be precluded from all economic activity. That's not right.



There is a side issue here for rental property owners. I used to have a provision in my standard lease precluding the display of signs on the property. My properties are now professionally managed and I do not know if this provision still applies. Its purpose was legitimate. Quite simply, the idea was to avoid a plethora of signs, displays, posters, etc. which would be offensive to the eyes and/or sensitivities of the public and mainly to the other tenants.

My guess is that this lease provision would be enforceable with one possible very sticky exception: political signs, particularly at election time. I have had the occasion to be more than annoyed by tenant displays of political expression not in tune with my own particular political proclivities. My sensitivities aside, any tenant display of a political nature could offend another tenant.

There is an argument — peace on the premises — supporting a ban on all political displays, but I doubt a court — at least a California court — would agree. For the same reason that an owner would be hard pressed to ban political signs on a rented single-family home, you likely could not do so for apartment dwellers.

I have never known this issue to be legally tested. My guess is that the owner would lose; that political advocacy trumps aesthetics, especially at election time. I don't know what specific legal principal would apply but logically I would think a tenant could display what he/she chooses in his/her apartment but not in the common area. A window sign would pass muster; a lawn sign would not.

QUOTE OF THE MONTH

Among those who dislike oppression are many who like to oppress.

— Napoleon Bonaparte



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MARCH 18, 1:00 PM

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- *Mid-Year Berkeley & State Rental Regulation
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