JUN 2022

MONTHLY

BPOA

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

Apologize!

Mark Tarses, President, BPOA

Michael St. John used to say at BPOA meetings that some of the biggest and most expensive quarrels between tenants and landlords start off over some little thing, and that is so true!

I knew of a big fight between a tenant and his landlord that started off over a twenty-cent washer. The tenant repeatedly asked his landlord to fix a drippy faucet that was annoying the tenant. When the landlord replaced the washer, the tenant wanted the landlord to apologize to him for taking several months to do the job, but the landlord wouldn't do it, making the tenant angry. That started a legal nightmare that wound up costing the landlord over $50,000.

You are not going to be a successful landlord, especially in a place like Berkeley, if you cannot apologize. Here are some things to remember:

1. S**ay that you are sorry.** There are a lot of people in this world who cannot say the words "I'm sorry" or who can't say "I'm sorry" and sound like they mean it. An insincere "I'm sorry" is infuriating and will make things worse.
2. T**ake responsibility.** Don't try to shift the responsibility to the person you are apologizing to. Don't say 'if.' Say: "I'm sorry. I know that a drippy faucet is annoying." Don't say: "I'm sorry if the drippy faucet was annoying you." '*IF*?' Obviously, the drippy faucet was annoying the tenant, or he wouldn't have complained about it.
3. A**ct quickly.** Most tenants won't call their landlord about something that is wrong unless it is annoying them. I once rented a house to a group of Cal students. One day, one of them called me because a hinge on the front was making a squeaking sound whenever someone opened it and it was creeping them out. I went over there that same day and fixed it. A little WD40 solved the problem. I left the can of WD40 with them in case it happened again.
4. M**ake amends.** If a tenant complains that the P-trap under the sink rusted through and ruined the stuff the tenant was storing there, apologize and reimburse the tenant for his loss and be generous. Don't wait for the tenant to ask you to reimburse him.

If you cannot apologize, you should sell your Berkeley property immediately and go into some other business.

JUNE EVENTS

Maintenance? What Maintenance?!
Wednesday, June 8, 3:00 pm

BPOA's New Lease & How to Enforce Lease Terms
Thursday, June 9, 3:00 pm

Fair Housing & Reasonable Accommodations for Rental Housing Providers
Wednesday, June 15, 3:00 pm

*See pages 13 & 14 for details & **more events!***

Issue Highlights

Editorial.....*Page 2*
Coalition Corner .....*Page 3*
Tenants Seek Help as Inflation Drives Rents.....*Page 4*
NX Wants to Build Berkeley's Newest Highrise... *Page5*
Proposal Would Cap Oakland Increases at 3% ....*Page 6*
The Nuts & Bolts.....*Page 8*
Bornstein: Update on Moratoria Challenges .....*Page 9*
Housing Crisis Squeezes College Students.....*Page 10*
Court Denies Challenge to SF Eviction Protection..*Page 13*
Monthly Event Calendar.....*Page 13*
Quote of the Month, BPOA Event Details.....*Page 14*

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

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

Office Hours:
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

Editorial

The Issue of Reproductive Rights Comes with an Unfortunate Side Effect

Albert Sukoff, Editor

Many years back, I had an idea which I thought was terrific until, on further reflection, I concluded it was not. The idea was this: that legislative representation of the individual voter need not, and probably should not, be geographically based. Why, I thought, were some number of voters a natural affinity group just because they lived in close proximity to one another. This left many voters with essentially no representation. Does a conservative in Berkeley have representation at any level of government? Likewise, for example, for a liberal in, say, Wyoming. Personally, right now, I do not feel I am represented by any of the legislators duly elected to represent me — either in Berkeley, Alameda County, Sacramento or Washington.

What if one could assign one's vote to any affinity group one chooses? What if any organization, regardless of issue, could be qualified to accept proxies for legislative representation? It might be a religious or an ethnic group. It might be narrowly or broadly focused. It might be the ACLU or the KKK. It might be PETA or the NRA. The point is to grant the voter at least some modicum of power in an area which is important to him/her.

This concept would allow different criteria to be adopted by voters for representation at different levels of government. One might assign one's vote based on the schools at local level, the environment at the state level and foreign policy at the national level.

Structuring the universal franchise this way would be the end of the two-party system. Rule by just two parties has not always served us well. It is particularly dysfunctional at this point in time because the extremes have garnered sufficient control of each party that they control the process. An electorate which is predominantly purple all too often gets to choose only between red and blue.

So why would non-geographic voting not be such a good idea? First there are the usual problems that multi-party systems encounter, only in spades. At lease most political parties are political. They may differ on how they might address the issues but they generally have a common understanding of what the issues are. With several political parties, small parties on the left might agree to form a government to counter a larger party of the right. But how do a farmer, an atheist, a vegan and an astrologist find common ground to govern? Forming a government with many disparate and narrowly focused groups — I hesitate to call them parties — would be difficult if not impossible.

Even worse would be vote trading. Why wouldn't the representatives from PETA be willing to exchange support with Iowa grain farmers. The might not appreciate, or even remotely understand, the issue promulgated by the other guy but they would not likely care. Maybe a sole KKK rep in Congress would have trouble forming alliances, but support for most issues would be tradable. Some coalitions would find others beyond the pale, but most would be sufficiently uninterested and/or disinterested that deals would be doable.

continued on page 14

❖ 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.

Golden Duplex & ADU Exemptions Threatened

The primary work of the Berkeley Rental Housing Coalition (the political and legal arm of the BPOA) is to monitor and participate in state and local elections. Every two years Berkeley rental housing owners are faced with proposed modifications to Berkeley's Rent Stabilization Ordinance (RSO). More often than not, the modifications are harmful to owners and are billed as a way to "strengthen" the protection of tenants.

Many owners are unaware that the Rent Stabilization & Just Cause Ordinance first came on the scene in 1978 with Berkeley's Measure I — the Renter Property Tax Relief Ordinance. The ordinance that we know today was solidified in 1982 with the removal of owner-occupied triplex exemptions. Because the RSO was voter-approved, most changes to the RSO must also be voter-approved.

Every two years, the Rent Board commissioners (guided by Rent Board legal staff) review the RSO and propose potential changes. Sometimes they are small, innocuous changes (yes, those do exist) but there are many times where the changes are significant. It is up to the BRHC to track all proposed changes and to communicate them to our members. The ultimate vote as to whether the changes will go to the voters are put in the hands of the Mayor & City Council at their end of July meeting.

There are typically 3-4 modifications of the RSO per election cycle. This poses a huge challenge to voters because they are asked to either vote on all of them or vote on none of them. Sometimes proponents of the changes will try to hide big significant modifications by putting the focus on the smaller, less impactful ones. This confuses voters, making them think that they are voting for something insignificant.

As we gear up for the 2022 election, we have been keeping our ears and eyes open for any signs of significant modifications to the Rent Stabilization Ordinance. It was quiet on the side of the Rent Board commissioners until a recent City Council 4x4 Committee. The committee is comprised of four Rent Board commissioners, the mayor, and three City Councilmembers. They discuss issues related to rental housing and this is where many of the ordinances (i.e., Fair Chance, Source of Income) get their start. At a recent meeting of the committee, the mayor casually mentioned that he would like to see a change to the ordinance that removes eviction protection exemptions for Golden Duplex and new construction ADU owners. Oakland did a very similar move a few years ago, effectively giving all tenants in Oakland eviction protections — even when the owner lives on site with the tenant.

As you can imagine, our organization has already started to mobilize around opposing this change. We have seen the negative impact of removing these exemptions, by nature of the Eviction Moratorium. With the prohibition on any eviction in Berkeley, Golden Duplex and new construction ADU owners have been prevented from ending the tenancy of problematic tenants. We have a few BPOA members who have been greatly impacted by this prohibition but who have had to continue to live on site with their problematic tenant.

We have launched a survey to better ascertain the real-life impact of such a policy decision. Over 75 small owners who currently have exemptions have responded, expressing their feelings about the possibility of losing the ability to terminate tenancies. Our intent is to aggressively and actively fight any proposal that removes owner-occupied exemptions. The rental industry is tired of taking the hit for tenants who have been given carte blanche during the pandemic to withhold rent and blatantly violate their lease agreement.

Stay tuned for next steps and how you can help oppose this legislation!

BRHC

Help fund our efforts to fight against unbalanced, unfair, and poorly thought-out rental housing policy. Your membership in the Berkeley Rental Housing Coalition helps to employ feet-on-the-ground acting as your watchdog. To lend your support, contact Executive Director Krista Gulbransen.

krista@bpoa.org or (510) 304-3575.

Tenants Seeking Help as Inflation Drives Up Rents

Lauren Hepler, San Francisco Chronicle, May 16, 2022

Oakland renters such as Mark Dias, an organizer with the Oakland Tenants Union, face increases as high as 6.7% as inflation drives up expenses.

Gas prices are going up. Food costs are climbing. But in Oakland, officials are moving to limit how much inflation drives up local rents.

Council Member Carroll Fife is leading an effort to bring the East Bay city in line with neighbors such as San Francisco by further limiting price increases on rent-controlled apartments. The shift comes after Oakland housing regulators announced that, starting in July, landlords would have the option of increasing rent up to 6.7% because of inflation, the highest such one-year jump on record.

Reconsidering how rent caps are calculated is the latest example of how Bay Area cities are grappling with the pandemic's housing fallout — a task pitting landlords against tenants in eviction courts, lawsuits and now, city meetings.

"Who should absorb the impact of all of this?" said Derek Barnes, CEO of landlord advocacy group the East Bay Rental Housing Association. "That's really the question."

Oakland's decades-old rent control program, formally known as a Rent Adjustment Program, covers most of the thousands of apartments in the city built before 1983. Landlords have the option under this program of doling out "allowable rent increases" after July 1 each year, which are currently calculated using a longstanding city formula that factors in inflation at a rate of 100% of annual change in the federal Consumer Price Index.

Neighboring cities with their own rent control formulas, including San Francisco and Berkeley, factor in 60% or 65% of the national inflation rate, meaning residents there are facing lower increases in the 2% range this year. If allowed to proceed, Oakland's 6.7% allowable increase this summer would be more than triple last year's local 1.9% rent hike.

It may all sound like an overcomplicated math problem, but residents of rent-controlled Oakland apartments like Mark Dias and Emily Wheeler say it adds up to a crucial moment in a pandemic that continues to exact an uneven toll.

"We were flabbergasted," said Dias, an East Bay native who helps counsel fellow renters with the Oakland Tenants Union. "We were trying to figure out, if we were going to get City Council or someone involved, what would we be able to do?"

An alternative emerged this month: Fife introduced a measure at a city meeting that would change Oakland's rent increase formula to factor in just 60% of change in the Consumer Price Index, or limit rent hikes to a maximum 3% annually, whichever is lower. The measure is scheduled for debate at a City Council meeting in late May, and several fellow council members have expressed their support.

About 60% of Oakland residents are renters, and 51% of those households are very low-income, Fife said in a news release announcing the measure, which in Alameda County means a household income of less than about $71,400 for a family of four. Of particular concern, she said, are non-English-speaking renters and other tenants stuck waiting for payments from "confusing" pandemic rent relief programs.

"We cannot see this happening," Fife said in a statement, "and continue to think that tenants can endure this record high allowable rent increase."

In the past year, rents across the country spiked an unprecedented 16%, surging far above pre-pandemic levels in lower-cost states like Florida and Arizona, according to Apartment List.

But the Bay Area has been a different story, thanks to highest-in-the-nation housing costs before the coronavirus. As of April, the average rent for a two-bedroom apartment in Oakland was around $1,800, Apartment List found, up 5% from the same time last year but 9% below March 2020 rates.

Neat financial charts obscure a messier reality. Thousands of tenants and landlords are still facing pandemic rent debt after applications closed for $5 billion in statewide rent relief funds. In Alameda County, property owners also recently sued over a local eviction moratorium after similar state and federal measures expired.

For Wheeler, a nonprofit worker who grew up in Oakland, it's a new chapter in what has long been a challenging housing market. She joined the Oakland Tenants Union about four years ago, after trying to figure out what her legal rights were while dealing with apartment issues like mold and rat infestations. Now, after the shock of the pandemic, she said it's unfair to ask tenants already paying high prices to stomach a nearly 7% rent hike.

continued on page 7

Berkeley Developer NX Wants to Build City's Newest High-Rise

Sarah Klearman, San Francisco Business Times, May 3, 2022

A Berkeley developer pitched a residential high-rise this week that would exceed the city's height limits, the latest proposal signaling a sea change in how the city thinks about height.

NX Ventures submitted preliminary plans April 29 to build a 16-story mixed-use tower on about a quarter acre at 2420 Shattuck Ave. in downtown Berkeley. The project, which will include 146 studio apartments and a ground-floor restaurant space, could rise as much as 95 feet taller than the 75-foot height cap implemented by Berkeley.

The company will use state density bonus law to arrive at its proposed height and density, NX co-founder Nathan George said Tuesday. Trachtenberg is the architect.

Tall buildings have historically been a point of controversy in Berkeley — and buildings as tall as the one NX has proposed are something of a rarity. The city's downtown area plan includes just five height exemptions for private developers building in the downtown core: two for buildings as tall as 120 feet, and three for buildings up to 180 feet.

But George, who estimated his project could rise between 165 and 170 feet, isn't seeking an exemption. NX is simply making use of state density bonus law that allows developers to claim as much as 50% more density than otherwise permitted by local zoning if they include a certain number of on-site affordable units.

The maximum amount of bonus density developers could pursue via the state law jumped from 35% to 50% in 2021. As construction costs and interest rates rise, it makes increasingly more sense for developers to trade affordable units for more density, especially in urban areas — a strategy in line with many cities' climate and housing production goals, George said.

There have been other projects in the downtown area that have exceeded the 75-foot height cap via the density bonus without securing an exemption, including The Lair @ Haste, an eight-story, 87-foot project on the same block as 2420 Shattuck.

But the latest proposal would be notable for Berkeley — and if market dynamics continue to strain the financial viability of low- and mid-rise residential development, the city could see developers use density bonus law to build taller with increasing frequency.

Berkeley's City Council last month discussed removing height caps in its downtown area altogether in support of more housing production in the area, which is well-served by public transit and neighborhood amenities.

Alene Pearson, acting planning director for the city, said Tuesday that such a change could be included in a future update to Berkeley's Land Use Element. That effort, Pearson wrote in an email, will likely begin after the city completes the update of its housing element, the planning document jurisdictions use to outline how they will meet their state-assigned housing production goals.

George emphasized the many benefits of building denser, saying the location of the 2420 Shattuck site makes it a good fit for more density.

"I don't think there needs to be a tall building on every corner," he told me. "I don't think it's always appropriate."

Savlan Hauser, vice chair of Berkeley's Planning Commission, said in an interview Monday that state density bonus law is responding to the state's housing and climate crises. Oftentimes state law moves quicker than do planning documents like Berkeley's downtown area plan, which can take years to finalize and implement, Hauser said.

The development team behind an approved 18-story mixed-use project at 2190 Shattuck Ave., just three blocks away from NX's proposal, had returned to the city with an updated proposal: PGIM has pitched a 25-story building that would be Berkeley's tallest ever if built. Trachtenberg is also the architect behind that project.

Developers behind that project secured one of those 180-foot height exemptions when the project was approved back in 2019; now they intend to apply the density bonus to the project. The increase in density will make the project more financially feasible, sources familiar with the plans told me at the time.

City officials are still assessing whether that project will need to go through a new entitlement process.

NX, which intends to entitle 2420 Shattuck using SB 330, a state law that expedites approval of eligible residential projects, said utilizing density bonus law also provides an element of certainty to the project.

"Several projects have taken us five or six years to get through with the fully discretionary process," said George, whose firm currently has hundreds of units in the works across a handful of projects in Berkeley. "The density bonus allows us to say: Here is the zoning standard. Here is the math. That and SB 330 can streamline the process."

NX purchased the 0.11-acre parcel at 2420 Shattuck, which includes an existing two-story commercial building, for $2.2 million at the beginning of this year; the developer is in the process of closing on the similarly sized parcel at 2428 Shattuck. NX will seek to have the project completed by the summer of 2025, George told me, though that timeline is a preliminary one.

New Proposal Would Cap Oakland Rent Increases at 3%

Natalie Orenstein, Oaklandside, May 5, 2022

One week after Oakland announced that owners of rent-controlled properties will be permitted to raise rents by as high as 6.7% this year, a city official has countered with legislation that would permanently cap increases at 3%.

Many tenants were stunned last week to hear that they could face the highest permitted rent increase in decades. Each year, landlords of rent-controlled buildings are allowed to raise rents by a certain percentage. Oakland determines that percentage based on the regional consumer price index (CPI), or inflation.

Because inflation is so high currently, the allowable increase jumped from 1.9% last year to 6.7% this year. That means rent for a $2,000-a-month apartment could be raised to $2,134, for example.

Fife's legislation would change Oakland's formula to be based on 60% of the CPI, not 100%, as it currently is.

"Ever since the CPI increase was announced, many residents and organizations have reached out to me and spoken up at City Council meetings about the hardships they will face if this allowable rent increase is not changed," said City Councilmember Carroll Fife, in a statement.

Fife's legislation would change Oakland's formula to be based on 60% of the CPI, not 100%, as it currently is. This change would be in keeping with the systems in nearby cities, including Berkeley, which uses 65% of the CPI, and San Francisco, which uses 60%.

Fife's policy would also make 3% the maximum amount that rents could be raised in a given year, even if 60% of the CPI is higher. Typically, allowable rent increases in Oakland range from 1-3%, but there have been cases when the CPI has been slightly lower or higher.

"It's been pretty standard, and there hasn't been much change for a long time," until this year, said Chanée Franklin Minor, who manages Oakland's Rent Adjustment Program.

Fife's ordinance is scheduled for a vote at the May 31 council meeting. The annual allowable increase currently goes into effect on July 1 each year, so if it's passed, the new policy would undo this year's rate at the last minute.

State law guarantees landlords a "fair return" on their investment in their rental properties, but cities have some leeway in determining how to achieve that. Most cities with rent control policies have a system of annual increases based on part or all of the CPI.

"There's certainly room to create a new method" in Oakland, reassessing the exact formula used to determine the yearly rates, Minor said in an interview earlier this week, before Fife's proposal was released.

Following last week's 6.7% CPI announcement, the Rent Adjustment Program began receiving calls and emails from renters concerned about the impact of the increase, Minor said.

"This is really devastating for a lot of people," she said. "It's a huge rent increase for a lot of folks."

At Thursday's Rules & Legislation Committee meeting, where policy proposals are scheduled for upcoming City Council meetings, a number of tenants and advocates called in to voice support for the proposed change.

"My work dropped so low because of COVID, I could barely afford to pay just the utilities," let alone a 6.7% increase in rent, said East Oakland resident Merika Reagan. "So this is super important to me and my neighbors."

Reagan said she's one of the thousands of people who've applied for rental assistance during the pandemic and are still waiting to hear whether they'll receive the aid. Because of delays in distributing rental assistance, many landlords have lost income during the crisis, and some have sued Oakland and Alameda County over the impact of eviction moratoriums on their bottom lines.

Derek Barnes, CEO of the East Bay Rental Housing Association, said he was "disappointed but not surprised" to hear about the 3% proposal, calling it "another example of a broken promise and social contract, and the City trying to unwind a negotiated deal." The CPI system was a deal reached by tenant and landlord groups in 2002.

In an emailed statement, Barnes said it's logical to base housing costs on inflation: "We don't understand why city councilmembers think that the cost of operating housing would remain stagnant while everything else is becoming more and more expensive."

Oakland's rent control policy covers most buildings constructed before 1983, with some exceptions including single-family homes. Most tenants in buildings not covered by the local rent control ordinance are still protected by a state law that limits annual increases to 5% plus the CPI, or 10%, whichever is lower.

from page 4

Inflation Drives Up Rents

"For tenants, high inflation means everything costs more," Wheeler said. "The effect on me versus my landlord is very lopsided."

Researchers are also rushing to understand who most feels the impacts of inflation. One report late last year, by Columbia University's Center on Poverty and Social Policy, identified a burgeoning issue of "inflation inequality," where the bottom 20% of earners have already experienced what amounts to a 7% pay cut since 2004 due to inflation.

"As income inequality has increased, companies have increasingly catered to families with high incomes, driving down prices for the goods they buy," the authors wrote. "In the meantime, poor families face prices and price changes that are 'business as usual.' "

Barnes of the East Bay Rental Housing Association counters that, while landlords do not face the same kind of annual price hikes with mortgage payments, they do still have to cover rising costs of building materials and service providers charging more for house calls. During the course of the pandemic, he said the membership organization has seen "hundreds" of Alameda County landlords sell or lose properties.

Because the group's 1,600 members are over 50% women and 45% non-white, he warns that more limits on small local landlords could reduce that diversity and lead to more out-of-town owners less willing to work with tenants.

"Either they're getting out of the business, or they're reinvesting elsewhere where it's less arduous," Barnes said. "Someone's going to buy these properties. There are *these unintended consequences to all this stuff*."

For Leah Simon-Weisberg, legal director of tenant advocacy group the Alliance of Californians for Community Empowerment, the recent backlash in Oakland could be just the beginning of more political pressure in months to come.

Other California cities, from Antioch to San Diego, are considering stronger eviction protections more in line with cities such as Oakland. Nearby, in Richmond, she said tenants are also facing rent increases at 100% of inflation, barring political intervention.

"Landlords are making the mistake of raising rents," Simon-Weisberg said. "By doing that, people will step in."

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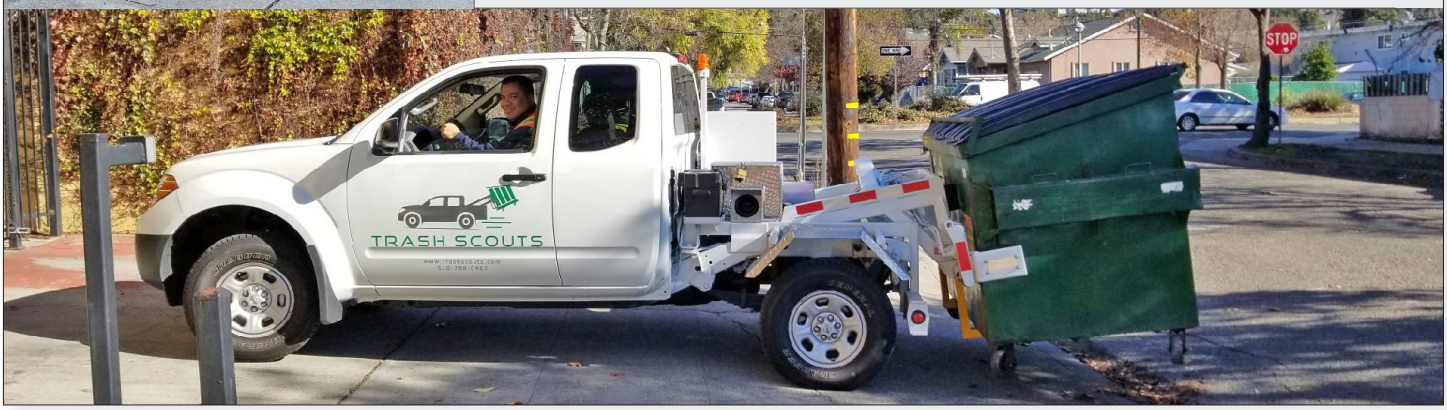

Tiffany Van Buren, BPOA Deputy Director

Preparing a Rental for Marketing: Taking Your Unit from Drab to Fab on a Budget

Preparing a unit for re-rental can be a costly affair, but it doesn't have to break the bank. Small improvements are improvements, nonetheless. Here are a few budget-friendly upgrades that can take your rental unit from "Blah" to "Ahhh!" without draining your cash.

1. **Start with fresh paint:** For walls and ceilings, Benjamin Moore's Swiss Coffee is a classic white with warm tones that reflects light wonderfully. Paint is a good way to update tired cabinets, refresh worn-out doors, and makes things look fresh and clean.
2. **Swap out those old light fixtures for LEDs:** Flush mount led light fixtures are available in any home improvement store. They have a clean, modern look, they're easy to install, and they can last for up to ten years — maintenance-free.
3. **Clean the window screens:** Cleaning the windows is important, but you must clean the screens, as well to really make a difference. Give them a wash with dish-washing soap, then spray them down with a hose. Shake the water off, then reinstall.
4. **New cabinet pulls:** Kitchen cabinets looking a little dated? Freshen them up with new, modern pulls! Bar style pulls make a sleek look on almost any style of cabinetry.
5. **Under-cabinet lighting:** Dark kitchens don't show well. Rechargeable LED light pucks, strips, or bars are great options for brightening up dimly lit kitchens.
6. **Window blinds:** Tenants have moved away from requesting curtain rods to requesting window blinds. There is a plethora of options when it comes to window blinds, enough choices to fit any budget. Vinyl remains the cheapest option but expect to replace them every few years and/or in between tenancies.
7. **Good bathroom lighting:** Throw some globe-style led bulbs in that vanity fixture! There are a lot of brightness options, and these bulbs last for years, lessening maintenance costs for you.
8. **A new showerhead:** The cheapest way to update a shower is with a new showerhead! It's a small expense that tenants really appreciate. Even a dated bathroom seems more luxurious with the right shower head.
9. **The Welcome Mat:** Since the showing starts at the front door, invest $30 in a nice doormat. If the front door is all banged up, give it a fresh coat of paint.
10. **Make sure it's clean:** Prospective tenants look with their eyes and their noses. The previous tenant's lingering cooking odors can be just as off-putting as a dirty toilet! If you can't do any updates at all, at least make sure the unit is clean and smells fresh when showing it to prospective tenants. The showing sets the bar for how you expect the unit to be maintained. If you want clean and tidy tenants — show them clean and tidy units!

Rent Control in New SF Buildings?

J.K. Dineen, San Francisco Chronicle, May 24, 2022

San Francisco housing units created through upzoning or local "density bonus" streamlining programs would be subject to rent control under a ballot measure that Supervisor Aaron Peskin will introduce Tuesday.

The proposed charter amendment, which needs six votes at the Board of Supervisors in order to get on the November 2022 ballot, would require developers to "agree to rent control when the city amends the planning code to allow for additional residential numerical density and heights." That means if a rezoning allows a project to grow from 60 to 100 units, all apartments would be rent controlled.

Peskin said the measure, the "Rent Control Housing Ordinance of 2022," would usher in a sweeping expansion of rent control in San Francisco, where the average rent for a one-bedroom apartment is $3,387, according to Apartment List.

"It would be the largest expansion of rent control in this town since 1979," he said.

In general, new development is exempt from rent control because of the Costa-Hawkins Rental Housing Act, which prohibited cities from imposing rent control on apartments built after February 1995. But the law includes a loophole: Developers can agree to make some units rent controlled "in exchange for direct financial assistance or density exceptions and other zoning modifications."

Update on Lawsuits Challenging Archaic Eviction Moratoriums in Alameda County

Daniel M. Bornstein, Esq., Bornstein Law

Alameda County remains on an island with a draconian eviction moratorium that may have made sense at the outset of the pandemic but makes little sense now. The rest of California has modernized its tenant protections to reflect the societal progress that has been made. There are no stay-at-home orders. Businesses are no longer closed. Schools are open. Yet Alameda County remains suspended in time with landlords unable to evict for non-payment of rent and they are left with few other theories of eviction. The ban on evictions is tied to the local state of health emergency that exists to this day.

It was inevitable that these protections would be legally challenged. A pair of lawsuits is now working their way through the courts to do just that.

Housing Providers of America, along with a group of property owners, took charge by filing the first lawsuit challenging the county's near-complete eviction ban. The California Apartment Association (CAA) joined the effort by commencing an action of their own.

The first lawsuit targets both Alameda County's moratoria as well as Oakland's, while the CAA's most recent litigation isolates Alameda County.

Everything is progressing along just fine, a judge has been assigned, and we expect the county's legal machinery to respond no later than May 31. Until then, we are in a state of ambiguity.

What are the Chances of Winning?

Up until now, courts in California and indeed, throughout the country, have been reluctant to second-guess emergency measures put into place intended to stop the spread of the virus and keep people housed. Many failed lawsuits were filed early on or midstream in the pandemic, but circumstances have since changed. We hope that the court's rationale changes in tandem.

Courts are the last result and no substitute for the shifting of attitudes by lawmakers and the people who elect them.

We know that litigation moves at a snail's pace. The best-case scenario is that the local lawmakers will act on their own to end outdated eviction protections. There have been two vocal Alameda County Supervisors who have been open about revisiting the eviction restrictions, but three votes are needed.

The Board of Supervisors is not fully functional with the tragic loss of longtime Supervisor Wilma Chan who was killed by a motorist during a morning walk. Whoever occupies this seat may be the deciding factor in removing the moratorium. Rental housing providers are urged to evaluate the candidates vying for this position.

Parting Thoughts

Help is on the way for Alameda County landlords, but patience is in order. The litigation process needs time to play itself out. Alternatively, lawmakers will have to take action to stop the misery of landlords who continue to drown with no rental income. While we have no crystal ball, our best prediction is that lawsuits will galvanize politicians to vote in favor of dismantling the county's eviction protections before litigation comes to a head.

Daniel Bornstein is the founder of Bornstein Law. Their office continues to proceed with evictions in Alameda County whenever there are threats to public health and safety, and in instances when no tenancy exists (forcible detainers). Tenant buyout agreements are always a viable option when the goal is to effectuate a vacancy.

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Housing Shortage, Soaring Rents, Squeeze US College Students

Janie Har, Associated Press, April 26, 2022

UC Berkeley sophomore Terrell Thompson slept in his car for nearly two weeks at the start of the school year last fall, living out of a suitcase stashed in the trunk and texting dozens of landlords a day in a desperate search for a place to live.

The high-achieving student from a low-income household in Sacramento, California, was majoring in business administration at one of the most prestigious universities in the world. Yet, Thompson folded his 6-foot frame into the back seat of his Honda Accord at night, wondering how he would ever find a home in the exorbitantly expensive San Francisco Bay Area city.

"Academically it was hard, because I'm worried about finding housing and I'm worried about my clothes and I'm worried about getting my car broken into all the time," said the 19-year-old Thompson, who now lives in a studio apartment he found last September. "I was anxious 24/7."

College students across the U.S. are looking for housing for the 2022-23 school year and if 2021 was any indication, it won't be easy. Students at colleges from California to Florida were denied on-campus housing last fall and found themselves sitting out the year at home or living in motel rooms or vehicles as surging rents and decades of failing to build sufficient student housing came to a head.

For some colleges, the housing crunch was related to increased demand by students who had been stuck at home during the pandemic. For others, including many in California, the shortage reflects a deeper conflict between the colleges and homeowners who don't want new housing built for students who they say increase congestion and noise.

In March, the University of California, Berkeley, said it would have to cap student enrollment because of a lawsuit brought by irate neighbors over the school's growth. State lawmakers fast-tracked a fix to allow the campus to enroll as many students as planned for the 2022 fall semester, but the legislation does nothing to produce more housing.

Nationally, 43% of students at four-year universities experienced housing insecurity in 2020, up from 35% in 2019, according to an annual survey conducted by The Hope Center for College, Community, and Justice at Temple University. Students reported being unable to pay utilities, rent or mortgage, living in overcrowded units, or moving in with others due to financial difficulties.

And for the first time since it began tracking basic needs in 2015, the survey found an equal percentage — 14% — of students at both four-year and two-year colleges who had experienced homelessness in the last year, said Mark Huelsman, the center's director of policy and advocacy.

"This is a function of rents rising, the inability of communities and institutions to build enough housing for students and other costs of college going up that create a perfect storm for students," he said.

For some students, the lack of affordable housing could mean the difference between going to college or not. Others take on massive debt or live so precariously they miss out on all the extracurricular benefits of higher education.

Jonathan Dena, a first-generation college student from the Sacramento area, almost rejected UC Berkeley over the lack of housing, even though it was his "dream program." He found a studio at the heavily subsidized Rochdale Apartments for under $1,300 a month, but he might have to move because the bare-bones units may close for a seismic renovation.

Dena, 29, wants to continue living within walking distance of campus for a robust college experience.

But the urban studies major and student government housing commission officer said "it's kind of scary" how high rents are near campus. Online listings showed a newer one-bedroom for one person at $3,700, as well as a 240-square foot (22 square-meter) bedroom for two people sharing a bathroom for nearly $1,700 per person a month.

"If I go to school in Berkeley, I would love to live in Berkeley," he said.

Nationally, rents have increased 17% since March 2020, said Chris Salviati, senior economist with Apartment List, but the increase has been higher in some popular college towns. Chapel Hill, North Carolina, saw a 24% jump in rents and Tempe, Arizona, saw a 31% hike.

In some cases, the rental increases have been exacerbated by a lack of on-campus housing.

Last fall, demand for on-campus housing was so high that the University of Tampa offered incoming freshmen a break on tuition if they deferred until fall 2022. Rent in the Florida city has skyrocketed nearly 30% from a year ago, according to Apartment List.

Rent in Knoxville has soared 36% since March 2020, and it could get worse after the University of Tennessee announced a new lottery system for its dorms this fall,

continued on next page

from previous page

Students Unprepared for Berkeley Housing Crunch

saying it needs to prioritize housing for a larger freshman class.

Even two-year community colleges, which have not traditionally provided dorms, are rethinking student needs as the cost of housing rises.

Last October, Long Beach City College launched a pilot program to provide up to 15 homeless students space in an enclosed parking garage. They sleep in their cars and have access to bathrooms and showers, electrical outlets and internet while they work with counselors to find permanent housing.

Uduak-Joe Ntuk, president of the college's Board of Trustees, hesitated when asked if the program will be renewed.

"I want to say no, but I think we will," he said. "We're going to have new students come fall semester this year that are going to be in a similar situation, and for us to do nothing is untenable."

California prides itself on its robust higher education system, but has struggled with housing at its four-year colleges. Berkeley is notoriously difficult, with cut-throat competition for the few affordable apartments within walking distance to campus.

"I definitely was not prepared to be this stressed about housing every year," said Jennifer Lopez, 21, a UC Berkeley senior from Cudahy, in southeastern Los Angeles County, and the first in her family to attend college.

She imagined she would spend all four years on campus in dorms, but found herself in a scramble for a safe, affordable place to sleep. The urban studies major currently splits an attic space in what is technically a one-bedroom apartment shared by four undergraduates, one of whom sleeps in the dining room.

The total monthly rent is nearly $3,700 — laughably high in most U.S. cities — but she's grateful for it.

"If I hadn't heard about this place, I was either going to end up living in a basement, or in this other apartment I know (where) the girls are struggling with leaks and mold,"

The Basic Needs Center at UC Berkeley, which operates a food pantry for students and faculty, found in a snapshot survey that a quarter of undergraduates reported they "lacked a safe, regular and adequate nighttime place to stay and sleep" at some point since October.

"That's huge," said Ruben Canedo, co-chair of UC's systemwide Basic Needs Committee. "This generation of students is navigating the most expensive cost-of-living market while at the same time having the least amount of financial support accessible to them."

Thompson, the business administration major, started looking for an apartment last May, after spending his first year at home taking classes remotely to save money. He quickly realized that his rental budget of $750 was wildly inadequate and as a second-year student, he no longer qualified for priority in the dorms.

By the time classes began in late August, he was in a panic. He tried commuting from his home in Sacramento, leaving before 6 a.m. for the 80-mile (130-kilometer) drive to Berkeley and returning home around midnight to avoid traffic.

But that was grueling so he took to sleeping in his car. Initially he parked far away in a spot without parking limits. Then he parked at a lot between two student dorm complexes closer to campus, where exuberant partying kept him up at night.

He attended classes, studied and ate sparingly to save on ballooning food costs. He looked at apartments where five people were squeezed into two bedrooms with pared-down belongings stored under beds.

He slept in his car for almost two weeks until a sympathetic landlord who had also grown up in a low-income home reached out, offering a studio within walking distance of campus. The rent is $1,000 a month, and he hopes to stay until he graduates.

"I think I have a little bit of a PTSD factor," he said.

Most students have no idea of the housing situation when they choose to attend UC Berkeley, said 19-year-old freshman Sanaa Sodhi, and the university needs to do more to prepare students and support them in their search.

The political science major is excited to move out of the dorms and into a two-bedroom apartment where she and three friends are taking over the lease. The unit is older but a bargain at $3,000 a month, she said. The housemates were prepared to pay up to $5,200 for a safe place close to campus.

"You don't honestly know the severity of the situation before you're in it," she said, adding that landlords hold all the cards. "They know that whatever price they charge, we'll inevitably have to pay it because we don't really have a choice except maybe to live out of our cars."

Berkeley's Homeless Population Dropped While the County's Rose

Supriya Yelimeli, Berkeleyside, May 16,2022

In the last three years, the number of homeless people living in Berkeley dropped about 5% to 1,057, even as the homeless population rose 22% in Alameda County over the same period, according to initial data from a new report.

It's the first time in recent history that overall numbers went down in Berkeley.

While the homeless population across Alameda County increased to 9,747 people from 2019, the rate of growth of the problem is slowing countywide. Each year from 2017 to 2019, the county's homeless population grew by as much as it did in the three years between 2019 and 2022.

The new numbers are the result of the long-awaited 2022 "point-in-time" homeless count, or PIT count, conducted by the nonprofit EveryOne Home.

Every two years, counties across the U.S. send out volunteers to tally how many unhoused people are living on the streets on one winter night. Shelter staff count their residents as well. The PIT count is required to access federal funds and is considered the most accurate source of local homelessness data, but it's an estimate. Volunteers who conduct the census may not find a homeless resident who is living out of sight, or at a temporary indoor location like a friend's home the morning of the count.

In 2019, the one-day homeless count found 1,108 people living in the streets, tents, vehicles and shelters of Berkeley. This year's count was conducted on Feb. 23, 2022, and recorded 51 fewer people — compared to the 13% increase that volunteers, service providers and shelters found after the last count.

The count distinguishes between homeless people living in a shelter and those who are unsheltered. Both categories of the population dropped, with 803 people considered "unsheltered" and 254 people in shelters. The number of people living in shelters dropped 14%. Among unsheltered people, the number living in tents rose 70%, the number living in vehicles rose 26%, the number living in RVs dropped 57% and the number living on the street dropped 53%.

Complete, detailed demographic data will be available later this summer, but initial numbers show that Black residents are still disproportionately impacted by homelessness in Berkeley and throughout the county, and over half of homeless people in the city are considered "chronically homeless," meaning they've been without permanent housing for at least a year.

The number of chronically homeless veterans has also increased across the county, according to the initial report.

Local officials and homelessness workers said the regional numbers — though they present a dismal picture of of nearly 10,000 homeless people in Alameda County, with over 5,000 people homeless in Oakland alone — are actually a sign that local and federal investment in housing retention and services during the pandemic were successful.

This included strong eviction protections, federal housing vouchers for homeless residents and state-supported programs that offered temporary housing, like Project Roomkey, and converted hotels into permanent housing, like Homekey.

The complete report due this summer will provide more information from surveys of homeless residents, including data on circumstances that led to losing housing, mental health, further demographic data and information on families and children who are homeless in Alameda County.

Unsheltered Homelessness Data Summary

803 Individuals
Were observed as being **unsheltered** in Berkeley.

7,135 Individuals
Were observed as being **unsheltered** in Alameda County.

*11% of **unsheltered** Individuals in Alameda County Live in Berkeley*

Unsheltered Population by Location

	Tent	Car/Van	RV	Street/ Outside	Abandoned Building
Berkeley 2022	426 (53%)	198 (25%)	69 (9%)	109 (14%)	1 (<1%)
Berkeley 2019	251 (31%)	157 (19%)	161 (20%)	231 (28%)	13 (2%)
Alameda County 2022	*2216 (31%)*	*2318 (32%)*	*1600 (22%)*	*958 (13%)*	*43 (1%)*
Alameda County 2019	*2172 (34%)*	*1431 (23%)*	*1386 (22%)*	*1239 (20%)*	*84 (1%)*

Court Denies Challenge to S.F. Eviction Protection

Bob Egelko, San Francisco Chronicle, May 12, 2022

The state Supreme Court rejected a challenge by apartment owners Wednesday to a San Francisco law that bars them from sidestepping the city's limits on evictions by imposing huge rent increases in order to force tenants to leave.

The ordinance, passed in January 2019, prohibits property owners from increasing rents in amounts so large that they were clearly not intended to recoup the owner's costs but were instead meant to displace the tenant, either voluntarily or by a suit for nonpayment of rent. In deciding whether the rent was being raised in bad faith, city officials are to consider whether the amounts were substantially above market rates and whether the increase was imposed within six months of an attempt to evict the tenant.

A suit filed a month later by the San Francisco Apartment Association and allied groups contended San Francisco was actually controlling rent levels, in violation of the Costa-Hawkins Act. The state law, backed by the real estate industry, bans local rent control on apartments built after February 1995 and on all single-family homes and condominiums.

The law, however, does not limit a city or county's authority to restrict tenant evictions. In Wednesday's order, the state Supreme Court unanimously denied review of an appellate ruling that said San Francisco was protecting renters from evictions, not legitimate rent increases.

"Costa-Hawkins does not protect a landlord's right to use a pretextual rent increase to avoid lawfully imposed local eviction restrictions," Justice Stuart Pollak said in a 3-0 ruling by the First District Court of Appeal on January 24. He said the purpose of the ordinance was not to restrict lawful rent increases, but "to deter landlords from trying to attempt to avoid local eviction rules by imposing artificially high rents in bad faith."

The ruling upheld a Superior Court judge's decision in the city's favor, and became final Wednesday when the state's high court denied review.

"These common-sense regulations were a response to landlords who doubled or tripled the rent, to rates far above market, to try to force their tenants out without complying with our local eviction protection laws," City Attorney David Chiu said in a statement. "I am pleased the court allowed these regulations to stand, which protect the city's ability to prevent landlords from evading these protections."

Janan New, executive director of the San Francisco Apartment Association, said, "We're obviously very disappointed that the courts have approved an ordinance that is part of San Francisco's long-running, well-documented campaign to undermine state law protections for property owners."

The case is San Francisco Apartment Association v. San Francisco, S273447.

Join Us for Quarterly Social Mixers with Fellow Members

The next mixer is set for Thursday, September 15, 5:00-7:00 pm.
Join us for drinks and appetizers at Heroic Italian, 2020 Kittredge @ Shattuck.

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

DATE	TOPIC
Wednesday, June 8, 3:00pm	**Maintenance? What Maintenance?!**
Thursday, June 9, 3:00 pm	**BPOA's New Lease & How to Enforce Lease Terms**
Wednesday, June 15, 3:00pm	**Fair Housing & Reasonable Accommodations for Rental Housing Providers**
Thursday, June 23, 12:00 pm	**Lunchtime Legal Q&A**
Thursday, June 30, 5:00pm	**BPOA Membership Overview & Political Updates**

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

from page 2

Editorial

And so I return to my collection of quotes which has something for all occasions. One of my favorite quotes says that; *In theory, theory and practice are the same thing, in practice, not so much*. Here a case where I fear practice would not produce the benefits envisioned by the theory.

And so we get to the topic suggested on the title line above: reproductive rights. With the leak of the likely Supreme Court decision overturning Roe v. Wade, both sides have been reinvigorated for the inevitable political battle which will take decades and will become the dominant issue in too many elections. It could take over political debate in the US for years. This is an even worse scenario than my multi-focused congress. Do we really want to be ruled — at the legislative or the elective level — by highly partisan candidates on this, or for that matter, any other issue. Legislators focused on reproductive rights would still have to govern on foreign policy, infrastructure, tax policy, immigration, health care, civil rights, trade, food and drug safety and all the other issues on which government must act. Single-issue legislators are simply not a good idea.

There are, nevertheless, real issues in the reproductive rights debate. How the matter is resolved really matters. My purpose here is not to argue the issue. My personal position does not matter. I might suffer from at least a modicum of ego but am not so delusional as to believe that I should rule the world. I have long ago given up the notion that public policy should be based on my positions (although we could do worse). Without getting into the substance of matter, I just wish to point out and lament that many partisans on this one issue are likely to get elected and that they will likely be ill-equipped and too uninterested to deal with the many other issues facing government. It is not a pleasant prospect.

QUOTES OF THE MONTH

The better I get to know men, the more I find myself loving dogs.

— Charles De Gaulle

If I have any beliefs about immortality, it is that certain dogs I have known will go to heaven, and very, very few persons.

— James Thurber

JUNE ZOOM MEETINGS

Maintenance? What Maintenance?!
With Blake Schatz, Schatz Structures & Waterproofing, Inc.
Wednesday, June 8, 3:00 pm

BPOA's New Lease & How to Enforce Lease Terms
With Ben Holl, Holl Law & Mediation
Thursday, June 9, 3:00 pm

Fair Housing & Reasonable Accommodations for Rental Housing Providers
With Steve Williams, Fried, Williams & Grice Connor
Wednesday, June 15, 3:00 pm

Our next **Member Mixer** *is coming on September 15th at Heroic Italian in Berkeley at 5:00 pm*

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

BPOA WORKSHOPS *— Go Beyond the Basics*

Bay Area is the Last Place in the US with Rent Below Pre-Pandemic Levels

Tessa McLean, SFGATE, May 17, 2022

The Bay Area is the last place in the U.S. with rental prices below pre-pandemic levels, according to a new report from Apartment List. That seems like a rosy headline — for renters at least — but the question remains how long the "depressed" prices will last.

New data estimates rents in the San Francisco-Oakland-Berkeley area are still down 3.3% compared with March 2020 and the San Jose-Sunnyvale-Santa Clara area is down 1.3%. Meanwhile, nationwide rental prices have climbed more than 16% in just the past year, with big cities in Florida such as Miami climbing 34% since the month the pandemic shut down much of the U.S.

In a separate report, Apartment List put median rent for a one-bedroom in San Francisco at $2,390 in April — a mere 0.7% month-over-month increase, but a 12.1% increase year-over-year.

Experts predict there are a number of factors affecting these still-shrunken prices, one of which being that the Bay Area has one of the most remote-friendly workforces. Tech companies led the way at adopting work from home amid the pandemic and many are continuing to allow flexible or permanent work-from-home options.

San Francisco doesn't dominate the highest of those one-bedroom median numbers in the region though, according to Apartment List. San Mateo rents are about 1% higher, with a median one-bedroom running at $2,440. Fremont, Union City and Dublin also all have higher one-bedroom median rental prices.

Zumper, another apartment rental marketplace, conversely still has rents in San Francisco as the highest in the area. Median one-bedroom rent was $2,900 in April, according to their most recent report, far above San Mateo's $2,510 median one-bedroom rent.

Notably, rents are still far below New York City averages, Zumper reports, which took the top spot in the nation yet again at $3,420 for a one-bedroom apartment.

Oakland prices grew even more modestly in April, with a minor 0.3% month-over-month growth and only a 5.3% year-over-year growth. It's still one of the least expensive cities in the San Francisco metro area, with a one-bedroom median of $1,660.

While prices in the Bay Area seem "discounted," Apartment List senior economist Chris Salviati said they aren't likely to stay that way for long. Still, the Bay Area is consistently trailing the national average, and Salviati attributes much of that to the region's lack of affordability before the pandemic began.

"San Francisco is still the nation's most expensive market," he said. "It's a little bit of a discount but this is far from enough of a reset to make San Francisco an affordable market by any stretch of the imagination."

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Political Update

Since the last update, we have two new Legislators that have been sworn into office. Assemblymember Matt Haney has filled Assemblymember David Chiu's San Francisco seat and Assemblymember Lori Wilson has filled Assemblymember Jim Frazier's seat. The runoff of the two special elections to fill the vacancies left by Autumn Burke and Lorena Gonzalez, will take place in conjunction with the primary election on June 7th. The top two to replace Autumn Burke are her former staffers, Tina McKinnor and Robert Pullen-Miles. The runoff to fill Lorena Gonzalez' seat is between David Alvarez and Georgette Gomez. This promises to be a very busy election year.

Legislative Update

We are almost halfway through the legislative year, having just passed the policy committee deadline for bills to be heard in their house of origin. There are several bills of note that CalRHA was opposing that failed to get a hearing. These are wins so far for the year and include:

- **AB 1710** (Lee) — LED Light Installation **(Opposed)**
- **AB 1771** (Ward) — Transfer Tax **(Opposed)**
- **AB 2289** (Lee) — Wealth Tax **(Opposed)**
- **AB 2290** (Carillo) — Unlawful Detainers **(Opposed)**
- **AB 2297** (Wicks) — Tenancy in Lieu of Security Deposit **(Opposed)**
- **AB 2434** (Santiago) — Homelessness Action Authority — County of LA **(Opposed)**
- **AB 2469** (Wicks) — Rent Registry **(Opposed)**
- **AB 2710** (Kalra) — TOPA **(Opposed)**

For the remainder of May fiscal bills will need to pass the Appropriations Committee by May 20th and all bills will need to pass the Floor by May 27th. Here is a timeline of the remaining legislative deadlines.

- **May 13:** Last day for policy committees to meet prior to May 31
- **May 20:** Last day for fiscal committees to hear and report to the floor bills introduced in their house
- **May 23-27:** Floor session only.
- **May 27:** Last day for each house to pass bills introduced in that house
- **May 31:** Committee meetings may resume
- **June 15:** Budget Bill must be passed by midnight
- **June 30:** Last day for a legislative measure to qualify for the Nov. 8 General Election ballot
- **July 1:** Last day for policy committees to meet and report bills. Summer Recess begins upon adjournment, provided Budget Bill has been passed
- **August 1:** Legislature reconvenes from Summer Recess
- **August 12:** Last day for fiscal committees to meet and report bills
- **August 15-31:** Floor session only. No committee may meet for any purpose except Rules Committee, bills referred pursuant to Assembly Rules 77.2, and Conference Committees Aug. 25 Last day to amend bills on the floor
- **August 31:** Last day for each house to pass bills
- **September 30:** Last day for Governor to sign or veto bills passed by the Legislature before September 1 and in the Governor's possession on or after September 1

Rent Assistance Update

The rent assistance application portal is now closed and approximately $3.1 billion has been paid out in rent assistance in the state. For more information on the rental assistance program, please visit Housing is Key.

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Berkeley Property Owners Association

JUNE EVENTS

see www.bpoa.org/events for information & registration

Maintenance? What Maintenance?!
Wednesday, June 8, 3:00 pm

BPOA's New Lease & How to Enforce Lease Terms
Thursday, June 9, 3:00 pm

Fair Housing & Reasonable Accommodations for Rental Housing Providers
Wednesday, June 15, 3:00 pm

LANDLORD 101 SESSIONS:

Each month we 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.

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