

OCT
2022



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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About Floor Coverings

Mark Tarses, President, BPOA

Not that long ago, everybody wanted wall-to-wall carpeting in their bedrooms and living rooms, but not now. Today, the only good reason for installing wall-to-wall carpeting in an apartment is that your building has a sound transmission problem between units — a problem that is all too common.

There are many reasons to get rid of wall-to-wall carpeting. If a tenant has a pet or an 'emotional support animal', and it has 'accidents', you may have to replace the carpet and the pad, whereas with other types of floor coverings, the 'accident' can usually just be mopped away. Another reason to get rid of wall-to-wall carpeting is allergies. If it seems like more and more people have asthma today than they used to, that is not your imagination. In 2000, one in fifteen Americans had asthma. It is now one in twelve. The number of people with asthma will likely continue to increase in California and the whole western U.S. due to global warming. Our air is getting progressively warmer and drier. People with asthma and allergies do not want wall-to-wall carpeting. They want flooring that doesn't trap dust, dander, or pollen. Landlords need to accept the fact that global warming is real and getting worse and that it is going to affect our business in many ways.

Of all the choices for flooring in a rental, my favorite is luxury vinyl. Luxury vinyl is the biggest flooring innovation of the past 40 years. It is like old-fashioned sheet vinyl, but it is thicker and easier to install. It is economical too. The material and labor costs are usually less than most other types of flooring. Luxury vinyl can look like ceramic tile or wood planking and can look very convincing as either. Luxury vinyl feels softer and warmer underfoot, which makes it feel nicer in bathrooms than ceramic tile. It is also easier to repair than other types of flooring.

Whatever type of flooring material you choose, be sure to save some extra of the material and write the description of it on the back along with the date and place of installation. Assume that despite what the flooring salesman told you, you will likely find it impossible in the future to find matching material to make repairs if you need to.

OCTOBER EVENTS

***Political Mixer: Reviewing the Berkeley Ballot
– Live at Cornerstone Brewery!***

Monday, October 3, 5:30 pm

Amping Up Your Property's Curb Appeal

Thursday, October 13, 3:00 PM

Converting Debate into Conversation: Mediating Your Way to Agreement

Thursday, October 20, 3:00 pm

See pages 13 & 14 for details & more events!

Issue Highlights

Editorial.....	Page 2
Coalition Corner	Page 3
Big Changes Coming to Berkeley	Page 4
Re-Zoning Prosperous Neighborhoods.....	Page 5
What if SF Got Serious About Single Family Zoning? ..	Page 6
The Nuts & Bolts.....	Page 8
Oakland, SF Still Recovering from Rent Declines ..	Page 9
Housing Bills Package Heads to Newsom's Desk....	Page 11
Monthly Event Calendar	Page 13
BPOA Event Details.....	Page 14
CA Legislative Update: End of Session Recap	Page 16



Editorial

What Constitutes Constitutionally Unequal Treatment

Albert Sukoff, Editor

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

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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

On page 7, you will find a San Francisco Chronicle article about the large number of applications for Section-8 housing vouchers received by the Berkeley Housing Authority. The agency received 21,000 applications for housing assistance. *Note that a random 2,000 will be put on a waiting list for available vouchers.* Dramatic as this disparity is, it is not nearly as large as it was the last time the BHA accepted applications. In 2010, 40,000 applied for 1,500 spots on the waiting list. The Chronicle story also reports that there are 1,939 households currently on Section-8. In other words, all the current recipients would have to leave the program for those on the waiting list to actually get a voucher.

While there is no doubt that Section-8 assistance can be a godsend for a household with limited financial resources, there is also no doubt that the Section-8 program has not and will not solve the affordability problem in high-cost housing markets. This program is a palliative at best. Looking at the bigger picture, 21,000 household applied for housing assistance in a city where there are only 25,000 rental units to begin with.

What we have here is a societally recognized problem for which government offers a remedy and yet only a small fraction of those affected get relief. This is not only unfair on its face, it is arguably unconstitutional. The fourteenth amendment says that *No State shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws.*

If government largesse is bestowed on only the lucky few, how can that be anything but unequal treatment. How can a housing voucher for one needy renter — worth as much as \$25,000 a year — be deemed equal treatment when others get zero. *Any government program which must resort to a random process to select beneficiaries is unequal on its face* and should be declared unconstitutional. But it never is.

Why? Because the United States Supreme Court has conjured up a doctrine that makes it impossible to challenge most cases of unequal treatment. The *strict scrutiny* standard of judicial review is applied to Fourteenth Amendment claims of unequal treatment. Federal courts use strict scrutiny to determine whether certain types of government policies are constitutional. The Supreme Court has applied this standard to laws or policies that impinge on a right explicitly protected by the U.S. Constitution, such as the right to vote. The Court has also identified certain other rights that it deems to be fundamental rights, even though they are not enumerated in the Constitution.

Most cases of blatant unequal treatment, however, are not actionable. This is because the courts apply a lesser standard to judge cases deemed unworthy of strict scrutiny. This lower form of judicial scrutiny is called the *rational basis test*. It is used in cases where a plaintiff alleges that the legislature has made an arbitrary or irrational decision. When employed, the rational basis test usually results in a court upholding the constitutionality of the law.

When the criteria for judgment shifts from strict scrutiny to rational basis, virtually any determination made by a duly-empowered governmental body will stand if there is a rationale for the action. The tricky part is that virtually all government rulings are deemed to be rational because the body in power says so. The courts have chosen not to be put in a position wherein they must judge

continued on page 15

❖ 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.**

Headed to the Ballot

Mark it down — Tuesday, November 8 is Election Day. While there will be no ballot measure modifying the Rent Stabilization Ordinance (thanks to our hard work), there are other ballot measures impacting owners of property in Berkeley.

Measure L: Bond Measure

"Shall the measure to create affordable housing; repair streets and sidewalks; underground utilities; and enhance buildings, infrastructure, and safety, authorizing the issuance of \$650 million in general obligation bonds, subject to independent oversight and audits, be adopted?"

Sounds good, right? Wrong! This is the Mother of All Bonds (MOAB) — the biggest Berkeley has ever attempted. A General Obligation Bond (put in its simplest terms) is borrowed money that is paid back by property owners based on a tax levied on the assessed value of the parcel. This means the higher your assessed value, the higher this tax will be on you the property owner. It's a bond that over the length of its lifetime will accrue \$475m in interest bringing the total to a staggering \$1.25 billion.

This might be all fine and dandy if the taxpayer could see value for their tax dollars. Despite previous bond measures (as recently as the 2020 election) Berkeleyans have not seen improved street conditions, reduction of homeless encampments, or increased police and fire presence. And this bond measure could only make it worse. While the ballot measure question implies that there is an intention to direct the money to repairing streets, creating affordable housing, and enhancing public safety, there is no guarantee. It has been written to allow for the money to be spent on any project or issue the Council wants to. The money could presumably be used to build towers on the BART parking lots, increase the police budget, or even enhance vanity projects like refurbished Council Chambers (which is estimated to cost millions of dollars). With little oversight built into the measure, it seems this is a waste of taxpayer money and another empty promise to Berkeleyans by the city of Berkeley. Learn more at www.BerkeleyansforBetterPlanning.org

Measure M: Vacancy Tax

"Shall the measure to tax property owners who keep residential units vacant more than 182 days per year, \$3,000 for each

nonexempt condominium, duplex, single family dwelling, or townhouse vacant unit in the first year, increasing to \$6,000 for each subsequent year, and \$6,000 for all other residential units vacant in the first year, increasing to \$12,000 for each subsequent year, with exceptions, from January 1, 2024 to December 31, 2034, generating between \$3,900,000 and \$5,900,000 annually, be adopted?"

This is clearly a solution looking for a problem. There is no data that confirms the "vast number of vacant units across Berkeley" are irreparably damaging Berkeley's renters. This ballot measure has been written to include exemptions for single family homes and owner-occupied duplexes and triplexes. It allows for an owner's personal use as an exemption leaving primarily large, fully unoccupied units as the target. We don't believe this will incentivize owners of these buildings to suddenly bring their units to market. At a penalty of \$3,000 for the first year of vacancy and \$6,000 per unit for every subsequent year, some owners may just take the hit.

Race to Watch #1: Berkeley Rent Stabilization Board

Five seats are open this election season. Only one incumbent is running for re-election (the other has opted to run for an open Councilmember seat). The Berkeley Tenants Union has put forward their "Right for Housing Slate" stemming from the ideology and framework crafted by the Democratic Socialists of America. The independent candidates (not running on a slate) are Stefan Elgstrand (Policy Analyst to the Mayor), Carole Marasovic (lawyer turned disability rights activist), and Wendy Saenz Hood (former rental housing provider and candidate in 2020). While this will be a tough race, we want to lend all the support we can to Wendy Hood's campaign with the hopes of getting at least one Rent Board commissioner that understands the business of rental housing! Go to www.Wendy4RentBoard.org for more information or to donate.

Race to Watch #2: District 8 (Elmwood) — Councilmember Lori Droste Not Seeking Re-Election

When current Councilmember Lori Droste announced she would not seek re-election, we knew we had a fight ahead of us. She has been a reasonable Councilmember who insists on fiscal responsibility for public policy. When

continued on page 14

Sarah Klearman, *San Francisco Business Times*, September 9, 2022

From high-rise towers to thousands of units of new housing, Berkeley charts a new course

If all goes to plan, the city of Berkeley will be a very different place in just a few years.

Between plans to dismantle single-family zoning at the local level, a torrent of new applications for major projects downtown and the redevelopment of surface parking lots at two of the city's BART stations into thousands of homes, there's much to consider as it comes to the future of Berkeley's built environment. But it's not just the physical that's changing: Attitudes about density and development, too, appear to slowly be shifting at both City Hall and in parts of the larger community.

It's a marked change for Berkeley, which for decades was notoriously resistant to any new residential development. It's good timing, too: The city, like the rest of California, is facing down steep state-assigned housing goals for the upcoming eight year production cycle that kicks off next year. Berkeley Mayor Jesse Arreguin has said his city is determined to rise to the challenge.

It's a lot to take in. Following, we break down the five most important factors shaping the future of building in Berkeley.

Downtown Sees a High-Rise Revolution

Developers in downtown Berkeley are reaching higher and higher. Tall buildings were once a rarity in Berkeley's downtown, which has long had a height cap of 75 feet. The city passed a new downtown area plan in 2012 that included seven height exemptions - three for buildings up to 180 feet tall, two for privately developed buildings up to 120 feet tall and two 120-foot exemptions for the University of California, Berkeley.

The state bonus density law will take these buildings even higher: The statute allows developers to trade on-site affordable units for up to 50% more density than permitted by local zoning codes. Two developers that had sought out the 180-foot exemptions have already redesigned their proposals to 250 feet high or taller. Take Berkeley-based developer NX Ventures' 25-story proposal for 1974 Shattuck Ave., for example. Clocking in at 260 feet, it would be Berkeley's tallest building if built. Then there's the proposed 25-story tower at 2190 Shattuck from Georgia-based developer Landmark Properties, and the soon-to-be 26-story project at 2128 Oxford St. from developer Core Spaces. (Core submitted a pre-application for a 25-story

project at 2128 Oxford earlier this year, but intends to submit a 26-story project in its full application, which it will submit in coming weeks).

Density bonus law coupled with statutes like Senate Bill 330, which grants an expedited approval process to eligible residential projects, provide more certainty to interested developers. As the cost of construction continues to rise, it's likely Berkeley will see more of those tall projects in its pipeline.

Where both elected officials and community members alike once might have balked at the thought of skyscrapers in the city's downtown, proponents now argue they're a more environmentally friendly solution to Berkeley's housing crisis, which has worsened over the last decade. And proponents are now winning the argument.

"Dense development won't be solely focused in downtown Berkeley, but downtown Berkeley is well-served by transit and it's immediately adjacent to the university, which generates a strong demand for housing," Berkeley Planning Director Jordan Klein told me last fall. "It makes sense for development to be concentrated there in accordance with the existing plan."

Mayor's Journey from Hesitant to Enthusiastic on Housing

The first tall building approved for downtown Berkeley, an 18-story, 302-unit tower slated to rise at 2211 Harold Way, never made it out of the ground. Would-be developer Hill Street Realty, which successfully entitled the site in 2015 but sold it to another developer untouched, last year.

Hill Street Realty founder Joseph Penner said officials doomed the Harold Way project by strapping it with an overly burdensome community benefits package and dragging it through roughly three dozen public hearings where some community members voiced fierce opposition to the project.

But community resistance to building tall has eased. Subsequent proposals for buildings taller than 75 feet haven't quite faced the sort of backlash that Hill Street's Harold Way did, and the first tall residential project to break ground in Berkeley, the 12-story, 163-unit project

continued on page 10

Nico Savidge, Berkeleyside, August 23, 2022

City could change zoning rules for Solano, College and North Shattuck to encourage construction

Berkeley's most prosperous neighborhoods aren't taking on their fair share of new housing in plans for the city's growth over the coming years, according to some local officials, who contend less-wealthy areas are set to shoulder an inequitable share of new construction.

West Berkeley Councilmembers Rashi Kesarwani and Terry Taplin made that case in letters to planning staff this summer in response to a draft of the city's Housing Element. The planning document, which cities throughout California are drafting this year, lays out how Berkeley will meet a state mandate to approve nearly 9,000 new homes between 2023 and 2031.

Taplin and Kesarwani were joined by Councilmember Lori Droste and several housing advocacy groups in arguing the city should rezone parts of "high-resource" neighborhoods such as North Berkeley and the Elmwood District to allow for more apartments to be built along popular corridors such as Solano and College avenues, as well as the northern blocks of Shattuck Avenue.

"It's very hard for me to explain to my constituents why they are seeing so much development along San Pablo Avenue and virtually none in the higher-resourced commercial districts of our city," Kesarwani said in an interview. "Without rezoning, those parts of the city will not share in the responsibility and burden of creating housing for the next generation."

The letters could foreshadow debates about Berkeley's growth at city council meetings over the coming months and years.

Staff in the city's Planning and Development Department are currently working on what is likely to be a contentious set of zoning changes that would allow smaller apartment buildings in neighborhoods that today are mainly made up of single-family homes, which supporters of greater density see as one path to building more housing in wealthy areas.

After those changes are done, staff will launch another process next year to revise zoning rules for streets Berkeley considers transit corridors, which could result in taller height limits or other steps to allow more dense housing along North Shattuck, Solano and College.

Councilmember Sophie Hahn, who represents North

Berkeley, was skeptical zoning changes would make much difference in the amount of housing that gets built there. Although Hahn noted she was part of the unanimous city council vote last year that launched the rezoning processes, she said the area's higher land prices and smaller parcels can make projects less attractive.

"The idea that we can't produce affordable housing in North Berkeley with the zoning we have is false," Hahn said, pointing to the opening of the 34-unit Jordan Court apartment complex on Oxford Street this year.

"I welcome, embrace, and would like to see more affordable housing in North Berkeley," she said. "I'm not sure the zoning is the issue."

The letters from Kesarwani, Taplin and Droste were in response to a draft of Berkeley's Housing Element that city planners released in June. Berkeley must approve a final Housing Element that complies with state law by the end of January, and officials in Sacramento have been closely scrutinizing those plans.

Planning staff submitted a revised Housing Element draft to the state Department of Housing and Community Development for an initial review earlier this month. That updated draft includes a new reference to the upcoming work to change zoning on "transit and commercial corridors, particularly in the highest resource neighborhoods."

The revised Housing Element does not specify North Shattuck, Solano or College avenues as locations for rezoning, but Berkeley Planning Director Jordan Klein said those streets could "absolutely" be part of the effort.

Where should nearly 9,000 new homes go?

Several housing advocacy groups have taken issue with the "sites inventory" portion of Berkeley's Housing Element, which lists properties where city staff believe developers could build new housing over the eight-year cycle.

The inventory shows many of the city's prospective sites for new housing are along San Pablo and University avenues, at the North Berkeley and Ashby BART stations, or in downtown and the Southside neighborhood near UC Berkeley. Other parts of the city have far fewer prospective housing sites.

An analysis Kesarwani included in her letter showed the sites inventory identified capacity for 3,600 apartments

continued on page 13

Alfred Twu, *San Francisco Chronicle*, September 3, 2022

Any attempt to meaningfully add density in our neighborhoods will need a new approach

Lately, more places across the United States, such as Portland and Minneapolis, have started allowing apartments to be built in areas that previously only allowed houses.

One of the most popular types of rezoning is one that allows for so-called “missing middle” housing — buildings that are larger than a house, but smaller than a five-story apartment block. In California, such efforts started with state and local laws to allow accessory dwelling units, such as garage conversions or backyard cottages, to be added to existing houses. Last year, SB9, introduced by state Sen. Toni Atkins, D-San Diego, passed the Legislature and was signed by Gov. Gavin Newsom. It took effect Jan. 1. and allows up to four homes to be built on lots previously zoned for just one.

For a city with a limited amount of space like San Francisco, however, SB9, isn't the most effective tool to add more housing. That's because it was written with the typical California suburb in mind, which might have a 2,000-square-foot house on a 5,000-square-foot lot — plenty of yard space that can be built on.

San Francisco is different.

Not only are the lots smaller, but the land in San Francisco and the existing buildings on them are more expensive. There often isn't room to build four detached houses on a single lot. And, even if there were, it would almost certainly require demolishing the existing building — a costly choice.

Any attempt to add meaningful density in the city's single-family neighborhoods, therefore, will need a different approach to making building apartments more attractive than the current status quo of renovating and flipping old homes.

Let's take a look at what that might look like for San Francisco's three main types of houses: “Little Boxes,” the rowhouses on the west and south sides of the city; the mansions on large lots and the older Victorians.

Found throughout the Sunset, Excelsior, Bayview and Outer Richmond — as well as Daly City, where the song “Little Boxes” made them famous — they are San Francisco's most common type of house. Your average Little Box was built from the 1920s to the 1960s and is a two-story building with a garage on the first floor and living

space above, occupying the front half of what is typically a 25-foot wide, 100-foot deep, 2,500-square-foot lot. These homes sell for \$1 million to \$2 million, making most of them too expensive to tear down and build only four units of housing to replace them.

Developers in San Francisco, whether they're building modest five-story apartments or 50-story towers, pay about \$100,000 to \$150,000 per unit. However, even houses that are fixer-uppers are currently selling for over \$1 million. That's more than \$250,000-per-unit land cost if only four homes can be built.

For a Little Box lot selling for \$1 million to \$2 million to be an economically feasible development site, it needs to allow at least 10 units — in other words, a five-story or six-story building. Most Little Box neighborhoods already contain examples of mid-rise apartment buildings like this, especially on corner lots.

Another option for making Little Box redevelopment feasible would involve a hybrid renovation and new building strategy. In this scenario, the garage of an existing home could be converted into a second unit, while a third and fourth unit are built in the backyard.

Big mansions, such as those in Pacific Heights, offer large potential for creating economic growth and opportunities for a wider range of people to live near jobs and transit. The lots that host these homes are big — typically 50 feet wide by 100 feet deep. Accordingly, they are also much more expensive, selling for several million dollars. To be worth more as a development site than as a luxury mansion, zoning would likely need to allow for 40 or more apartments per lot. Again, the past hints at what's possible. These neighborhoods feature many existing high-rises dotted among the mansions, including the ones at the top of the Lombard Street curves, along Green Street or the elegant 1920s apartment tower on Steiner Street that stands over Alta Vista Park in Pacific Heights.

Finally, there are Victorian houses. Like the Little Boxes, these homes typically occupy 25-foot wide, 100-foot deep lots. However, the Victorians are much larger than Little Boxes — often 3½ stories tall. Many have historic value. But even those that don't are likely too expensive to demolish for a development site anyway. Instead,

continued on page 16

21,000 Apply for Berkeley Rent-Help Wait List

Sarah Ravani, San Francisco Chronicle, September 6, 2022

More than 21,000 residents applied to get on a wait list for rental assistance in Berkeley in July, but officials have only enough spots to put 2,000 people in the queue for a coveted housing voucher.

The lopsided nature of the numbers underscores the desperation of low-income residents in the region looking for government help as housing costs have continued to soar during the pandemic.

The Berkeley Housing Authority, which runs the voucher program, received the applications over nearly a week from people requesting to be placed on its Section 8 wait list.

Once on the wait list, it could be years before a resident gets a voucher.

A Section 8 voucher is a rental subsidy, provided by the federal government, that covers a portion of a person's rent with any landlord who will accept it. The tenant's portion of the rent is generally between 30% and 40% of monthly adjusted gross income. In general, to qualify for a voucher, a family's income may not exceed 50% of the median income for the county or metropolitan area.

Getting a Section 8 voucher doesn't guarantee housing, and some landlords may not accept the vouchers — although some cities, like Berkeley, have outlawed discrimination against tenants who have housing vouchers.

This is the first time the wait list has been opened in more than a decade. When it was last opened in March 2010, the authority received more than 40,000 applications for 1,500 spots selected in the random draw.

Leah Simon-Weisberg, the chair of the Berkeley's rent board, said the number of applicants shows why expanding programs like Section 8 is critical.

"There is almost no affordable housing available on a regular basis," she said.

The need for affordable housing in the region is clear. Though Berkeley saw a 4% drop in its homeless population to about 1,000 in the latest official count earlier this year, Alameda County saw a 24% increase in its homeless population.

The housing authority, which currently provides rental assistance to 1,939 low-income households through Section 8 and other assistance programs, will randomly select the 2,000 people to be placed on the wait list.

Of the 21,592 applications, 9,974 families applied and 12,131 single-person households applied, and 2,553 heads of households who applied were elderly, agency staff reported. In addition, 605 applicants were veterans and 5,383 had disability status. And 2,670 applications noted Hispanic ethnicity.



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Tiffany Van Buren, BPOA Deputy Director

Best Practices for Dealing with Problem Tenants

As landlords, we do our absolute best to only execute leases with solid, responsible, and reasonable applicants. Unfortunately, even the most intensive tenant screenings cannot predict changes in a seemingly perfect tenant's behavior. It can be difficult not to react to problems from an emotional standpoint when a tenant causes disruptions, becomes neglectful of their responsibilities, or is being uncooperative — but it's important to put your feelings aside and react in a tactful, professional manner. Here are some Best Practices to help you deal with problem tenants.

- 1. Immediate Action.** Don't wait for problems to compound or escalate. The minute you're aware of a problem, address it, in writing, with the appropriate party or parties.
- 2. Stay Professional.** Remain calm and objective. This is a tenant with whom you have a business relationship. Leave emotion out of your response. Reacting out of anger or spite could land you in court. Proofread your response and ask yourself if you'd speak to a colleague the same way.
- 3. Keep Written Records and Documentation.** Keeping a written account of every interaction you have with a tenant, positive or negative, is one of the most valuable steps you can take to protect yourself as a landlord. Keep all emails, notices, even text conversations. Don't forget to document your actions as well!
- 4. Treat Tenants How You'd Want to Be Treated.** Remember, your behavior sets the tone for your business relationship! Listen effectively and communicate clearly. Having a good attitude could positively impact how your tenant responds to you during conflicts and interactions in general. If the complaint or problem warrants an inspection, give proper notice, and show up on time to scheduled appointments.
- 5. Refer to the Lease.** Many of the most common conflicts between landlords and tenants, such as late fees, violations of the guest policy, and right to access (parking, storage, laundry) can be avoided when both parties have a clear understanding of the lease agreement. Direct your tenant to the section of the lease that corresponds to the problem at hand. Remind them that they signed a legally binding contract and

agreed to abide by the rules and regulations within it. If they say they don't have or can't find their lease, provide a copy.

- 6. How to Deal with Inter-Tenant Disputes.** When there is conflict between tenants, encourage them to work it out between themselves. Most commonly this happens with noise complaints. "My upstairs neighbor wears heels in the house that make a loud clicking sound in my apartment! She gets home late at night when I'm sleeping, and it wakes me up!" If they've come running to you, expecting you to deal with it, you might say, "I can see where that could be an issue. What did they say when you asked them about it?" Chances are, they haven't talked to their neighbor, so suggest they have a conversation, or even just leave a note on their door. Most tenants are considerate of their neighbors and are simply unaware that what they are doing is affecting others. If they cannot resolve an issue between themselves, you might suggest mediation.
- 7. Safety First.** Don't potentially put yourself in harm's way. If a tenant poses a danger to you or others on the property, is engaging in illegal activity, or is behaving in any way that feels unsafe, call the police! Once they have handled the situation, request a copy of the report.



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SF & Oakland Still Recovering from Nation's Biggest Pandemic Rent Declines

Kellie Hwang, San Francisco Chronicle, September 2, 2022

Most major cities across the U.S. have seen apartment rental prices bounce back above pre-pandemic levels — but San Francisco and Oakland remain among the very few exceptions, new data shows.

In all but three of the country's 50 biggest cities, the price of a one-bedroom rental in August 2022 exceeded the price in March 2020, according to data from real estate listings site Apartment List.

Two of those three are in the Bay Area: Oakland's median one-bedroom rent in August was 9.5% below March 2020 — the lowest growth rate of the 50 cities included in the data. San Francisco followed with an 8.5% drop over the same time period.

Minneapolis was the only other big U.S. city still in the red for rental growth, with the median price down 2.5%. All other cities saw growth, ranging from 3.9% for Washington, D.C., to 43% for Tucson, which had the biggest increase.

Many major cities saw rental prices plummet during the first year of the pandemic, from March 2020 to early 2021, as offices shut down, and workers fled for more affordable areas, including out of state. But while others have since rebounded, experts said several factors explain why Bay Area cities are slow to catch up.

"The slow rent rebound in the Bay Area is really concentrated in San Francisco, Oakland, and the Peninsula, markets with both the highest pre-pandemic rents as well as the highest share of remote capable jobs, per research conducted by our team last year," said Rob Warnock, senior research associate for Apartment List, in an email.

According to U.S. census data, he added, from 2020 to 2021 the Bay Area experienced a net decline of almost 156,000 residents, with the highest population decline in San Francisco of 6.3%.

"This translated to a drop in rental demand, a surge in apartment vacancies, and a dramatic drop in rent prices that in some individual cities, remains today," he said.

Tech companies overall have been slower to bring employees back to the office or pivoted to flexible work schedules. While San Francisco is seeing more signs of life, some companies in recent months have been downsizing or canceling their office spaces, or closing down their offices for good.

Some major tech companies have called employees back to the office on hybrid schedules, including Google, which

began requiring that most workers return at least three days a week in April, and Apple, which recently announced that corporate employees would need to come in at least three days a week beginning September 5.

Rent in San Jose, which also declined earlier in the pandemic, was up a modest 6.6% in August since the start of the pandemic — the fifth-lowest growth rate out of the 50 largest cities.

San Francisco is "denser and has smaller unit footprints, two features that housing demand moved away from during the pandemic," Warnock noted. So as the San Francisco and San Jose markets rebound, he said it's possible that the type of housing offered in the San Jose area is more attractive to new renters, "especially if they are working remote and proximity to the office isn't a deal-breaker."

Outer-lying Bay Area communities have seen bigger growth in rent prices since the start of the pandemic. For example, median rent in Fairfield in August was 21.9% above March 2020, and Santa Rosa saw growth of 17.1%.

Rent in Sacramento, a popular destination for people leaving the Bay Area during the pandemic, rose 23.1% from March 2020 to August 2022 — a rate that put it in the middle of cities nationwide.

Unlike the Bay Area's biggest cities, other parts of the state didn't experience such a significant population loss, Warnock said.

"As people moved around, one thing we witnessed universally was a flow of people from higher-cost to lower-cost cities, even within expensive regions," he said.

In the larger San Francisco metropolitan area — defined as San Francisco, San Mateo, Alameda, Contra Costa and Marin counties — median rent has finally edged just above pre-pandemic levels: the median one-bedroom was \$1,969 in March 2020 and \$1,970 in August 2022.

Despite the sluggish growth, rents in the Bay Area remain much pricier than most of the rest of the U.S. The San Jose metro — which includes all of Santa Clara and San Benito counties — had the country's highest one-bedroom median rent in August, at \$2,295, followed by the San Francisco metro at \$1,970.

In third place was the metro area encompassing Ventura County in Southern California, at \$1,951. The New York metro area came in fourth with a median rent of \$1,948.

continued on page 14

by Grosvenor at 1951 Shattuck St., did so without much ado earlier this summer.

There's perhaps no figure more emblematic of the pivot than Mayor Jesse Arreguín, who once argued in favor of the kind of community benefits package Hill Street blamed for killing the Harold Way project. Whereas Arreguín first regarded tall projects downtown with a kind of hesitancy - maybe even resistance - he's come to see them as an important solution to the city's housing shortage.

"People have been priced out of our cities. The status quo is not working," Arreguín told me last fall. "I have come to embrace the realization that we do need more dense housing along our transit corridors and in downtown."

How complete is Arreguín's conversion? So much so that he is now serving as president of the Association of Bay Area Governments, the often-unpopular agency that sets housing targets for the Bay Area's 101 cities and nine counties. Berkeley's own assignment is nearly 9,000 units, and Arreguín has pledged to meet it.

More Housing for More Students

UC Berkeley has notoriously little student housing: The university has beds to accommodate around 20% of its student and faculty population, the least of any campus within the UC system.

But Chancellor Carol Christ, who was named to her current position at Berkeley in the spring of 2017, has made it her mission to begin reconciling the shortage of student and faculty housing, which has also exacerbated the housing crisis playing out in the city of Berkeley.

Students living in off-campus student housing walking distance from Berkeley are experiencing a housing crisis within a housing crisis - they regularly pay as much as \$2,000 per bed, I reported this summer, and I hear from brokers who'd seen beds listed for as much as \$2,500. That's right: per bed, not per room.

Among the pipeline projects that will boost UC Berkeley's bed count:

Anchor House, a 772-bed student residence hall for transfer students that began construction last year

Upper Hearst, a project to include 150 units and 37,000 square feet academic space. Save Berkeley's Neighborhoods, the group whose lawsuit against UC Berkeley prompted a court-ordered enrollment freeze this year, sued to stop the university from proceeding with the project. It remains in the planning and design phase for now, per the university.

People's Park, a two-part project to feature more than 1,100 student beds as well as a supportive housing component with 125 beds for formerly homeless and low-income residents. UC Berkeley attempted to get going with construction this summer; progress was put on hold after protests repetitively swarmed the park.

The university's long range development plan, approved last year by the University of California Regents, gives it the green light to add 8 million square feet. That would accommodate 11,730 beds for students and faculty and 2.5 million square feet in non-residential space.

UC Berkeley's expansion plans provoked the ire of neighborhood groups like SBN, and they weren't immediately well-received even by the city of Berkeley, which sued Cal in 2019 over what it described as the university's "exponential population growth." The two parties settled in 2021 after UC Berkeley agreed to provide the city with \$82.64 million to fund city services over the next 16 years; in exchange, Berkeley agreed to drop its litigation against Cal and agreed not to challenge the long range development plan in court.

Riding BART to Redevelopment

Berkeley City Council approved the rezoning of a cumulative 6.5 acres of surface parking at the Ashby and North Berkeley BART stations this summer; both stations are now approved for residential buildings up to seven stories tall, and development there could rise up to 12 stories if developers take advantage of state density bonuses.

The city and BART, which are working together on the stations' redevelopment, expect the two stations could accommodate more than 2,400 units between them. The pair want to get going as quickly as possible: BART issued a request for qualifications from interested developers for the North Berkeley station at the beginning of July and expects to do the same for Ashby in late 2022 or early 2023, BART Director of Real Estate and Property Development Abby Thorne-Lyman told me in June.

The two projects should make a serious dent in Berkeley's state assigned housing goals for the upcoming eight-year cycle, which begins in 2023.

"Seven stories and 2,400 units is a huge win for Berkeley," Mayor Jesse Arreguín said at the conclusion of a marathon City Council hearing in June at which the changes were approved. Redevelopment of the two stations, he said, constitutes an "incredible, historic opportunity" for Berkeley.

continued on page 12

Housing Bill Package Heads to Newsom's Desk

Emily Hamann, Sacramento Business Journal, September 2, 2022

Bills Would Allow Developers to Turn Shuttered Retail Centers Into Housing

Two bills that would make it easier to build housing on commercial-zoned land are heading to the governor's desk.

Assembly Bill 2011 and Senate Bill 6 both seek to spur the development of millions of potential new housing units by bypassing many steps of the local approvals process and making certain residential projects a by-right use of commercial properties primarily used for

Both bills passed their final hurdles in the Legislature on Monday and now go to the governor's desk.

Wednesday was the final deadline for bills make it out of the Legislature. Gov. Gavin Newsom has until Sept. 30 to either sign or veto the proposals.

Where the two bills differ is in the affordability requirements of the housing and labor requirements on the construction projects, which garnered them alternating opposition and support from affordable housing developers on one side and construction unions on the other. An agreement negotiated by state Senate leaders last week allowed both bills to move forward, and potentially create two different streamlined approval processes developers could choose between to build more housing in commercial areas.

"These bills will change the trajectory of California's housing crisis," said Assemblymember Buffy Wicks, author of AB 2011, in a statement. "The impact will be historic — no longer will lack of land be an issue for housing production. No longer will there be a lack of incentive for workers to join the construction workforce. And, no longer will red tape and bureaucracy prohibit us from building housing in the right locations to address our climate crisis."

AB 2011 would require that some or all of the units in the projects be set aside as affordable, and that contractors pay workers on those projects a prevailing wage.

For projects with 50 units or more, contractors would be required to seek to bring on apprentices from a state-approved apprenticeship program.

Under SB 6, there would be no affordability requirement for the housing units in the project, which could include mixed-used retail, commercial and office uses as long as at least 50% of the project's square footage was residential. However, there would be stricter labor requirements. SB 6 would require contractors to use a "skilled and trained

workforce" — a legal standard that, in effect, means that most of the workers on the job would be union members.

The State Building and Construction Trades Council of California, a labor group with nearly 500,000 members across the state, routinely pushes for housing bills to include the skilled and trained workforce requirement, and opposes those without it.

The Trades Council had long supported SB 6, which was first introduced in 2020 and has been stalled in the Legislature.

"Standing strong for working families is our top priority and we can't do that without building housing for the middle class," said Trades Council President Andrew Meredith, in a statement. "SB 6 is the culmination of years of work, and is a game changer for working families to achieve the American Dream and it will protect workers from exploitation. As we've said all along, our members and apprentices are ready and prepared to build us out of the housing crisis."

The Trades Council opposed AB 2011, although it was supported by other unions. The state's largest labor union, SEIU California, and the California Conference of Carpenters co-sponsored the bill along with the California Housing Consortium, which represents affordable housing developers.

"California desperately needs more housing, especially housing that is affordable for lower- and middle-income families — SB 6 and AB 2011 will help fulfill that need," said Senate President Pro Tem Toni Atkins, in a statement. She went on to call the package "one of the most significant efforts to streamline and amplify housing production in decades."

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Berkeley Charts a New Course

The city expects to see a combined 1,200 units rise at the two stations between next year and 2031.

Change the Zoning, Change the City

Changes to the zoning that underpins Berkeley's land use has also been a key part of the mix.

Berkeley was working on a local version of Senate Bill 9, which allows property owners to build up to four units on lots zoned-single family, as early as 2018. The city has embraced SB 9, and it's considering allowing what it calls "missing middle" housing - residential projects with between two and four units - by-right, the city said in its draft housing element, meaning no need for approval from the city. Berkeley expects to release objective standards for those kinds of residential projects by early next year.

Berkeley, which is believed to have been the first city in California to implement single-family zoning in 1916 in an explicit bid to control its racial demographics, is now a pioneer in dismantling restrictions that apply to roughly half the land area of the city. Last year, the city embarked on a two-year process to roll back single-family zoning, a move that could open the door to up to 9,000 more units.

"We are not saying that if you live in a single-family home that you are bad or racist. I live in one," Councilmember Lori Droste, who spearheaded the change, said at the time. "It's more about - why wouldn't we allow the opportunity to have flexibility in our zoning code to allow a grandmother to duplex her house."

Beyond being a pioneer in the move to dismantle single-family-only zoning, Berkeley is also taking a closer look at allowing density in a part of the city it's calling the Southside Plan Area, which covers a portion of the city directly bordering the southern part of UC Berkeley's campus. City leaders have said they think allowing things like taller and larger buildings in the neighborhood, which houses many Cal students, could help alleviate the increasingly severe housing shortage there.

The city is folding those changes into its draft Housing Element, a kind of blueprint cities use to demonstrate their ability to meet their state assigned housing production goals, Mayor Arreguín told me this spring. Berkeley expects to have the zoning amendments released by 2024.

Major San Francisco Property Owners Ask to Cut Assessments in Half

Sarah Klearman, San Francisco Business Times, August 26, 2022

The owners of nine San Francisco properties assessed at more than \$100 million are scheduled to appear before a city board Monday to request their assessments be cut in half.

The appeals are for the 2021 tax year, suggesting the owners will claim the pandemic's effect on real estate in the San Francisco hurt the value of their properties. It could be the first official sign of widespread financial distress.

The arguments will be heard by the San Francisco's Assessment Appeals Board, which deals with property owners seeking to contest the assessed taxable value of their real estate assets. If the appeals are granted, it could have major financial implications on the city's finances, especially if other property owners come forward with similar requests.

San Francisco property owners are required to pay their assessed tax for a given year, even if their appeal of their property's value is pending. It's not yet clear how AAB might choose to deal with the eight owners; if their ap-

peals are granted or partially granted, the city would issue refunds of the difference with interest, according to the AAB's website. An AAB spokesperson said commercial landlords often appeal the assessed value of their properties during economic downturns.

San Francisco's Chief Economist Ted Egan said Friday each appellant would have to make their case. A property owner could point to a tenant that was unable to pay their rent, reducing the profitability of the building, Egan said. Or they could try and make the case that declining demand for office or retail space had harmed the value of their properties. Remote work has caused many companies to downsize.

If the AAB grants any of the appeals Monday, it would only be granting the reduction in property taxes for 2021. Property owners must submit assessment appeals for each individual year they believe the market value of their real estate asset falls has fallen below its assessed value.

to be built in West Berkeley, compared to 326 in Northeast Berkeley. The imbalance was even bigger for affordable apartments, with 1,956 eyed for West Berkeley and 136 in Northeast Berkeley. And even within that smaller pool of properties, Kesarwani and others contend some sites identified as candidates for new housing are unlikely to be redeveloped since they're already occupied by businesses.

"That is not fair — that does not affirmatively further fair housing," Kesarwani said, referring to the state requirement that cities equitably distribute affordable housing throughout all neighborhoods. "In fact, it does the opposite."

She tied the imbalance to Berkeley's history of redlining and other forms of housing discrimination. West and South Berkeley were zoned to allow more industrial and commercial uses, such as auto body shops, that weren't permitted in whiter and wealthier parts of the city; today, many of those sites are seen as prime candidates for new development.

By not planning for more housing in areas such as North or Southeast Berkeley, Kesarwani said the city's plans also mean fewer people will have access to the amenities existing residents in those areas enjoy, from parks and tree cover to better air quality.

And while wildfire concerns have led officials to limit growth in the historically well-off Berkeley Hills, advo-

cates contend other wealthy neighborhoods could safely take on more new homes.

"I think that every district, every neighborhood, has to play a role in the future of our growth," Taplin said. "We can't just site all of the subsidized housing [and] all of the density, along San Pablo and Adeline — it has to go everywhere."



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

DATE	TOPIC
Monday, October 3, 5:30 pm	Political Mixer: Reviewing the Berkeley Ballot
Thursday, October 13, 3:00 PM	Amping Up Your Property's Curb Appeal
Thursday, October 20, 3:00 pm	Converting Debate into Conversation: Mediating Your Way to Agreement
Wednesday, November 9, 3:00 PM	Year-End Tax Planning & Real Estate Tax Updates
Thursday, December 8, 5:00-8:00 PM	Holiday Party at Cornerstone Brewery, \$40 per person

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.

Rent Rates in SF and Oakland Still Lagging

Tight supply helps explain why Bay Area prices have remained so high, Warnock said.

“Despite a softening of the rental market ... the Bay Area continues to suffer from a massive housing shortage, which props up prices,” he said. “Open houses may have fewer prospective renters lining up for a showing, but that does not mean that landlords are suddenly desperate for new tenants.”

Apartment List data shows vacancy rates remain below 5% across the Bay Area, Warnock said.

So what is in store for the future of Bay Area rents?

Nationwide, rent growth is decelerating, Warnock said, which is a “welcome sign indicating that the rental market is falling back into its typical, pre-pandemic seasonal trend.” In San Francisco, monthly rent growth in August 2022 was 0.7%, compared with 2.7% in August 2021.

“Last year is proving to be an anomaly, while this year is behaving more normally,” he said. “This doesn’t mean that prices will go down substantially, but rather that price increases should continue slowing for the remainder of the year, unlike last year when they accelerated throughout the fall and winter.”

Corner

there isn’t an incumbent on the ballot, the race is wide open. We are please that Councilmember Droste spent the time to consider a successor who would carry on her reasonable policy-setting. That candidate is Mark Humbert, a small property owner and insurance lawyer. He has extensive experience sitting on Berkeley commissions and is well-respected in the community. Learn more at www.HumbertForCouncil.com.

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

OCTOBER MEETINGS & EVENTS

Political Mixer: Reviewing the Berkeley Ballot

Cornerstone Brewery, 2367 Shattuck Ave.

Monday, October 3, 5:30 pm

Amping Up Your Property’s Curb Appeal

With Julie Durkee, Winkler Real Estate Group

Thursday, October 13, 3:00 PM

Converting Debate into Conversation: Mediating Your Way to Agreement

With SEEDS Community Mediation Services

Thursday, October 20, 3:00 pm

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

BPOA WORKSHOPS — Go Beyond the Basics

justification for a law (as usually expressed as findings in the preamble to the law). In other words, the judges punt. Thus, there is a de facto rational basis for rent control, even if owners and tenants next door to each other across the Berkeley/Albany border are treated very differently. The Berkeley owner is burdened whereas the Albany owner is not. The Berkeley tenant is benefitted whereas the Albany tenant is not. As these two abutting apartment buildings function in the same housing market, how can Berkeley's decision to enact strict rent control exist along side of Albany's decision to have no controls? These cities — certainly these two abutting buildings across the city line — are in the same housing market. One of these two cities is acting irrationally.

It is the state which is not permitted to treat its citizens differently. The state could not preclude cities beginning with A(lbany) from having rent control while allowing controls in cities beginning with B(erkeley). It should therefore not be allowed to look the other way when state law enables local jurisdictions to create a situation which the state itself cannot. There is no rational basis for local rent controls.

Now that the state has enacted a statewide rent control law, it should apply to all rental housing equally. If there had been no existing ordinances to exclude from the recent state law, the cities with these ordinances surely would not have been excluded when the statewide law was passed. In the spirit, if not the letter of the Fourteenth Amendment, grandfathered ordinances should be preempted by state law.

QUOTE OF THE MONTH

Of all tyrannies, a tyranny exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end, for they do so with the approval of their consciences.

— C. S. Lewis



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Legislative Update: End of Session Wrap-Up

California Rental Housing Association (CalRHA)

Lawmakers concluded legislative business in the 2021-22 California legislative session early in the morning on September first, passing hundreds of bills that now await Governor Newsom's stamp of approval. Although the majority of bills that made it to the Assembly and Senate floors were approved, several controversial bills failed, including bills to preserve California's concealed-carry gun limits, require large corporations to report GHG emissions, and increase California's GHG emission reduction target. Given the Democrat supermajorities in both houses and the almost miniscule margin of Republicans, the Legislature's moderate Democrats were pivotal in halting the few bills that did stall.

2022 was the second year of the 2-year session, so any bill that didn't clear the Legislature is dead. Notwithstanding the deadline, bills that died can be resurrected into new vehicles next year, so we may see repeats of some of the more high-profile bills — particularly given that over 30 new members will be sworn in after the November election. For now, however, the Legislature's business is finished.

HOUSING

Lack of affordable housing has afflicted California for decades and has only gotten worse in recent years. Measures to expedite housing development have been introduced over the last several sessions, and this year was no exception. Legislators approved SB 6 (Caballero), which will

enact the Middle-Class Housing Act of 2022, establishing housing as an allowable use on any parcel zoned for commercial purposes. In order for a development to qualify, projects must either be certified as public works or pay prevailing wages and use a skilled and trained workforce. AB 2011 (Wicks) also passed, which will clear hurdles (like the California Environmental Quality Act) for housing developments near strip malls. Like SB 6, developers would have to pay union-level wages.

ALL EYES ON NEWSOM

Lawmakers are back in their districts for the fall, so the spotlight is now on Governor Newsom as he decides the fates of the several-hundred bills en route to his desk. This year is very different from last year, when the recall loomed over Newsom during his bill signing period. Another stark contrast is the speculation that Newsom has presidential political aspirations, which could influence his decisions on certain bills. One thing of which we can be fairly certain is that he will sign the vast majority of the bills on his desk. Last year, his veto rate was only about 8% — far lower than the average 13% of his predecessor, Jerry Brown. Newsom has until September 30 to sign or veto all bills. Once the signing deadline is passed, the focus will pivot to the November 8 General Election. A large, freshman class of legislators will be sworn in on December 5, and the Legislature will return to Sacramento in early January for the 2023 legislative session.

from page 6

What if SF Ended Single Family Zoning?

Victorians would be good candidates for conversion into two-to-six-unit apartment buildings. Many, in fact, already are. Garages are an easy place to start. Changing the planning code to allow mid-rise apartment buildings with fire sprinklers to have a single stair — which Seattle does — would also allow the attics in these houses to become separate fourth-floor apartments.

Ending apartment bans is one part of solving the housing shortage. In addition to new homes in residential neighborhoods, we also need them in commercial zones, especially downtown. Other Bay Area cities also need to build, especially Silicon Valley cities with more jobs than homes. Stronger tenant protections can also keep existing residents housed while waiting for new homes to be built and steer investment into building new homes rather than flipping existing ones. Subsidized affordable hous-

ing and mixed-income social housing are needed for those that can't afford new construction.

Together, these approaches have the potential to not only solve the housing shortage but also support local businesses, bring in new tax revenue to replace the losses from office vacancies and shorten commutes by making room for more people who work in the city to also live in the city.

Alfred Twu is an architect, artist and housing advocate who creates illustrations explaining state housing legislation. He also serves on the Berkeley Planning Commission and has been involved in the city's General Plan Housing Element update.



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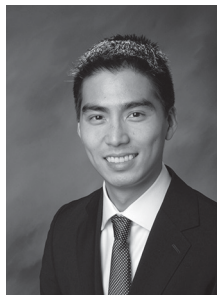
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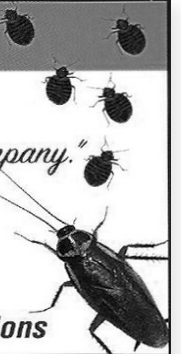
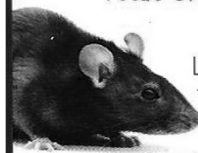
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