

NOV  
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](http://www.bpoa.org)

### About Paint Types

Mark Tarses, President, BPOA

The big difference between the types of paint you use in your own home and those you use in your rentals is that everything in a rental unit should be a notch up on the washability scale. This shouldn't be conspicuous, but you don't want to have to repaint between every tenant. Think about the layout of your apartment. If there is an area where there is a greater chance of burnishing, that is, scuffing on the paint from rubbing against a wall, go notch up on the sheen scale in picking the paint. For example, eggshell may be a good choice for a wide hall, but you might want to use pearl or semigloss on the walls of a narrow hall.

Keep a paint record. Paint a stiff white sheet of cardboard with any type of paint you use. Date them. Paint manufacturers frequently discontinue types and colors. Paint stores are very good at matching paint colors and types, but you need to bring in a sample of the paint you are trying to match.

**Flat** paint does not reflect light and has no sheen at all. It hides imperfections best, but it is not washable. The only place I use flat paint is on ceilings in living rooms, bedrooms, and closets.

**Matte** paint is almost shine-free as flat, and is also not washable, so why buy it? You should limit the number of types of paint you use to the minimum you really need.

**Eggshell** is my go-to paint for living room and bedroom walls. There is very little shine to it, and it is washable.

**Pearl** has a little more shine than eggshell. It is a better choice for small or dark living rooms and bedrooms.

**Satin** paint is in between pearl and semigloss. This is another finish that I never buy.

**Semigloss** is the standard paint for woodwork, trim, windows, doors, bathrooms, kitchen walls and cabinets. It has a definite shine to it. It is very washable. I use semigloss to paint areas that are dark, like the walls inside a dark closet.

**High Gloss** may seem like a good choice for kitchen cabinets, but it really shows up surface flaws. If you are going to use high gloss paint, make sure the surface you are painting is very smooth. I rarely use high gloss paint.

### NOVEMBER EVENTS

#### *Year-End Tax Planning & Real Estate Tax Updates*

Wednesday, November 9, 3:00 PM

#### *Understanding Your Property Tax Bill*

Thursday, November 10, 3:00 PM

#### *Monthly Owners Forum*

Thursday, November 17, Noon

#### *Holiday Party*

Thursday, December 8, 5:00-8:00 PM

See pages 13 & 14 for details & more events!

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# Editorial

## Laws and Sausages

Albert Sukoff, Editor

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

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

### About the Newsletter

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

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

Direct comments and material to our Bancroft Way office or to [bpoa@bpoa.org](mailto:bpoa@bpoa.org)

There is an aphorism that goes something like this: *I saw that you were drowning 20 feet from shore, so I threw you a 12-foot rope. I met you more than halfway.* This is often how government programs pretend to help when in fact they are palliative, or even worse, counterproductive.

On page 10 is an article about the passage of two new state laws that are supposed to foster the development of more housing in California. In fact, as usual, Sacramento gives with one hand and takes away with the other.

To garner union support, both AB2011 and SB6 have components that euphemistically require union labor. These laws were only passed after serious concessions to the trade unions. That they got what they wanted is clear from the photo on the Governor's website which shows him promoting the bill. He is surrounded by blue collar workers in hardhats with signs promoting the law. The smaller sign they carried says *Build Homes Now*. The larger one, more to the point, says *We Support Prevailing Wage* (i.e. union wage). These trade unions are not interested in more housing but more work on their terms. They routinely challenge housing developments on environmental grounds, trying to extract an agreement from the developer to use union labor. It is just another abuse of CEQA. A new apartment building is bad for the environment — unless they get to build it. Then it is wonderful.

Additionally, AB2011 loosens local zoning requirements which limit the number of units on a given parcel, but then demands that 15% of the units in any given project be affordable. As the sale or rent of these units will never cover costs, this is a serious compromise of the alleged benefit, i.e. providing more units. The bonus units may or may not justify the cost of providing them. At any rate, if they must operate at a loss, the ultimate renters or the condo buyers end up subsidizing the below-market-rate housing. Both mandatory union labor and inclusionary zoning requirements seriously diminish the potential positive impact promised by the legislation.

Two things are true relative to housing production, particularly with respect to so-called affordable housing. One, the ONLY thing that will ever bring down housing costs in California is more supply. Tampering on the edges to artificially provide lower cost housing — like minimum labor requirements and inclusionary zoning — subverts achieving this goal. Two, there is no way to currently produce housing in California at a cost which allows for affordability, not for rental housing and certainly not for owner-occupied housing. Market rents and values drive production costs. Production costs will and do rise to the level supportable by achievable sales prices and rents. New housing can only be affordable if it is subsidized by someone. This can be through tax breaks, subsidized loans, density bonuses, impact fees, imposed developer contributions, or straightforward government development at a loss to the taxpayer.

It is said that government is the art of the possible. Compromise is an essential component of governing. Compromise assures that the good is not sacrificed to the pursuit of the perfect. But compromise means sacrifice on the part of one or both sides of a controversy. In the case of AB2011 and SB6 — and even a better bill, SB9, as well — the expensive conditions imposed on those who would take advantage of the positive provisions of the legislation will seriously undermine, if not vitiate, the benefits otherwise attainable. That's too bad.

# ❖ 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.**

*The Berkeley Rental Housing Coalition (BHRC) is the political and legal arm of BPOA. Each election we review ballot measures and meet with candidates to understand their impact on the rental housing industry. Below are our recommendations for candidates and positions on ballot measures. While there is no ballot measure this year modifying the Rent Stabilization Ordinance, there are ballot measures that will increase property taxes for your rental housing.*

## **Ballot Measures**

### **Measure L — \$650m Bond Measure — VOTE NO**

Called the Mother of All Bonds (MOAB), this hefty bond adds money to your property tax bill, but no guarantee the tax money will be spent on potholes, affordable housing, or fire prevention. At the cost of almost \$42.00 per \$100,000 of assessed value, this is just lining the coffers of the City Council's General Fund for pet projects. It's time voters stop giving more blank checks to Berkeley's city government with nothing to show for it! Learn more and contribute to the fight at [BerkeleyansforBetterPlanning.org](http://BerkeleyansforBetterPlanning.org)

### **Measure M — Vacancy Tax — VOTE NO**

Although this measure has some exemptions for owner-occupied duplexes and triplexes, it is just another direct hit that tries to force owners to rent out their vacant units, even if they don't want to. Starting in 2024, a tax of \$3,000 per vacant unit will be levied in the first year and \$6,000 per unit for every year thereafter. This is a punishment for owning private real estate and not an incentive to bring more housing to the market. More information on Measure M can be found on [www.ballotpedia.org](http://www.ballotpedia.org).

### **Measure N — Low-Income Housing — VOTE NO**

While we support housing opportunities for low-income earners, this is a direct financial give to non-profit housing providers like SAHA and Bridge Housing. These agencies have a poor history of purchasing and managing rental housing but a good track record of paying their executives bloated salaries! There is a better use of taxpayer money to create affordable housing than a freebie to ineffective housing providers. More information on Measure N can be found on [www.ballotpedia.org](http://www.ballotpedia.org).

## **Candidates (Berkeley City & Alameda County)**

### **Rashi Kesarwani — District 1 — Incumbent**

Rashi has been thoughtful on housing policy and often points out the ineffective use of taxpayer money by social housing activists. She opposed the Tenant Opportunity to Purchase Act (in its most recent format), the effort to eradicate Golden Duplex and ADU rent ordinance exemp

tions, and is an outspoken voice for using data to inform decisions.

### **Mark Humbert — District 8 — Replacing Outgoing Councilmember Lori Droste**

This is a very important race for us as Mark Humber's contender is current Rent Board Commissioner Mari Mendonca. Mark is a small rental housing property owner, a seasoned Berkeley commissioner, and a lawyer. He understands the impact of increased regulations on the small housing provider population. Learn more and make a donation to his campaign at [www.humbertforcouncil.com](http://www.humbertforcouncil.com).

### **Rent Stabilization Board — Wendy Saenz Hood**

While there are five Rent Board seats open this election, we recommend you only vote for Wendy Saenz Hood. This is a plurality vote with the top five vote-getters winning seats. The only way to defeat the Right to Housing slate (tenant-backed Social Housing) is to not vote for them. These are At Large seats; any Berkeley voter may cast a vote. Learn more about Wendy and donate to her campaign at [www.Wendy4RentBoard.org](http://www.Wendy4RentBoard.org)

### **City Auditor — Jenny Wong**

This is an uncontested race of an incumbent; however, we want to point out that the City Auditor has made public that she intends to audit the Rent Board. The Rent Board has never been audited, and we are encouraging her to move forward on the audit sooner rather than later.

### **Alameda County Board of Supervisors — Lena Tam**

The Alameda County Board of Supervisors has the power to end the Eviction Moratorium that grips Berkeley. But only two of the current Board of Supervisors are willing to discuss the matter. It is critical that we elect new Supervisors that are willing to change policy when the time is right. While we have not personally vetted Ms. Tam, other well-respected industry officials have, including our sister organization, the East Bay Rental Housing Association. To learn more about Lena Tam and her platform, visit [www.lenatam.com](http://www.lenatam.com)

*We are not taking a position on the re-election of Kate Harrison & Rigel Robinson, or BUSD candidates.*

# More Bay Area Cities Transition to Rent Control

*Lauren Hepler, San Francisco Chronicle, October 3, 2022 [abridged]*

With a narrow 3-2 vote, Antioch became the most recent California city to approve a 3% cap on many annual rent increases. It's part of a wave of jurisdictions, along with Oakland, Richmond, Concord, Alameda County, Petaluma and several Southern California communities, that have recently passed or are debating rent stabilization laws and related tenant protection measures.

The COVID-era rent-control reckoning — which advocates say is the biggest groundswell since 2015 rent limits proposed in Silicon Valley and the East Bay — comes as cities plan to build hundreds of thousands of state-mandated homes in the next decade. With frustration mounting after pandemic eviction battles, worsening homelessness and record home prices locking millions into renting, fed-up tenants are signaling that waiting around for alternatives is no longer an option.

No landlord advocates spoke in opposition to the Antioch rent stabilization measure during nearly two hours of public comments on Tuesday, but the measure sets the stage for more showdowns to come. Property owners have already sued to end remaining pandemic eviction restrictions in neighboring Alameda County and criticized similar rules in San Francisco.

In previous Antioch City Council meetings, landlords and industry groups argued that a landmark 2019 state law, AB1482, already sufficiently limits rent hikes to 10% per year. Most landlords, Delta Association of Realtors President James Britto contended, strive to keep properties up to code and operate fairly.

"There's always a few that ruin it for everyone," Britto said at a meeting earlier this summer. "We don't really need more regulations."

As landlord-tenant tension threatens to boil over at the local level, state politicians and Gov. Gavin Newsom focused this year on building for the next generation. At a news conference Wednesday in San Francisco, he signed three dozen new state laws focused on housing construction and homelessness.

"We need to all be a little bit more accountable," Newsom said, "to this crisis of affordability."

Though California voters have repeatedly voted against a statewide expansion of rent control with ballot measures like 2018's Proposition 10, one open question is whether the surge of local reforms could translate to bigger state reforms in coming years.

Even before the pandemic upended the housing market, cities like San Francisco, Berkeley and Santa Monica were already national poster children for rent control. But in recent years, rent-control debates have evolved along with decades of dueling economic studies about how much the policies curb displacement, ironically encourage price hikes or both.

The policy approved Tuesday in Antioch — officially called a "rent stabilization" ordinance because of how it limits annual increases, as opposed to rent-control policies that enact hard limits on monthly rent — follows a model also recently approved in Oakland and up for a vote this November in Richmond with Measure P. Under these policies, most rentals built before 1995 would be subject to annual rent hikes of either a flat 3% or 60% of the annual rate of inflation, whichever is lower — figures in line with existing rules in San Francisco and Berkeley.

In some cases, tenant organizers are also pushing for related policies to prohibit landlord harassment or strengthen eviction protections in Antioch, Concord, Petaluma and Alameda County.

One trend is how public appetite for stronger renter protections is spreading to places once a world away from the activist tenant culture of cities like San Francisco, said Tenants Together legislative director Shanti Singh.

From Contra Costa County to Orange County, rent stabilization and tenant protection measures are being approved in more suburban areas with less history of renter advocacy. Singh credits the shift to factors including the sprawl of urban affordability concerns, more door knocking by tenant organizers and the unique economic pressures posed by the pandemic.

"What sort of was the tipping point, I think, is inflation, and renters being really fired up about the way that they've been treated and what they've had to deal with on top of this pandemic," Singh said. "It is kind of the perfect storm."

New research released this week also points to potential weaknesses in existing state renter protections. The report, titled "Rising Rents, Not Enough Data: How a Lack of Transparency Threatens to Undermine California's Rent Cap," found that 60% of California rental listings posted this past spring had annual price increases above the state's annual 10% rent cap. That's according to an

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# Plan for Downtown Berkeley Apartment Building Grows to 26 Stories

Nico Savidge , *Berkeleyside*, October 21, 2022

## Third proposal for a housing tower that would rise more than 250 feet

The student housing developer who pitched a 17-story apartment complex across from UC Berkeley last year is taking its plans to new heights.

A revised proposal submitted this month by Chicago-based Core Spaces now calls for its Hub Berkeley project to rise 26 stories above the intersection of Oxford and Center streets. The building would include 485 apartments — about 200 more than the developer, who has built similar student-centric Hub complexes in college towns across the country, initially proposed.

Plans call for the project to include a 4,000-square-foot restaurant on its top floor, part of 13,500 total square feet of commercial space in the complex.

At 288 feet, the project is the tallest of three planned high-rise downtown apartment buildings now in the city's approval pipeline. Developers have also proposed a slightly shorter 26-story building at 1974 Shattuck Ave. and a 25-story project at 2190 Shattuck Ave.

Any of those projects, if they are approved and built, would be the biggest structure in downtown Berkeley, where proposals for large apartment buildings have sparked long and bitter fights between residents resistant to high-rise development and those who argue the transit-rich and campus-adjacent area is the ideal place to build tall, dense housing.

"The need for housing, and housing in the downtown, is at an all-time high," said development consultant Mark Rhoades, who is working with Core Spaces on the Hub Berkeley project and is part of the development team for 1974 Shattuck Ave. "It makes the most sense to put that transit-oriented density right here."

Hub Berkeley would be a much larger development overall than the other two proposed towers. Whereas the projects on Shattuck Avenue would each occupy corner lots, neither of which is bigger than 20,000 square feet, the Hub Berkeley property is made up of two parcels that cover just over 35,000 square feet in total. Along with the 26-story tower at the corner of the lot, a segment of the building nearly matching that height would extend down much of the 2100 block of Center Street.

The project would replace what is now a popular strip of restaurants along Center and Oxford streets; the development team has told city officials it is providing relocation

assistance to those businesses, and will offer them space in the new building.

Rhoades said Core Spaces decided to pursue a taller project after seeing how plans for 2190 Shattuck Ave. exceeded Berkeley's downtown height caps thanks to California's density bonus law, which lets developers build beyond local zoning limits if their projects include affordable housing.

The proposal for Hub Berkeley now calls for including 47 affordable units — 42 for renters who are considered very low income and five for those considered extremely low income — which allow the project to soar past the 180-foot height cap set in Berkeley's 2012 Downtown Area Plan. Core Spaces will also pay about \$10 million into the city's Housing Trust Fund to satisfy affordability requirements. The company's previous proposal did not include any on-site affordable housing.

The proposed building would include a parking garage with space for 45 cars, as well as storage for more than 300 bicycles.

Rhoades said the development team hopes to secure city approval for Hub Berkeley over the next year under the expedited process Berkeley created to comply with SB 330, a 2019 state housing law which limits the number of meetings cities can hold about a project. Construction, which Rhoades estimated would likely take three years, could start by the end of 2023.

As for the other two proposed downtown high-rises, city planning staff said the project at 2190 Shattuck Ave. is undergoing environmental review, with public hearings expected sometime next year, while Rhoades said the development team for 1974 Shattuck Ave. is still putting together that project's application.



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# Berkeley's Push to End Single-Family Zoning

Nico Savidge, Berkeleyside, September 22, 2022

## *A proposed rewrite of the zoning code would speed up the approval process for small apartments throughout Berkeley*

A wide-reaching effort to rewrite zoning rules for most of Berkeley's neighborhoods is coming into focus. Last month, City staff presented a detailed proposal for zoning changes that aim to encourage property owners to build small apartment buildings in neighborhoods where they were effectively banned for decades. The new policies would also speed up the approval process for those projects, allowing construction to be green-lit without a public hearing.

The proposed changes — which are still months away from a final vote — have been driven in part by the City Council's call last year to end single-family zoning in Berkeley, which was followed by a state law abolishing that zoning category in cities throughout California. Supporters say upzoning to allow more small apartments in less-dense areas will also help Berkeley meet a state mandate to approve plans for nearly 9,000 new homes over the next eight years.

Several California cities have sought to subvert the state's single-family zoning law, SB9, or challenge the aggressive housing targets. But while Berkeley pioneered single-family zoning in the early 1900s, and in recent years fought a legal battle to block a developer from building three homes in a residential neighborhood, the city is now poised to go well beyond what SB9 requires.

The zoning changes that were presented to the City Council on Tuesday would affect areas Berkeley classifies as "low-density residential," which make up just over 60% of the city.

Here are some key provisions of the proposal from Berkeley's Planning and Development Department:

**Density:** There is no simple answer for how many apartments property owners would be allowed build on sites in residential neighborhoods under the proposed zoning change. The rules instead use more complex criteria that effectively mean larger lots would be allowed to have more and bigger apartments, while smaller lots would be limited to fewer. Those limits also vary among the different types of residential zones in Berkeley: a 5,000-square-foot property would be capped at three units in areas zoned R-1, but could have as many as six in the denser R-2A and MUR districts.

**Height:** The proposal allows for slight increases in building height, which in most residential areas is typically capped at 28 feet today. While projects would be limited to an average height of 28 feet, they could rise as high as 35 feet at their tallest point; the limit drops to 22 feet toward the rear of the property.

**Approvals:** Apartment projects that comply with the city's set of objective design standards could get what's known as "by-right" approval. That streamlined process would be similar to the one homeowners use to get approval for backyard cottages, and would involve sending notice about the project to its immediate neighbors. Single-family homes would still be allowed, but they would have to go through the longer use permit process.

**The hills:** The zoning changes would allow for greater density in the Berkeley Hills, though the rules there would be more restrictive. Projects would have a lower overall height limit of 28 feet and would be subject to tighter density caps compared to other parts of the city: for most of the hills, a 5,000 square-foot lot could not have more than a duplex.

**Shadows and views:** One question facing Berkeley's effort to develop a set of objective design standards for new development has been whether to include rules restricting projects that cast shadows on surrounding properties or block their neighbors' views. The zoning changes don't include those provisions — planning staff and consultants contend the proposed height limits would be sufficient to address concerns about shadows and views, making further standards for them unnecessary.

Planning staff will continue working on the proposed zoning rules over the coming months in response to feedback from the City Council and public. A final proposal is set to go before the Planning Commission early next year and the City Council sometime in the spring.

City staff on Tuesday also shared a separate set of potential zoning changes for the Southside neighborhood near UC Berkeley, including increased height limits that could allow apartment complexes up to twelve stories tall on and around the north end of Telegraph Avenue. Those changes are on a faster timeline, with the Planning Commission expected to take them up later this fall.

*continued on page 16*

## New Rent Control Bill Introduced

*J.K. Dineen, San Francisco Chronicle, October 6, 2022*

Two months after withdrawing legislation that would have imposed rent control on some new apartment buildings, Supervisor Aaron Peskin has teamed up with Supervisor Matt Dorsey to introduce a more limited version of the bill.

The legislation would expand rent control protections to new housing developments that take part in San Francisco's local density bonus program, Home-SF, which allows developers to add two stories of height in exchange for an increased level of affordability.

The program would be optional for developers, who could choose between the existing Home-SF rules — additional affordable units in exchange for height — and a new option where, instead of more affordable units, a builder could agree to make a building rent controlled.

The legislation is similar to a proposed ballot measure that Peskin withdrew in July because of opposition, including from some of the building trades unions. That bill would have extended rent control to any project that took advantage of a local or state “density bonus” program, where a builder is allowed to increase unit count.

This time, the legislation is more targeted: It applies rent control only to new units authorized through a specific program, Peskin said.

“The ballot measure I was trying to do earlier this year would be more comprehensive ... but this is part and parcel of what the ballot measure was trying to do,” Peskin said.

A 1979 state law, known as Costa-Hawkins, bans rent control on most new construction. However, it includes a loophole where a developer can agree to rent control in exchange for density bonuses, waivers, concessions and incentives.

That was the case in Trinity Place, a 1,900-unit development at Market and Eighth streets where Supervisor Dorsey lives. During the dot-com boom of the late 1990s, Dorsey lived in a non-rent controlled building and twice experienced “shocking” rent hikes.

“As a renter in a post-1979 rent-controlled apartment at Trinity Place, I’m the beneficiary of a voluntary agreement in which developers agreed to rent control in exchange for development benefits that enhanced residential density,” said Dorsey. “It’s a model that works.”

Passed in 2016 by Supervisor Ahsha Safaí and former Supervisor Katy Tang, Home-SF requires that 20% to 30% of the residential units be affordable, while expediting and increasing heights allowances for projects in the program.



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# The Nuts & Bolts: Seasonal Maintenance

Tiffany Van Buren, BPOA Deputy Director

## Preparing Your Rental Property for Fall and Winter

We might not see a drastic changing of the seasons here in the Bay Area, but if the shelves of your local Trader Joe's are full of pumpkin spice flavored goods, that's a solid indicator that it's fall, and winter is right around the corner. Fall is a great time of the year to spend some time making sure your rental property is ready for the winter, and I've put together this handy checklist for your reference.

### Check your gutters and downspouts

Gutters and downspouts are essential in protecting your property from water damage by directing rainwater away from the foundation. If your gutters are full of leaves and other debris, they can't do their job, which can lead to water buildup and possible flooding. Clogged gutters can lead to clogged downspouts, so ensure yours are clear. Adding rain gutter extenders helps to direct rainwater away from the foundation, preventing pooling, which can cause major problems.

### Check the roof

Inspect your roof for missing, buckled, or broken shingles, remove debris, check for missing chimney caps, inspect any rubber gaskets or caulked areas to look for defects. Don't wait for a tenant to report a leak inside their unit; by that time, costly damage could have occurred inside the walls and/or ceiling.

### Trim trees and other foliage

Experts usually say that tree branch trimming should ensure that the branch tip is at least six feet away from the roof. This allows for the branches to sway in the wind without touching the rooftop. Allowing tree branches and foliage to be in direct contact with your roof or the side of your building invites moisture to collect, which can damage your property. Trim foliage, leaving a space away from your building, and remove growth like ivy or other invasive vines.

### Check the heaters

Chances are your tenant hasn't even thought about using the heater since January. Depending upon when you conducted your RHSP, it might have been six months since you ensured a unit's heater was operational. Now that it's fall, check that each unit's heater will be ready to go when the temperatures drop. You can ask your tenant to test it themselves, or you can arrange for a heater servicing vendor.

### Check windows and doors for leaks

Water damage is expensive to remediate. The best time to check that doors and windows are properly sealed is before the start of wet weather. Having tightly sealed windows and doors will prevent moisture damage and keep those heating costs down.

### Aluminum windows?

Aluminum windows are notorious for "sweating" when the indoor temperature exceeds the outdoor temperature, and tenants don't usually say anything about it until they see mold growing on the windowsills and walls. Fall is a good time of year to send a reminder out to tenants to continue to ventilate by opening blinds and windows as often as possible, even when it's cold outside, and drying off condensation to prevent pooling of moisture. Running the heater helps to keep humidity levels at or below 50%; another way to combat mold growth.

## CAN YOU HELP?

A sponsored Ukrainian family of four will be arriving in the US in December and need a two-bedroom apartment for \$2,000/month or less. If you are willing and able to help, please send an email message to [merle.fajans@gmail.com](mailto:merle.fajans@gmail.com).

Thank you.

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## *“Builder’s Remedy” Could Upend Cities*

*Kevin Burke, San Francisco Chronicle, October 20, 2022*

A state law may force San Francisco and other cities to allow developers to build housing with few local controls.

Cities in California have long insisted that they take the state’s housing crisis seriously and that they know best where new housing should go. This year, they actually have to prove it. Every eight years, the state makes cities plan for growth through the Regional Housing Needs Allocation process, which sets baselines for housing production to accommodate factors such as births, immigration and jobs. Until recently, those plans were rubber-stamped by the state.

This cycle is different.

The California Department of Housing and Community Development is now enforcing the rules, and state-mandated housing goals are much higher, especially in wealthy cities; San Francisco’s increased from 29,000 to 82,069.

Nonetheless, many cities that haven’t built much new housing for decades still seem to think they can blow off these state requirements. The deadline for Southern California cities to submit what’s called a housing element plan was 15 months before the Bay Area’s and the results have not been pretty: plans from 25 cities were not certified and fell “out of compliance” with state law. Noncomplying cities are ineligible for state grants for affordable housing and transit, the kind that San Francisco just requested for a 160-unit, 100% affordable development at 730 Stanyan St.

Some cities, such as Beverly Hills, don’t especially want affordable housing and don’t mind losing funds. But a second penalty, a 1990 amendment to the Housing Accountability Act informally called the “builder’s remedy” is getting more attention.

There’s a lot of confusion about the builder’s remedy right now, including in San Francisco. Here’s how it works:

The builder’s remedy says that non-compliant cities must allow housing at any density and any height, anywhere in the city, as long as at least 20% of the new homes are affordable. In effect, developers could get streamlined permits to build Central Park’s glass skyline on Fulton Street in San Francisco or “Star Trek’s” Starfleet headquarters in Marin County. So long as applications are submitted

while cities are not in compliance, local officials can’t use subjective criteria (“too tall,” “not in character”) to deny the applications.

All Bay Area cities have until Jan. 31, 2023, to certify a compliant housing element. Until last week, many cities, including San Francisco, incorrectly assumed they had a “grace period” of a further 120 days before penalties started.

They don’t.

These cities will likely be unprepared to submit a compliant plan before Jan. 31. If that happens, builder’s remedy applications would open on Feb. 1.

The builder’s remedy has never been tested in court, so there’s still plenty of uncertainty. Cities will almost certainly find ways to run developers through bureaucratic and legal gauntlets before they are allowed to build.

Environmental review is one such way. Normally, cities perform one environmental review for a citywide or neighborhood-wide zoning plan. So long as project applications comply with those plans, they can piggyback on the parent environmental report. But since builder’s remedy applications often disregard local zoning, cities can ask developers to complete a full environmental impact report for a project. Once that’s done, cities can then claim that any impact — noise, shadows, pollution — in the report was insufficiently studied and demand costly redos. Community groups can also take builders to court.

Cities can further pile on costs for builder’s remedy projects by requiring infrastructure upgrades like new sewer connections. Local governments can also potentially exact revenge by making other applications from developers more unpleasant — for instance, by subjecting them to additional scrutiny or longer processing times. This threat will likely dissuade many developers from pursuing a builder’s remedy project.

Alternatively, cities could outright deny a project and take their chances on a lawsuit. In court, anything can happen.

Despite all these risks, however, some builders are going for it.

Developers in Santa Monica have applied to build 14 different projects that ignore local density rules after the

*continued on page 15*

# New Laws Will Boost Housing in Some Urban Zones

*Dustin Gardiner, San Francisco Chronicle, September 28, 2022*

After years of thwarted attempts, California leaders succeeded Wednesday in passing a pair of bills that will accelerate construction of new housing units in sleepy urban areas zoned for retail shops, office buildings or parking.

Gov. Gavin Newsom signed the bills standing in the chapel of a former funeral home in San Francisco's Inner Richmond neighborhood, which will soon be converted into affordable housing. He stood alongside legislators, city officials and union leaders — uniting groups that have been bitterly divided over similar measures in the past.

“What this bill does is it reimagines what our cities can look like,” said Assembly Member Buffy Wicks, an Oakland Democrat who carried the most sweeping measure. “It says, ‘You know what, we have an abundance of retail space, we have an abundance of office parks that are no longer being utilized. And we have a real deficit of housing. Let’s use that land for what it should be for: homes.’”

The bills are designed to cut barriers that make it notoriously difficult and expensive to build housing in California's city centers. Supporters said the measures will spur the construction of millions of new units in deserted commercial areas:

**AB2011 by Wicks**, who chairs the Housing Committee, allows for fast-tracked zoning and permit approvals for housing in transit-friendly commercial areas, such as vacant parking lots, strip malls and office parks. In turn, the bill requires at least 15% of the units to be designated affordable.

**SB6 by state Sen. Anna Caballero**, a Democrat from Merced, will make it easier to build housing on vacant commercial property, like strip malls. It lifts local zoning requirements to expedite such projects and doesn't include an affordable housing requirement.

Newsom, who was surrounded by union workers in hard hats and orange construction vests as he spoke, said the bills show how state leaders are taking bold actions to address the worsening housing crisis, not just repeating talking points about it. Newsom also sternly warned local governments that his administration will hold them accountable if they throw up roadblocks to new development.

“At the end of the day, we’ve got no one else to blame but ourselves. It happened on our watch,” Newsom said. “We need to all be a little bit more accountable to this crisis of

affordability. This is a big moment as we begin ... to take responsibility.”

But the bills almost didn't make it to Newsom's desk due to a bitter dispute about the extent to which developers should be required to use union labor to build such projects.

The measures are similar in their aim to increase density, but diverge in how they address the union-labor question. Wicks' bill does not include language that effectively requires a percentage of the workers on a project to be unionized. Caballero's bill does include the union-friendly language.

Both bills might have died if not for a breakthrough compromise in the final weeks of legislators' session that ended a monthslong battle between union leaders and some lawmakers.

Last month, legislative leaders announced they had brokered a deal to advance both bills, with minor amendments. The compromise was significant because major bills to increase density had repeatedly died in the Legislature over the last three years.

AB2011's passage is a major victory for housing and YIMBY advocates, who've long complained that the union-labor quagmire has killed bills needed to address the state's worsening housing crisis.

The State Building and Construction Trades Council of California had opposed the measure because it doesn't require that developers use a “skilled and trained workforce,” language from state labor law that, in effect, requires a percentage of workers on a job site to be unionized.

Caballero's bill includes that pro-union language, though it was amended to give developers a route to use non-unionized labor if multiple contractors with skilled labor don't bid on a project.

Wicks' measure, instead, requires developers to pay their workers “prevailing wages” for the area (or the hourly rate earned by the majority of workers engaged in a particular craft), offer health care on large projects with 50 or more units and create apprenticeship programs for some projects.

The Building Trades Council had vehemently opposed AB2011, which it said would enrich developers at the expense of workers. But the council dropped its opposition

*continued on page 12*

# The 2022 Landlord Insurance Guide You Can't Afford to Miss

Brad Cartier, CalRHA monthly digital magazine

This excerpt features highlights. Get the details at: [www.stessa.com/blog/landlord-insurance-guide](http://www.stessa.com/blog/landlord-insurance-guide)

Rental housing providers require a different type of insurance product than regular homeowners, and even then, there are nuances to be aware of depending on your particular situation and location. Today, we will demystify some of the most important aspects of landlord insurance to ensure you and your assets are protected.

## Landlord Insurance 101

As a rental housing provider, you require landlord insurance instead of owner-occupied homeowner insurance. If you're running a rental property business, there are additional protections that you should ensure you have in addition to what a primary residence homeowner may need.

There are three standard insurance policies that landlords should be familiar with: DP-1, DP-2, and DP-3. The standard DP-1 policy generally covers less than DP-2, and DP-3. For instance, DP-3 policies cover most perils such as theft, vandalism, and liability coverage, whereas DP-1 and DP-2 may not. In the case of liability coverage with the DP-3 policies, if a tenant injures themselves on your property, you can then turn to your policy to cover legal or medical expenses.

As noted above, most landlord insurance policies don't cover the contents of the units. That said, most DP-3 policies cover landlord-owned contents, such as appliances of furniture.

DP-3 policies also include loss of rental income, meaning if the unit is off-market while you make [claim-related] repairs. Here are some of the common insurance policy features you'll want to consider:

- Property protection (structure)
- Personal property protection (contents)
- Liability
- Rental loss protection
- Flood
- Acts of nature (be sure to ask your broker what is covered, and what isn't)

Rental Loss covers lost income when the property becomes uninhabitable and does not typically protect against tenant default or vacancy. You can buy additional insurance to cover tenant default, which may be worth considering if you can't cover your mortgage without the rental income and if you think it will be hard to find a new tenant and/or difficult to evict a tenant who is withholding rent due to no fault of your own.

## What if my pre-paid policy doesn't expire for many months?

Don't worry. You can switch insurance providers at any time, and you will get a pro-rated refund for unused coverage. Talk to your insurance broker or a new insurance provider for the details. Don't let your current policy hold you back!

## What is the cost of landlord insurance?

The general rule is that landlords can expect to pay roughly 15% more for landlord insurance than a standard homeowner policy. The higher cost is because insurers are taking on additional risk for landlord insurance because of the presence of renters. Here are some other factors that affect the price of your landlord insurance:

- Security features
- Age and condition of property
- Smart home devices that provide early warnings on potential issues
- Number of rental units
- Location
- Safety equipment on the premise
- High-risk features such as wood-burning fireplaces, pools, and hot tubs
- Long-term vs. short-term tenant (different coverage is needed for each)

## Talk to your insurance broker

It's critical that you speak with a licensed insurance broker prior to purchasing any rental property. You should also obtain insurance quotes. Consider using a broker if you don't already get a packaged deal from an insurance provider because brokers can shop around for the best prices and policies. A single insurance provider however may give you a bulk deal if you work only with them. Be sure to explore both options.

*continued on page 13*

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# Are Micro-Unit Projects the Future?

J.K. Dineen, *San Francisco Chronicle*, Oct. 21, 2022

When members of the San Francisco Board of Supervisors rejected a “group housing” project at 450 O’Farrell St. a year ago, they bought into opponents’ argument that the proposed teeny-tiny apartments were precisely what the Tenderloin didn’t need.

The units were too small, opponents said. The Tenderloin already had plenty of residential hotel rooms. What the neighborhood needed was larger units to accommodate the immigrant families living on top of each other in often dark, stuffy studios - many of which had shared bathrooms and kitchens.

Now the same developer is ready to test a nearly identical concept a few blocks away at Turk and Leavenworth streets.

This week, Forge Development Partners is starting leasing at 361 Turk St., a 130 unit micro-unit project on what was once a YMCA parking lot. The building, which will open early next month, will be followed in December by the opening of a similar 96-unit building around the corner on at 145 Leavenworth St.

What’s unusual is that the project was able to get built at a time when hundreds of housing projects are stalled because of high costs. But it’s unlikely any other similar projects could move forward in the area after the Board of Supervisors passed a law to prevent new “group housing” projects in the Tenderloin or Chinatown.

At 361 Turk St., the pint-sized pads range from about 230 to 280 square feet. They have Murphy beds that can be flipped up when not in use. A few feet away from the pull-out beds are mini-refrigerators and two-burner stoves that can be removed when not in use to create a work surface.

“Finding a refrigerator at 32 decibels so you can sleep in the same room was an interesting challenge,” said developer Richard Hannum.

Forge’s business model is based on building workforce housing as cheaply as possible without any government subsidy. Rents will start at \$2,100 and top out about \$2,700. There are about 30 below-market-rate units that will rent for about \$900.

Some of the units have balconies. There’s a rooftop garden

with barbecue pits and community gardens and a dog walking area. The basement has two large community kitchens. A pair of light-filled two-story communal spaces offer a gym and living rooms.

Hannum said that the cost of the project came in under \$500,000 a unit, a number that would have been lower had the pandemic not delayed work and deliveries. That price tag is in contrast to typical market rate units that come in over \$1 million a unit and some affordable projects that are expected to top \$1.2 million, although that

includes space for social services.

The developer saved money by designing a building that has single water and electrical

meters, which cut down on plumbing and electrical work. It used an exceptionally light steel frame, which required less steel, a shallower foundation and less bracing for seismic stability. The project was also not built with 100% union labor, unusual for a major development in San Francisco.

The developer also embraced the density that has long been part of the Tenderloin’s character.

“This is definitely three pounds squeezed into a two-pound lot,” said Hannum.

Project architect Doug Zucker, a principal at Gensler, said the “goal was to try to rethink the paradigm of creating housing” and produce thousands of units when little else is getting built.

“Everybody is entitling projects left and right and they are sitting on the properties because they can’t finance them,” he said. “This project was Forge’s attempt to say, ‘I’m not going to take a dollar of taxpayer money. I’m going to try to build as economically as possible.’”

Forge is backed by Bridge Investment Group, which recently closed on a \$1.74 billion workforce housing fund, the largest of its kind, according to the company.

Meanwhile it’s unclear what will happen at 450 O’Farrell. Forge is suing the city for violating state housing laws by rejecting that 316-unit project and the California Department of Housing and Community Development is also

*continued on page 16*

Regarding “Make state’s housing accessible to locals first” (Open Forum, Oct. 12): Kudos to Kevin Frazier for highlighting the problems of local and lower-income households and tenants displaced by inflation and land speculation.

These chronic burdens will never be solved by simply building more units of housing. And while we argue about building housing or more affordable housing, our most popular yet least creative housing policy declares, “JUST BUILD!”

*In the guise of a progressive and caring housing solution, YIMBY rhetoric is nothing more than a radical defense of private ownership and the use of land as a commodity. This ubiquitous pro-housing ideology isn’t merely an embrace of supply-side free-market fundamentalism, but the build-now-build-everywhere movement does represent an elitist and authoritarian approach to ideas about society, government and community.*

Thoughtful policy solutions to housing without building include financial and political support for limited-equity housing cooperatives and community land trusts, which stress the priority of residency over ownership.

A community-centered housing policy offers stability and security of residence, and I believe a compassionate society will someday revolt against the untold misery borne from compulsory human migration.

Stuart Schott, San Francisco

from *Letters to the Editor*, SF Chronicle, October 13, 2022

after legislators announced their deal to pass both bills. Wicks’ bill was bolstered by a split within union circles: The California Conference of Carpenters was one of the key sponsors of AB2011. The carpenters said insisting on union-first language hamstrings construction when there’s already a shortage of skilled construction labor. With the union dispute set aside — at least for now — legislators and Newsom had multiple causes for celebration during Wednesday’s bill-signing event.

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DATE	TOPIC
Wednesday, November 9, 3:00 PM	Year-End Tax Planning & Real Estate Tax Updates
Thursday, November 10, 3:00 PM	Understanding Your Property Tax Bill
Thursday, November 17, Noon	Monthly Owners Forum with Sam Sorokin
Thursday, December 8, 5:00-8:00 PM	Holiday Party @ Cornerstone Brewery
Saturday, January 7, 10:00 AM	Annual Membership Meeting & Elections

*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

analysis of Zillow data by UC Berkeley's Turner Center for Housing Innovation and Oakland's TechEquity Collaborative, based on whether the rent cap were to apply to units leased to new tenants.

Though rent-control policies have been gaining more ground in recent months than they have in years, there are still big barriers to broader statewide changes. That's thanks in large part to a powerful California law called the Costa-Hawkins Rental Housing Act, which barred new rent-control measures for single-family homes, condos and properties built after 1995, the year the law passed.

Barring another effort to overhaul Costa-Hawkins after the most recent attempt failed in 2020, those limitations leave tenant organizers focused on more targeted local measures. They can either attempt to win support of city

councils and county boards of supervisors to pass new ordinances, or they can go to the ballot and ask voters for changes to existing rental rules, as is happening in Richmond.

Landlord lobbying group the California Apartment Association, meanwhile, has warned members in recent years about a "2.0" version of 2018's Proposition 10 state rent-control ballot measure, plus other "threats of radical rent control."

"In today's political climate, all communities are vulnerable to rent control," the association advised in one online class for landlords. "With this rising threat of rent control, California's state law limiting rent control, the Costa-Hawkins Act, is more important than ever."

## Insurance Guide

Be sure to conduct your due diligence with your insurance broker and speak with other landlords in your area to better understand the most common scenarios that could arise.

### Final thoughts

There's not doubt that adequate insurance coverage can make or break your real estate investing business. If 10 years ago there was flooding on your street and sewers backed up, then you need to ensure you have that cover-

age. Further, if a tenant slips and falls on the steps and you're held liable but don't have any liability coverage, you're putting your business and personal finances at risk. Get different quotes, speak with experts in the area, like local insurance brokers, and conduct your due diligence alongside a professional insurance person. That way, you can sleep at night knowing that no matter what happens, you and your business will be covered.

## NOVEMBER MEETINGS & EVENTS

### Year-End Tax Planning & Real Estate Tax Updates

With Kelly Creed, RHINA Accounting

Wednesday, November 9, 3:00 PM

### Understanding Your Property Tax Bill

Thursday, November 10, 3:00 PM

### Monthly Owners Forum

with Sam Sorokin, Premium Properties

Thursday, November 17, Noon

### Holiday Party

Cornerstone Brewery - \$40 per person

Thursday, December 8, 5:00-8:00 PM

Check the calendar at [www.bpoa.org/events](http://www.bpoa.org/events) for information & registration

## BPOA WORKSHOPS — Go Beyond the Basics

city failed to submit a compliant housing element. These applications total over 4,000 new homes, 800 of which are for lower-income households.

If Southern California is any indication, expect to see projects like these in the Bay Area where cities have not taken the January deadline seriously.

Consider Lafayette, which evaluated plans to rezone its downtown for 70-115 homes per acre 18 months ago. If it had followed through, this would have been a compliant plan. Instead, the City Council did not rezone anything. The state sent Lafayette a skeptical letter two weeks ago, asking for evidence that developers will build enough at

the current zoned density to meet the city’s goals. Lafayette now has 100 days to pass a compliant plan, including possible rezoning, or risk developers proposing 200 homes per acre anywhere they want.

Now that we have seen developers try to use the builder’s remedy in noncompliant cities, the stakes for Bay Area cities in January are high. The choice facing them is clear: Make realistic plans to add housing — and do it fast — or let developers make them for you.

*Kevin Burke is a volunteer with the California Renters Legal Advocacy and Education Fund and serves on the board of East Bay for Everyone.*

## A FOLLOW-UP

The August editorial in your BPOA newsletter took San Francisco to task for its \$20,000 trash bins. The saga continues. How do you make a \$20,000 trash bin look reasonable? This from the October 20, 2022 Chronicle:

*The toilet — just one loo in 150 square feet of space — is projected to cost \$1.7 million, about the same as a single-family home in this wildly overpriced city.*

*And it won’t be ready for use until 2025.*

No further comment needed.

## QUOTE OF THE MONTH

*Under democracy one party always devotes its chief energies to trying to prove that the other party is unfit to rule --and both commonly succeed, and both are right.*

— H. L. Mencken



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## Tiny Tenderloin Apartments

investigating the matter.

Planning Director Rich Hillis said the new law limiting group housing in the Tenderloin and Chinatown would prevent 450 O'Farrell from moving forward, unless a spot zoning was part of a legal settlement.

Forge Chief Investment Officer Chris Fraley said the tradition of tiny living spaces for working-class individuals and couples was squashed by cities in the 1980s and '90s as a reaction to what were considered unhealthy living environments.

The math, he said, is simple. A 240-square-foot place might bring in \$2,400 a month in rent, while an 800-square-foot apartment might command \$4,000 a month.

As far as whether there is a market for such units, Fraley pointed to 77 Bluxume, a micro-unit project in South of Market that is fully leased. Those units went for \$2,700 prior to the pandemic and \$2,100 more recently.

"Go to their website and click on availability," he said.

"There isn't any. That is the evidence."

Fraley said 450 O'Farrell would break ground next summer if permitted. The argument that 450 O'Farrell should be 1,000-square-foot units for larger families - the position advocated by many of the Tenderloin groups opposing the development - is unrealistic, he said.

"For that project to be financed through the private markets they would have to charge \$7,500 per unit," he said.

"I don't know that many people who would want to pay \$7,500 to live at the corner of O'Farrell and Jones right now."

Tenderloin Housing Clinic Executive Director Randy Shaw, who was a leading opponent of the O'Farrell Street development, celebrated the new ban on market-rate group housing. He had supported a previously approved 183-unit development at the site with larger units.

"Thank God there won't be any more of these," he said, referring to 361 Turk. "There is a real surplus of vacant SROs and we don't have places for families with children to live. That is where the low-income families of San Francisco continue to live because it's all they can afford."

Housing Action Coalition Executive Director Corey Smith disagreed. He predicted that Forge will have no problem filling the units.

"It's not for everyone. It's not supposed to be for everyone. That's OK - you don't have to live there," he said.

"It's incredibly important we build a variety of different housing types to fit the need of every type of person who wants to live in San Francisco."

At a time when developers regularly complain that housing development doesn't pencil, Forge's business model is a refreshing change, Smith said.

"Considering construction costs and how many projects are not going forward due to lack of financing, any time we can create a home for someone - that is a positive," he said.

## Berkeley's Push to End Single-Family Zoning

The City Council on Tuesday appeared to be broadly supportive of the zoning concepts, though members also scrutinized certain details.

At a hearing, there was relatively little opposition to the direction of greater density in Berkeley's residential neighborhoods. Instead, many of the comments from councilmembers and the public focused on ways to further loosen the regulations and allow for more housing in those areas.

Several speakers from local Yes In My Backyard (YIMBY) organizations took issue with the policy's proposed density caps, which would set relatively low limits on the size of apartments in multi-unit projects.

City planning staff said the limits were meant to encourage property owners to build smaller units, which could be less expensive for renters or buyers than bigger ones,

and also noted the caps wouldn't apply to existing structures such as a single-family home that an owner wants to convert into a duplex. But density advocates argued the rules would have the effect of stifling efforts to build apartments, since there are not similar limits on the size of new houses.

Three councilmembers — Robinson, Lori Droste and Rashi Kesarwani — said they shared the concern that the density caps could be too restrictive or complex. They suggested Berkeley could move away from using density metrics altogether and instead set zoning rules for most neighborhoods based on the overall size of buildings, rather than how many apartments they contain.

"We need to decide what it is we want to regulate," Kesarwani said. "We need to be regulating the building envelope, not the number of units."



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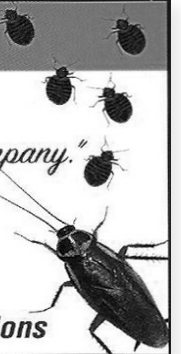
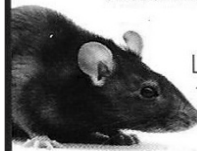
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### NOVEMBER EVENTS

see [www.bpoa.org/events](http://www.bpoa.org/events) for information & registration

#### *Year-End Tax Planning & Real Estate Tax Updates*

Wednesday, November 9, 3:00 PM

#### *Understanding Your Property Tax Bill*

Thursday, November 10, 3:00 PM

#### *Monthly Owners Forum*

Thursday, November 17, Noon

#### *Holiday Party*

Cornerstone Brewery, Shattuck @ Durant

Thursday, December 8, 5:00-8:00 PM

*Check the BPOA calendar for more details.*



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