

MAR
2023



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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Three Rules to Being a Successful Landlord

Mark Tarses, President, BPOA

Never forget that you are running a business

You can't do things in business that you can do in your personal relationships. For example, suppose your daughter wants to get a dog, and you say "Okay", and she gets a dog. Some time later, your son says he also wants a dog, and you say: "No. One dog is enough." You can do that because it's your family. However, a landlord can't do that. If you give permission to one tenant to get a dog even though there is a no-pets clause in your leases, then you have let all your other tenants get dogs, or you will get sued for discrimination, and you will lose.

Tenants can't perform miracles

Neither can you. No matter how honest or ethical a person is, if someone lacks the ability to do something, then they won't do it. I have interviewed applicants for apartments who didn't have any apparent way to pay the rent. I've asked people like that: "If I rented this apartment to you, how would you pay the rent?" Sometimes an applicant has answered: "I don't know." If someone can't pay the rent, then they won't pay the rent. Honest people often buy things that they can't afford. That's what keeps repo men in business!

Put it in writing

Memories are unreliable and carry little weight in court. If someone feels offended that you want to put something in writing that states what it is that you agreed upon, explain to them that you are not questioning their honesty. Honest people remember things differently. In business, you put things in writing to avoid quarrels in the future about what you agreed to. A lot of nasty and expensive lawsuits could have been easily avoided if the parties had put into writing what they agreed upon. Also, you need keep a business log — a written record — when things are going wrong. A log is a record that includes the date and time that something happened and what happened. Suppose you are getting complaints from neighbors that one of your tenants is having noisy parties. You need to keep a written record of such complaints, including the date, what was said, and who said it. Keeping written records is part of your job!

MARCH EVENTS

*April Showers Bring May Flowers, but
Don't Let Water Become a Problem!*

Thursday, March 9, 3:00 PM

*Monthly Owners Forum with Sam Sorokin,
Premium Properties*

Thursday, March 16, 3:00 PM

*Red Alert: 9 out of 10 Landlords are
Underinsured — Are You?*

Thursday, March 23, 3:00 PM

See pages 13 & 14 for details & more events!

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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

Editorial

How Beneficial Has a Controlled Rent Been for Long-Term Tenants?

Albert Sukoff, Editor

When in a provocative mood, I have annoyed more than one person with the assertion that, contrary to the prevailing perception, *California real estate over time was not only not expensive, it was actually free*. This is because the historic annual increase in value has exceeded the annual cost of ownership. If you bought a house twenty or thirty years ago, you could almost certainly recoup your initial cost and all carrying costs by selling or refinancing the property. (Furthermore, raising kids was also free, or at least subsidized, by owning a home in California. If your three kids forced you to buy a bigger house, the greater cost of the bigger house resulted in a greater increase in value. If other words, your kids paid for themselves.)

At one of my Berkeley properties, six of the twenty-four units have never had a Costa/Hawkins increase. The tenants in these apartments pay about \$700/month while those of their neighbors whose rents are at market literally pay three times as much.

I bought this property over 40 years ago. One of the long-term residents is the only tenant who was there when I purchased the property in 1981. She told me at the time she was looking to buy a house. She never did. I assume that, as her controlled rent became even more beneficial each year, her motivation to purchase diminished accordingly. Makes perfect sense on the surface.

Over forty-plus years, her rent has increased from less than \$200 to about \$700. Assuming she was paying about market when I bought the building, market rent on her unit has risen from the then-charged \$200 to \$2,100 40-plus years later. (All the units are virtually the same; the highest current rent is \$2,100.) Her subsidy, therefore, rose from zero in 1980 to about \$1,400 a month currently. If you assume a steady increase in market rent — not exactly the case but true enough for this exercise — the average subsidy for her apartment over time has been \$700 a month. Rent control therefore has saved her about \$350,000 during her tenancy.

That's great for her, right? She saved over \$350,000. At the very least, rent control gave her more financial freedom that she would have had, had she paid a market rent. If she spent her savings well, good for her. If she spent it foolishly, she is no worse off than she would be if all she had after 40 years was a pile of rent receipts. If she invested it well over 40 years, she could have grown that \$350,000 into a nest egg of as much as \$1,000,000. I cannot know what this tenant did with the money she did not spend on rent but clearly the lower rent was very much to her benefit.

Or was it? This tenant had a well-paying professional career when I bought the property. She gave it up for less remunerative work which she liked better. I assume a lower rent facilitated this change. I assume that she sees this as a positive benefit in her life. So where is the downside?

If this tenant had bought a house in the early eighties, she could have paid off her house by 2010 and would have had no mortgage payment thereafter. By

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❖ THE COALITION CORNER ❖

Krista Gulbransen, BRHC Executive Director

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

As we slowly crawl towards the Governor's February 28 end-date for the state of emergency due to COVID, we sigh with exhaustion. February 28 marks almost three years to the day that the state of emergency went into effect and the Eviction Moratoria followed.

At first, we supported the efforts to prevent displacement if someone could pay rent, *as long as they were receiving immediate financial assistance*. None of us thought that tenant debt per household would easily be upwards of \$60,000. Nor did we think some tenants would carry the façade so far that they'd be off taking vacations and buying Teslas instead of paying their rent.

While we acknowledge that most tenants paid rent throughout the pandemic, there were some who took advantage of the "free pass" and didn't pay rent. In a recent survey of our members, 21 owners reported an average rent debt per unit of \$20,239. Only three of the 21 owners received rent relief from the state's infusion of funds and most reported that it appeared their tenant could have paid rent but chose not to.

The city Council will discuss and vote at their next meeting on whether to end the local emergency and whether to extend Berkeley's ban on evictions by at least 60 days to protect tenants. This is because the Alameda County eviction moratorium is set to expire 60 days after the County's health emergency is over.

But the reality is the free ride is going to end soon. For those that cannot prove a valid COVID reason for not paying rent, they will be subject to an eviction notice and unlawful detainer once the moratorium is lifted or modified. While this won't be an easy answer for owners who do not have cash to hire a lawyer, at least it will provide some sort of writing on the wall for the tenant. For all other evictions including owner move-in and violation of lease, it remains to be seen when those can resume. We believe the City Council may extend that to September 1. City Council can also determine how long a tenant must pay back any rent due *if they have a valid COVID reason for not paying rent*. They could be given up to two years to make the repayment. But what's most important is the requirement to start paying standard and regular rent that is normally due on the first of each month. We maintain

that the resumption of this rent must start by no later than May 1.

We have grave concerns that Berkeley Rent Board Chair Leah Simon Weisberg intends to "find a reason not related to COVID" to extend the eviction moratorium. She said as much in a recent 4x4 committee meeting (that's a City Council committee comprised of the Mayor, three Councilmembers, and four Rent Board Commissioners). We find it hard to believe that she could find a reason when Just Cause for Eviction protections is an ordinance voted on by the voter.

We also have concerns that there will be a lot of confusion as we transition out of the period of moratorium — especially as it relates to the rent debt. The city has made a tentative commitment to further investing in the city's Rent Relief fund in hopes that it can help pay back some of the debt. BPOA has a strong relationship with the administrator of those funds and feels strongly that we could make a significant dent in some of the debt if the city will allow us to.

We hope that our continued pressure on elected officials and the presentation of our member stories will help to reestablish standard evictions for nonpayment of rent, lease violations and owner move-ins sooner rather than later. We will update you on the outcome of the February 28 City council meeting upon its conclusion.

Special Note: As we go to press, Mayor Arreguin has proposed to extend Berkeley's eviction moratorium to September 1 to "provide a transition to ensure that property owners and tenants are aware that the end of the moratorium is forthcoming and to provide a date by which lawful eviction notices can be served."

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California Rejects Berkeley Housing Plan

By Roland Li, San Francisco Chronicle, February 3, 2023

Berkeley's Housing Element was rejected by the state this week, city and state officials confirmed, exposing one of the East Bay's biggest cities to potential fines and the threat of developers trying to build projects that aren't constrained by local zoning restrictions.

Berkeley did not fully analyze potential housing sites, and the city must commit to removing permit constraints and upzoning wealthier neighborhoods, according to a letter from the California Department of Housing and Community Development to the city.

"Despite our best efforts to strengthen Berkeley's Housing Element, HCD says we have more work to do," City Councilmember Rashi Kesarwani said in a Twitter message on Monday in response to the letter. "Specifically, HCD tells Berkeley to fix our sites inventory & do more to affirmatively further fair housing."

Housing growth has massive implications for the future of the city and UC Berkeley. The university nearly rejected thousands of students from last year's fall class before state lawmakers intervened to save their spots due to a lawsuit over the school's housing development plans. Housing battles have roiled the city, including at People's Park.

The immediate ramifications of the state's rejection are disputed. The state has said that cities that aren't in compliance are subject to the builder's remedy, which allows developers to get approval for housing projects with at least 20% lower income affordable units or 100% moderate income units, even if they aren't consistent with local zoning.

Jordan Klein, Berkeley's Planning & Development Department director, said the city was not subject to the builder's remedy because the city was in "substantial compliance" with state law - but HCD reiterated that the city was out of compliance.

"Several stakeholders have inquired as to whether HCD's latest letter means that housing projects in Berkeley are eligible for 'builder's remedy' and can disregard the City's zoning rules. However, the City has met the statutory requirement to adopt a Housing Element that is in substantial compliance with State law by January 31, 2023," Klein said in a statement.

The Berkeley City Council adopted a Housing Element that is in substantial compliance with state law, and made findings to that effect as required by state law, and we intend to continue to enforce the City's zoning rules. If

an applicant seeks to pursue a project that isn't compliant with zoning rules, it would be up to the courts to decide whether "builder's remedy" is available.

Alicia Murillo, a spokesperson at HCD, told The Chronicle that Berkeley "has not met the statutory requirement to adopt a Housing Element that is in substantial compliance with State law," which leaves it open to the builder's remedy. Under state law, the city may not reject such applications for zoning reasons, but may do so for specific reasons including a threat to public health and safety or to comply with state or federal laws. Projects also must follow California Environmental Quality Act and state Coastal Act guidelines.

Klein said in response that the builder's remedy was not dependent on state certification and the Association of Bay Area Governments, as well as Berkeley, have the position that cities can rule their plans are mostly compliant and continue to enforce zoning regulations.

"If an applicant seeks to pursue a project that isn't compliant with zoning rules, it would be up to the courts to decide whether 'builder's remedy' is available," Klein said.

Klein said he was unaware of any builder's remedy applications as of Thursday morning. City staff are evaluating the state's comments and are seeking information on what changes are required for certification, he said.

Berkeley also faces monthly fines up to \$100,000 and could lose out on state grant funding if its Housing Element remains out of compliance.

Klein said "the Housing Element commits the City to proactively upzone several areas including the Southside neighborhood adjacent to the UC Berkeley campus and all of the City's low-density residential districts," and also seeks to up-zone commercial corridors.

Ben Metcalf, managing director at the Turner Center for Housing Innovation at UC Berkeley, believes the builder's remedy question is likely to be a moot issue unless "very irrational actors" try to use it. If they do, it could very well end up in court, he said.

"I do think Berkeley is on the path to get substantial compliance," said Metcalf, who was previously the director of HCD until 2019. "It's not a slam dunk process to use the builder's remedy."

Metcalf said that he was "thrilled" overall that HCD was taking a more assertive approach to hold cities accountable to meet their housing goals. He said the result has

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State Rejects Oakland's Housing Road Map

Sarah Ravani, San Francisco Chronicle, February 8, 2023

Oakland released a revised housing element in December after the state sent a letter saying the city had to plan for more density in the Rockridge area.

California has rejected Oakland's housing element — the road map for how the city will plan for 26,000 new units over the next eight years — potentially opening the city to penalties, state officials confirmed Tuesday.

Oakland's housing element, passed by the City Council on Jan. 31, did not fully analyze potential housing sites nor create programs to ensure housing for lower-income households in wealthier areas, according to a Feb. 2 letter from the state's Housing and Community Development division. The city's housing element plan must explain how Oakland will accommodate 26,251 new units between 2023 and 2031.

In December, Oakland released a revised housing element after the state sent a letter saying the city had to plan for more density around the Rockridge BART Station in North Oakland. In its Feb. 2 letter, the state acknowledged that the city's revised housing element "addresses many statutory requirements," but "revisions will be necessary" for the state to approve the plan.

The state has rejected the housing elements of the majority of cities throughout the Bay Area, including Berkeley's last week. San Francisco and Alameda are in compliance.

Cities have until the end of May to be certified. If they aren't, they could be blocked from grant funding opportunities and face fines.

William Gilchrist, director of Oakland's Planning and Building Department, said in a statement to The Chronicle that the city is "proud to be a leader in meeting our housing goals and proving that municipalities can and will do their part to end the housing crisis." Oakland was one of seven cities in California to make the state's exclusive list of pro-housing municipalities, making it eligible for key state funds.

"When the City Council unanimously passed the Housing Element, they did so with awareness and the legislative foresight to allow non-substantive changes to be made administratively," Gilchrist said. "Staff are currently reviewing the suggested edits provided by HCD in their February 2 letter and anticipate being able to resolve all comments."

Other penalties are unclear, but could include imposition of the so-called builder's remedy, which lets developers gain approval for projects with at least 20% lower income affordable units or 100% moderate income units, even if

the projects aren't otherwise consistent with local zoning. On Tuesday morning, Oakland Mayor Sheng Thao said at an event hosted by the San Francisco Business Times that she wants to build 30,000 units over the next eight years. Thao said she wants to streamline the city's permitting process and also work with local churches that could allow for building on their property. Thao declined to comment to The Chronicle on the state's decision.

"We need to get out of our own way," Thao said. "The way we actually make sure we can take care of our unhoused population is build, build, build."

Housing advocates said the state's housing element process is complicated, so it makes sense that cities have to go back and make some changes.

"Oakland has made a valiant effort to affirmatively further fair housing... and so it's not surprising that there's still a few i's to be dotted and t's to be crossed in fully achieving that goal under state law," said Matthew Lewis, a spokesman for CA YIMBY. "My understanding of Oakland's efforts is that it's going to get there and this letter is more about making the whole package complete and compliant and less about Oakland being a bad actor than other cities in the Bay Area."

But some affordable-housing advocates said they were surprised by the state's decision after reassurances from the city that its housing element would likely be certified. "Our first reaction was, you're kidding," said Jeff Levin, a policy director at East Bay Housing Organizations, which represents nonprofit developers. "We want to take a look if they're going to have to revise the housing element, both the revisions the state is asking for and whether there is also (a possibility) for other revisions that people have been calling for."

Among the revisions that Levin's group has been calling for is more density in Montclair, parts of which are in a fire zone. In addition, Levin said he wants to see more city resources poured into some of the poorer parts of the city where Oakland wants to plan for affordable housing — an issue the state agreed with too.

Chris Elmendorf, a professor of law at UC Davis, said he was struck by the state's demand in the recent letter that Oakland have a program in place to reassess its progress midway through the cycle — a program that the state had previously asked the city to undertake. San Francisco was given similar feedback in the first draft of its housing element and had to come up with a reassessment plan.

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Christian Britschgu, Reason Magazine, January 27, 2023

Federal housing regulators are flirting with the idea of imposing nationwide rent control via executive action, although any attempt to implement their plan would run into some serious practical and legal hurdles.

On Wednesday, the White House released a Blueprint for a Renters Bill of Rights that lists a wide range of actions federal agencies are taking or considering to “strengthen tenant protections and encourage rental affordability.”

The most eye-catching proposal is an announcement that the Federal Housing Finance Agency (FHFA) — the independent regulator and conservator of Freddie Mac and Fannie Mae — would explore ways it could “limit egregious rent increases” going forward at properties with a Fannie- or Freddie-backed mortgage.

Since the campaign trail, President Joe Biden has promised to create a “renters bill of rights” of federal tenant protection. In recent months, he’s also been pressured by congressional Democrats and affordable housing advocates to use his executive powers to more strictly regulate “corporate landlords” and their ability to charge market prices for housing.

Both have suggested in letters to the White House that the FHFA use its powers to cap rent increases at properties with a Freddie- or Fannie-backed mortgage.

The announcement doesn’t commit the Biden administration or the FHFA to actually enacting rent control. But it does say that the independent agency will “launch a process” to consider it.

Former housing regulators and housing industry stakeholders have criticized the idea for being both counterproductive and likely illegal.

Government-sponsored enterprises (GSEs) like Fannie and Freddie “loan in places where it’s often really hard to get a loan, like a small multifamily building in St. Louis,” says Jim Lapidés of the National Multifamily Housing Council (NMHC), a trade association.

Lapidés says developers would generally just avoid taking loans that come with a rent control requirement. That means that GSEs would see their multifamily business shrink substantially. Developers in more marginal markets where GSEs are a major source of financing would struggle to get capital at all, he says.

That wouldn’t necessarily be a bad outcome for people who would like to see Fannie and Freddie play a smaller role in the housing market. But enforcing rent control via

the FHFA would face some serious legal hurdles.

It’s “legally dubious” that the FHFA has the power to enforce rent limits, says Mark Calabria, a senior advisor to the Cato Institute and former FHFA director during the Trump administration.

Calabria says that during his tenure, the FHFA had performed a legal analysis of whether it could modify existing contracts with landlords to include additional tenant protections and rent caps, and “the conclusion was certainly you can’t really do it.”

The blueprint released by the White House suggests imposing limits on “egregious” rent increases on future loans only. That mirrors the demand by affordable housing groups in an August 2022 letter to the Biden administration. (In contrast, a letter authored by Sen. Elizabeth Warren (D-Mass.) and Rep. Jamaal Bowman (D-N.Y.) from earlier this month does not limit its request for FHFA-enforced rent caps to new loans.)

Calabria says that the FHFA only enforcing rent caps on new loans would remove one legal obstacle. But the policy would still have to be reconciled with the agency’s statutory mission to minimize Fannie and Freddie’s losses, which would be a huge stretch.

He also says that any rent control rule would face extreme internal resistance from the FHFA, Fannie, and Freddie, which would be unhappy to see their market share shrink because of the rule.

In addition to the rent control, the White House’s blueprint also directs federal agencies to explore stricter regulation of tenant background checks, put more limits on evictions at public housing, restrict landlords’ ability to reject federal housing vouchers, and guarantee military housing tenants’ right to organize tenant unions.

The plan landed with a thud with housing providers generally. The NMHC and National Apartment Association both released statements expressing their disappointment with the plan and their opposition to an increased federal regulatory role in rental housing.

On the other side, National Low Income Housing Coalition criticized the administration for not going further in adopting its own sweeping recommendations for more tenant protections, calling the blueprint “a missed opportunity.”

For all the novel regulatory interventions it’s considering, the Biden administration is pretty candid that the root of

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What We've Learned from the Recent Storms

By Krista Gulbransen, Executive Director

There's no argument — the December and January storms were unprecedented, even for Northern California. The amount of damage done to both personal property and investment properties has been difficult. We all experienced rain in places we never thought we would!

This is the perfect time to better understand how flood and storm damage is dealt with under insurance policies. Most insurance policies do not cover damage from floods as they are considered "Acts of God." That is, unless you have an additional flood insurance rider. This is applicable to both personal property and investment property.

California declared a state of emergency due to the storms. As a result, property owners can tap into special funding and possible tax credits. If your personal residence sustained damage, you should consider FEMA's disaster relief fund. It's easy to apply online and you could be awarded funds for repair and compensation for loss of use. Apply at www.disasterassistance.gov. It's easy to sign up and you will be assigned an inspector who will come out to look at your property and make a determination.

If your rental property sustained damage, you will be directed to apply for a Small Business Administration loan. This can be especially helpful if your repair bill is large, and you do not have the cash-on-hand. If you are rejected for a

small business loan, you will be put to a secondary fund for possible financial support.

Last but not least, we look at renters' insurance.

In general, all tenants should be reminded/encouraged to obtain a renters' insurance policy — they are quite affordable and there are even providers that specialize in low-cost policies (check out Lemonade.) However, just as with homeowners' insurance, renters' insurance policies do not cover flood or earthquake damage without the appropriate rider. Unfortunately, most tenants will incorrectly assume that the owner is responsible for replacement of their damaged personal property, and explaining this to them after the disaster has happened will be unpleasant for all. So it's definitely in everybody's best interest to spend a little effort making sure your tenants are informed about the way insurance works.

Additionally, it's important to note that the city of Berkeley's Relocation Ordinance does not apply to "Acts of God", so if the tenant's unit was damaged to the extent where they couldn't eat, sleep or bathe at the unit, their relocation costs are not covered by the Relocation Ordinance.

While the storms may have abated for the season, future storms are inevitable. Be as prepared as possible and keep your fingers crossed!



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The Nuts & Bolts: Pre-Screening

Tiffany Van Buren, BPOA Deputy Director

What the Heck is Pre-Screening and What Type of Questions Should I Ask?

The ad you've been running since November is finally getting some attention! You've received five emails and need to determine your next step. Rule one is to strike while the iron is hot; don't allow inquiries to go stale. Whether you send an email or pick up the phone, make sure to do so within 24 hours of receiving the query. The inquiring party could lose interest in your property or get a poor impression of you if you delay your response.

Hopefully, you've included your screening criteria in your marketing ad. Sometimes (though not always) this will prevent you from having to field inquiries from under-qualified parties. Regardless, asking a set of pre-screening questions is a best practice before scheduling in-person showings or going through the process of paid tenant applications and screenings. Although you cannot legally prevent a person from applying for a property — qualified or not — you can tell them if the answers they provide do not meet your screening requirements, and this might dissuade them from needlessly spending the money to apply, only to be denied (on a legal basis for denial, of course.)

What questions do you ask in a pre-screening? Here are some examples:

- Are you currently renting?
- Have you ever been evicted?
- How long have you lived in your current home?
- Does your current landlord know you are planning to move?
- Can you provide landlord references?

- Why are you looking for a new place to live?
- What move-in date are you looking for?
- What is a rough estimate of your monthly income?
- Have you filed for bankruptcy recently?
- How many people would be living with you?
- Do you or any of the people who'd be living with you smoke?
- Do you have any pets?
- Are you familiar with my screening criteria?
- Will you be okay with paying our (\$) application and screening fee if you fill out an application?
- Would you be able to pay the security deposit upon lease signing?
- Do you have any questions for me about the screening criteria or application process?

Asking these questions allows you to get a better understanding of the person who's interested in your property, and it lets them know you conduct your business professionally. If a person is reluctant to answer questions, don't move forward with them; move on to the next one.

Pre-screening is not foolproof; people do lie from time to time. Always run your prospective tenants through a bonafide screening, such as Intellirent, which is free to our members and charges your prospective tenants \$30 per applicant. The pre-screening is a best practice to help weed out time wasters and lookie-loos, and help you learn more about your potential next tenant.

from page 4

Berkeley Housing Plan

been real commitments, including in Berkeley, to zone for more housing and help alleviate the local shortage of homes.

The vast majority of Bay Area cities are out of compliance with state housing law. Only two cities, San Francisco and Alameda, have received full Housing Element certification as of Thursday. Redwood City and Emeryville have compliant draft housing elements pending final approval, while 39 jurisdictions remain under review, 51 have draft Housing Elements that were rejected, and 15 have not submitted anything, according to HCD.

Berkeley and other Bay Area cities have until the end of May to be certified before some penalties take effect.

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San Francisco's Vacancy Tax Facing Challenge in Court

Carolyn Said, *San Francisco Chronicle*, February 14, 2023

A consortium of San Francisco landlords and property owners filed a lawsuit last week challenging the city's new tax on vacant residences as unconstitutional and a violation of state law.

Proposition M, "The Empty Homes Tax," passed by 54.5% of voters in November, imposes a tax on property owners for each unit left vacant for more than 182 days in a given year, starting in 2024. It applies to buildings with three or more units, not to single-family homes or duplexes.

The taxes start at \$2,500 for units smaller than 1,000 square feet and go up to \$5,000 for units over 2,000 square feet. They escalate over each subsequent year a unit is vacant, and later are adjusted according to the Consumer Price Index.

The measure's goal was to help alleviate the city's punishing housing crisis by motivating property owners to rent their units, according to proponents.

But the lawsuit said that was misguided.

"The government cannot compel a property owner to rent his or her property to third parties without violating" the Takings Clause of the U.S. Constitution, the lawsuit said.

Supervisor Dean Preston, who championed Prop. M, dismissed the case as a frivolous lawsuit filed by "real estate lobbyists" displaying "a great sense of entitlement when it comes to broadly popular and essential reforms."

"San Francisco voters delivered a clear mandate that it is completely unacceptable to have tens of thousands of vacant homes as more than 4,000 people are living on our streets," Preston said in a statement. City data shows 61,473 empty homes in San Francisco as of October, although that includes units that are on the market but have not yet secured tenants, as well as ones for sale.

The lawsuit was filed in San Francisco Superior Court by several small landlords, along with the San Francisco Apartment

Association, a trade group which represents about 2,800 landlords who own more than 65,000 residential units in the city; the Small Property Owners of San Francisco Institute, a nonprofit that advocates for property owner rights; and the San Francisco Association of Realtors.

California law also would prohibit enforcement of Prop. M, the lawsuit said.

"The right not to offer residential units for rent is also enshrined in preemptive state law, specifically the Ellis Act," it said.

The lawsuit said some San Francisco property owners choose to keep their rental units vacant because they wish to avoid the "burdens" imposed by the city on landlords, such as rent control, eviction laws, registration and notice requirements, relocation payment mandates and "severe restrictions on an owner being able to live in, or allow an immediate family member to live in, a unit they own if it is occupied by a tenant."

In other cases, the suit says, landlords may wish to rent out their units but haven't been able to find tenants in a changing market without slashing rents, which would lock them in to those lower rents "indefinitely" because of rent-control laws.

Although Prop. M offers a one-year exemption from the vacancy tax while property owners await building permits, the lawsuit noted that the city often takes far longer than a year to approve such permits.

Preston said the same groups made a similar argument when they sued to challenge a law he wrote to ban evictions during the pandemic. A San Francisco Superior Court judge rejected their arguments in August 2020 and upheld the anti-eviction law as "a permissible exercise" of the city's power to regulate evictions "to promote public welfare."

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Oakland Housing Plan

"I am really perplexed as to why Oakland thought this was going to be passed if this was an issue that HCD had previously brought up and wasn't addressed," he said.

Monica Hernandez, a spokesperson for the state's HCD, said in an email to The Chronicle that while Oakland had made "substantial revisions" to its element, more still needed to be done.

"To obtain full compliance Oakland will still need to address findings such as obtaining approval certainty for pipeline projects and establishing programs to affirmatively further fair housing that promote equitable quality of life in lower income areas," Hernandez said.

The state said Oakland's fair housing plan must include neighborhood, infrastructure, transportation and park

improvements to allow for low-income housing in high-resource areas.

"These actions should be significant and meaningful to promote equitable communities and geographically targeted, particularly toward concentrated areas of poverty or relatively lower income areas, with numerical targets or metrics for the planning period," the letter said.

In addition, the state said Oakland must create an inventory of land, including non-vacant sites, that could be used for residential development and redevelopment.

The city also needs to create programs to evaluate projects already in the pipeline and change rules to allow permits for group homes of seven people or more in all residential areas.

California Rental Housing Association

We are now past the legislative bill introduction deadline of February 17th, and it is clear that 2023 is going to be a busy year on the legislative front. Governor Newsom has stated that housing and homelessness are his top priorities for the year, and clearly the priority for the Legislature as well based on the sheer number of bills that have been introduced on the subject.

The CalRHA President, Legislative Chair, Vice-Chair, and PAC Chair came to Sacramento in February to begin outreach, education, and advocacy on both bills and the budget. We met with the Governor's Office, Leadership, key committees, and several members of the Legislature.

A top priority for CalRHA will be the attacks on Costa-Hawkins. Senator Aisha Wahab (D-Fremont) has Introduced SB 466 to repeal major provisions of the Costa-Hawkins Act. We will know more about the viability of proposal as the legislative session progresses. SB 466 comes on the heels of a proposed initiative measure, the Justice for Renters Act, supported by Michael Weinstein of the AIDS Healthcare Foundation. It is his third attempt at the hands of California voters, to repeal Costa-Hawkins. It is slated for the 2024 ballot. It is worth noting that Governor Newsom was against Proposition 21 (the last state ballot version of the attack on Costa-Hawkins).

There have been over 2,600 bills introduced this year — the most in at least a decade. In addition to SB 466 on Costa-Hawkins, there are many others that will be a top priority for CalRHA, including:

- **AB 12 (Haney, D-San Francisco)** — *Tenancy: Security Deposits* — Would prohibit a landlord from receiving a security deposit for a rental agreement in an amount in excess of one month's rent, regardless of whether the residential property is unfurnished or furnished.
- **AB 59 (Gallaher, R-Chico)** — *Taxation: Renter's Tax Credit* — Would bill would increase the renter's tax credit to \$2,000 for spouses filing joint returns, heads of households, and surviving spouses and \$1,000 for other individuals.
- **AB 875 (Gabriel, D-Woodland Hills)** — *Courts: Data Reporting* — Would require courts to report specified information to the Judicial Council regarding unlawful detainer cases and summary data on COVID-19 rental debt in small claims court, by ZIP code.
- **AB 932 (Ting, D-San Francisco)** — *Junior ADU: Application Approval Time* — Would streamline ADU applications from 60-days to 45-days.
- **AB 1097 (L. Rivas, D-Arleta)** — *Tenancy: Credit History of Persons Receiving Government Rent Subsidies* — Would require housing providers to consider alternative evidence in lieu of the person's credit history in determining rental accommodations.
- **AB 1418 (McKinnor, D-Inglewood)** — Would prohibit a local government from imposing a penalty against a resident, owner, tenant, landlord, or other person as a consequence of contact with a law enforcement agency. Would prohibit a local government from requiring or encouraging a landlord to perform a criminal background check of a tenant or a prospective tenant or to evict or penalize a tenant because of the tenant's association with another tenant or household member who has had contact with a law enforcement agency or has a criminal conviction.
- **AB 1505 (Rodriguez, D-Chino)** — *Seismic Retrofit: Soft Story Multifamily Housing* — Would direct \$250 million from the General Fund for seismic retrofit for multifamily housing.
- **ACA 1 (Aguiar-Curry, D-Woodland)** — Local government financing: affordable housing and public infrastructure: voter approval — Would lower the necessary voter threshold from a two-thirds supermajority to 55 percent to approve local general obligation (GO) bonds and special taxes for affordable housing and public infrastructure projects.
- **SB 267 (Eggman, D-Stockton)** — *Credit History of Persons Receiving Government Rent Subsidies* — would prohibit the use of a person's credit history as part of the application process for a rental housing accommodation without offering the applicant the option of providing alternative evidence of financial responsibility and ability to pay in instances in which there is a government rent subsidy and would require that the housing provider consider that alternative evidence in lieu of the person's credit history.
- **SB 460 (Wahab, D-Fremont)** — *Hiring of real property: Criminal History* — Would prohibit a housing provider from inquiring about an applicant's criminal history, requiring an applicant to disclose their criminal history, or requiring an applicant to authorize the release of their criminal history, or basing any adverse action on information contained in an applicant's criminal history, unless they are complying with federal law.

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Bay Area Cities Still Trying to Cheat Their Way Out of Building Housing

Jeremy Levine, Sonja Trauss, Jordan Grimes, *San Francisco Chronicle*, February 1, 2023

February is poised to be “builder’s remedy” month in the Bay Area. That’s because, as of February 1st, cities without legally compliant “housing element” plans will see their local zoning rules no longer apply to any proposed residential development that is at least 20% lower income or 100% moderate income. Some examples of zoning are height limits, setbacks, parking minimums, floor area ratio and density limits. In most Bay Area cities, all of these limits are lifted — meaning your neighbor, you or a developer can propose new housing and not follow any existing local codes.

This is California’s builder’s remedy. Housing elements are a legally required plan for new homes that cities must update every eight years. Historically, jurisdictions submitted their housing elements to the state Department of Housing and Community Development, which would review plans and work with the city to make revisions until it deemed the housing element to be in “substantial compliance” with state law. The department had limited authority to ensure these plans ever came to fruition.

Recent changes to California law, however, have turned the housing element process into a binding “contract with the state.” The builder’s remedy is arguably the most potent consequence for those who don’t follow the rules.

That hasn’t stopped some cities from trying to exploit loopholes to forgo their responsibilities to plan for new housing.

Instead of working with the state to create credible plans for new homes, a number of Bay Area cities have passed resolutions that declare their housing elements to be in compliance with the law — even without approval from the state housing department. Contractors working with San Mateo County’s 21 Elements consulting group identified this legal loophole and created templates on their website for “Housing Element Adoption Before HCD Approval.”

Several cities are pursuing a so-called “premature adoption” strategy in the hope that no one will challenge their claims, including San Mateo, South San Francisco,

Brisbane, San Bruno, Menlo Park, San Carlos, Belmont, Atherton, Woodside and Colma. Local consultants have spread the strategy to Lafayette, Concord and Pinole.

Cities are passing these premature adoption resolutions because the loophole could help them avoid the builder’s remedy. To prove a city that has prematurely adopted and its housing element is subject to the builder’s remedy, a third party would need to sue and a court would need to declare the city’s housing element out of compliance. Lawsuits are an expensive and potentially risky, especially if a court sides against housing — which they sometimes do.

To put this premature adoption strategy in context, cities

that declare their own housing elements to be in compliance are a bit like sovereign citizens who issue themselves driver’s licenses. It’s perfectly legal to *declare* yourself fit to drive, but that doesn’t help you at a traffic stop. Similarly, we don’t expect state officials to attach any meaning to these premature adoptions.

Nonprofits like Californians for Homeownership, the CA Housing Defense Fund, the Housing Action Coalition and YIMBY Law are also preparing to sue several dozen Bay Area cities in the coming weeks for noncompliance. Californians for Homeownership has already sued several cities in Southern California. When cities lose or settle these lawsuits, they become vulnerable to the builder’s remedy even if they attempted the “pre-

mature adoption” scam.

It shouldn’t have come to this.

Instead of using trickery, the majority of Bay Area cities are respecting the process by trying to get their housing element drafts right. Most fell short and will become subject to the builder’s remedy. San Jose, Sunnyvale, Mountain View, Campbell, Gilroy and Saratoga have all received comments from the state housing department — yet they are still undergoing the normal review process. In addition, Palo Alto, Cupertino and Santa Clara County all started the process too late or not at all.

Housing activists like us are baffled by local governments’ failure to complete the process in time. The deadline was no surprise. California’s housing elements process occurs

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state housing department.*

continued on page 16

Fair Housing Testers Set “Traps” for Owners and Leasing Agents

By Daniel Bornstein, Bornstein Law

Do a search for “fair housing testing jobs” and you’ll find that the business of entrapping landlords is good. In this position, the tester is tasked with catching rental housing providers and their agents in the act of discrimination.

An employer is often an advocacy group funded by HUD to determine the likelihood that illegal housing discrimination is occurring.

Here is advertised position we came across

Help us end housing discrimination by becoming a Fair Housing Investigator! Housing discrimination occurs when someone is denied housing based on their race, gender identity/sexual orientation, national origin, religion, children/family status, disability, age, veteran status, source of income, and more. Housing discrimination is ILLEGAL. We at Community Legal Aid are working to end housing discrimination, investigating claims, and systemically testing housing providers.

Investigators help us evaluate the everyday business practices of housing providers by posing as bona fide renters searching for housing. Individuals who test for Community Legal Aid collaborate closely with the fair housing testing coordinators before, during, and after tests. Strong communication skills and the ability to write an objective narrative of what they experienced during a housing test is required.

Of course, there is a need for supervisory staff to manage a phalanx of testers, massage the data, and so forth, so there are many job postings for those positions, but you get the point.

Posing as a bona fide renter seems deceptive

Yes, but in case you were wondering, a 1982 U.S. Supreme Court decision upheld the use of testers in inquiries on housing bans as perfectly legal.

In this case, the landlord was sued after being misled by a tester. The landlord argued that the imposter does not suffer the kind of injury usually required to establish “standing” to commence a lawsuit. In other words, no harm, no foul. The

high court rejected that argument in *Havens Realty Corporation v. Coleman*, No. 80-988.

A roundtable of the “Fair Housing Insiders” discusses some scenarios that rental housing providers are likely to encounter by testers.

Our concerns and recommendations

We are concerned about the endemic lack of training about fair housing laws and this deficit of training is especially problematic for property management companies that suffer from a high turnover rate.

If there is a revolving door of employees, there may be fatigue in training new employees that replace an outgoing one, but this step should never be overlooked.

Presumably, a leasing agent has some familiarity with fair housing laws, but with an ever-expanding class of individuals that fall in the category of a “protected” status and stiffening penalties, a refresher may be in order.

Pay careful attention to the person answering the phone. Whoever is the first point of contact had better have some understanding of what can be said and what terms to avoid.

Parting thoughts

Rental housing providers who engage in discriminatory practices are inviting a lawsuit, whether by Big Brother or by enterprising, private attorneys who put their children through private schools from the proceeds of a housing discrimination lawsuit.

Many of the lawsuits we see and sometimes have to defend against are not from overt discrimination but simple mistakes that can be avoided by creating a culture of welcoming all rental applicants.

For those of you who have been following us for some time, we are probably preaching to the choir. But even that statement may be considered discriminatory because it may be indicative of a religious preference.

QUOTE OF THE MONTH

Expecting Congress to pay down the debt is akin to asking a six-year-old if he/she would rather have an ice cream cone or pay down Mommy and Daddy’s mortgage by a couple bucks.

— [ed]

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California Legislative Outlook 2023

- **SB 555 (Wahab, D-Fremont)** — Would create the Social Housing Act of 2023, declaring a 10-year goal of creating 1.2 million units of social housing through a mix of acquisition and new production and a 5-year goal of creating 200,000 units of social housing that are affordable to extremely low and very low income households.
- **SB 569 (Glazer, D-Orinda)** — *Renter's Tax Credit* — Would require that the Franchise Tax Board recom-

pute the renters tax credit for inflation and refund for tax years 2023-2028.

As always, CalRHA will keep you informed as these bills make their way through the Legislature. We will be sure to send out Calls to Action when we are at a pivotal juncture and your involvement could determine the outcome.

Drop in S.F. Rents Among Biggest in Nation

Roland Li, San Francisco Chronicle, February 5, 2023

San Francisco and the rest of the Bay Area saw apartment rents fall in January at a higher rate than the national average, another sign of a slowing Bay Area economy that could be hurt further by mass tech layoffs, according to data from Apartment List.

San Francisco median rents fell 1.1% to \$2,174 per month compared to December, one of the biggest drops in the country. Metro area rents are down 5% compared to March 2020 when the pandemic started, making San Francisco and San Jose the only two metro areas with more than 1 million people that have rents that are below pre-pandemic levels.

San Jose's median price fell 0.4% to \$2,370 per month compared to December. Prices are 2% lower than March 2020. Oakland saw a 0.9% monthly decline to a \$1,613 monthly median rent.

National rents fell for the fifth straight month, with prices down 0.3% compared to December. Prices are still up 3.3% compared to January 2022, but growth has slowed in the past two years. Two-thirds of the 100 largest U.S. cities saw rents drop month over month.

A wave of layoffs in tech is expected to reduce demand for apartments in the Bay Area. "Softness in the tech industry is likely to prevent a strong rebound in Bay Area rents," Apartment List said.

Nationally, rents are expected to climb again during the busier spring and summer months.

Bay Area home values have also declined in the past six months as mortgage rates have shot up, according to Zillow.

Join Us for Quarterly Social Mixers with Fellow Members

Remember: Sam Sorokin's Owners Forum happens every month on the third Thursday!

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

DATE	TOPIC
Thursday, March 9, 3:00 PM	April Showers Bring May Flowers, but Don't Let Water Become a Problem!
Thursday, March 16, 3:00 PM	Monthly Owners Forum with Sam Sorokin, Premium Properties
Thursday, March 23, 3:00 PM	Red Alert: 9 out of 10 Landlords are Underinsured — Are You?
Thursday, April 13, 3:00 PM	Mold, Mildew & Mayhem: Protecting your Property

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.

Court Halts UC Berkeley People's Park Housing

Nora Mishanec, San Francisco Chronicle, February 26, 2023

A California appeals court ruled Friday that a \$312 million plan to turn Berkeley's historic People's Park into housing for about 1,100 students and more than 100 of the homeless people who regularly camp on the 2.8-acre site fails to address environmental concerns surrounding the proposed construction projects.

The unanimous ruling by the First District Appellate Court brings the project to a halt until the University of California can conduct a new environmental study — a victory for neighborhood groups that sought to preserve the park as an open space.

Under the plan, more than half of the historic park would have remained open. The other half would have hosted a 17-story building that UC Berkeley said would have housed more than 1,100 students. The university provides housing for just 23% of its students, by far the lowest rate in the state university system.

The university also pledged to build a separate space with 125 beds for homeless people who now sleep at the park and offered to shelter some of them during construction.

The appeals court ruling, which had been previously floated

in a preliminary review, comes six months after a Superior Court judge ruled that the university had adequately addressed key criticisms of the plan, writing that university officials had considered the environmental impact and had justified their decision to house students there, rather than at alternative sites.

But the appeals court disagreed, finding that UC officials did not sufficiently explore alternative student housing sites, and had dismissed legitimate neighborhood concerns about "loud student parties" — a longstanding problem in residential neighborhoods abutting the campus.

State Sen. Scott Wiener, D-San Francisco, called the court's ruling "absurd and dangerous," tweeting Saturday that the California Environmental Quality Act cited in the ruling "requires evaluation of the type of people who will live in proposed new housing."

Wiener said he plans to introduce legislation "to put an end to this nonsense."

The university and housing advocates did not immediately respond to requests for comment Saturday.

from page 6

National Rent Control

renters' problems is a lack of housing supply.

"Limited housing supply has created more competition for fewer available units, which gives owners even more leverage in deciding to whom to rent to, what lease terms to offer, and whether and how much to raise rents," reads the White House's blueprint.

Rent control has a history of constricting the supply of rental housing and reducing housing quality.

By pursuing it and other policies that would raise the costs or limit the returns of providing rental housing, the White House's blueprint is likely to limit supply further and exacerbate many of the problems it's trying to fix.

MARCH MEETINGS & EVENTS

April Showers Bring May Flowers, but Don't Let Water Become a Problem!

Thursday, March 9, 3:00 PM

Monthly Owners Forum with Sam Sorokin, Premium Properties

Thursday, March 16, 3:00 PM

Red Alert: 9 out of 10 Landlords are Underinsured — Are You?

Thursday, March 23, 3:00 PM

Mold, Mildew & Mayhem: Protecting your Property

Thursday, April 13, 3:00 PM

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

BPOA WORKSHOPS — Go Beyond the Basics

Office Building Redo Could Set Tone to Save S.F.

J.K. Dineen, *San Francisco Chronicle*, February 4, 2023

A skinny, historic brick office building in Lower Nob Hill could be a poster child for the elusive trend that many see as the secret to saving downtown San Francisco: the office-to-residential conversion.

The nearly 20,000-square-foot building at 701 Sutter St., which was previously filled with tech tenants, has all the attributes that architects and investors say are needed for a conversion. The 1910 structure sits on a corner lot and is soaked in natural light. It has exposed beams, a mezzanine with arched windows and original wooden floors. It is on a mixed-use block replete with restaurants, close to several Academy of Art University buildings and a quick downhill walk to Union Square.

But what makes the brick-and-timber building particularly well positioned for a residential conversion is that it was cheap: The property recently sold for \$8.3 million, 40% less than the \$13.5 million it fetched in 2019.

It sold in November to the contractor SC Buildings and the residential investment group SCSH Development & Realty, which focuses largely on student housing. While the buyers did not respond to emails and phone calls seeking comment on their plans, the broker who represented the seller confirmed that the buyer plans to convert it to residential.

Broker Rick Durazzo of North Beach Properties said the property primarily attracted groups interested in converting it.

"It's got great bones and is a rock star location for condos or apartments," he said.

The deal comes as San Francisco's office vacancy rate has hit 27%, and the availability rate, which includes sublease space, is 32.1%. Not surprisingly, none of the potential buyers who toured the property were looking to keep it as an office space.

"I have been in commercial real estate for 42 years, and thought I seen every damn downturn you could imagine," said Durazzo. "This is the top of the heap."

The concept of reviving the city's downtown neighborhoods by filling empty buildings with residents has been the topic of panels, white papers, task forces and media reports. But all that attention has not resulted in projects coming into the planning department.

In addition to the 1910 Georgian structure at 701 Sutter, which has yet to apply for an application with the city, the one conversion proposal that has been filed with the city is for the Warfield office building at 988 Market St. That project aims to turn the 25,000 square feet in the building into 34 residential units, seven of them affordable.

With the city's high construction costs, the key to making conversions work will be the ability to snag buildings at a bargain price, said Colin Yasukochi, research director for CBRE.

"A lot of people are scouring the market looking for office buildings that not only have the physical characteristics

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YIMBYs are about to sue the daylight out of Bay Area Cities

Emily Hoeven, OPINION, San Francisco Chronicle. February 7, 2023

Housing advocates are about to deliver a message to the Bay Area: Comply with state housing law or face the consequences.

The message is being delivered in the form of 12 lawsuits, most of which will be publicly unveiled for the first time Tuesday by three pro-housing legal nonprofits: YIMBY Law, the California Housing Defense Fund and Californians for Homeownership, which was founded and is financially supported by the California Association of Realtors.

The three groups are suing Belvedere, Burlingame, Cupertino, Daly City, Fairfax, Martinez, Novato, Palo Alto, Pinole, Pleasant Hill, Richmond and Santa Clara County for failing to follow state law, which required them to adopt by Jan. 31 a blueprint — called a housing element — outlining how they plan to accommodate their share of the 2.5 million homes California is asking cities to prepare for by 2030.

Most of the local governments targeted by these lawsuits didn't adopt plans at all, the groups' legal counsel told me,

while others gave the illusion of compliance by greenlighting their own blueprints, even though these plans hadn't been reviewed by the state Department of Housing and Community Development.

Among the lawsuits' main goals: Force local jurisdictions to comply with state law by developing and adopting a plan for building the required number of homes and reminding them that they're subject to what's known as the builder's remedy while they're out of compliance.

The builder's remedy — an as-yet relatively untested provision of California law — allows developers to bypass local zoning standards in noncompliant cities to build residential projects with a certain percentage of low-income or moderate-income units.

So why are the lawsuits necessary, given that the builder's remedy technically goes into effect the moment a city's housing element falls out of compliance?

from page 11

Cities Continue to Avoid Building Housing by Any Means

every eight years and this is the sixth cycle. Cities have had decades of experience.

Housing element law is also not difficult to comply with. The state has issued reasonable housing goals for cities to comply with, reflecting realistic housing needs, with nearly unlimited flexibility to plan to meet those goals. Cities don't need to plan for revolution, but they can't fall back on the status quo, either.

A handful of Bay Area cities have received timely approvals from the state: Alameda, Redwood City and Emeryville, for instance. These cities all pursued a mix of rezoning, subsidies for affordable housing and tenant protections to earn their state certification.

Some cities went the other direction, such as Lafayette and Hillsborough, which held dozens of community

meetings over more than a year that often devolved into bickering about statutory requirements rather than making coherent housing plans.

The privilege of vetoing virtually any housing in rich neighborhoods is so ingrained in American culture that many people believe it is one of their inalienable rights. However, new state laws and the willingness of housing activists to pursue legal remedies have changed the game.

Cheap trickery isn't going to work this time. California requires cities to plan for more housing, by choice or by force.

Sonja Trauss is the co-founder and executive director of YIMBY Law. Jeremy Levine is the executive director of Inclusive Lafayette. Jordan Grimes is the resilience manager at Greenbelt Alliance.

from page 15

S.F. Office Building Redo

they are looking for but have a high vacancy and can potentially be bought at a discount," said Yasukochi. "The appropriate asset at the appropriate price. That is what will make conversion feasible."

Chris Haeggglund, a principal at BAR Architects & Interiors, has met with a steady stream of building owners and investors interested in doing conversions, and even gave a presentation last week to the San Francisco Chamber of Commerce on the economics of turning office space into housing.

"There is a lot of momentum and a lot of interest," he said. "But I must say, at least so far, none of them are getting out of the due diligence phase."

He said construction costs have remained stubbornly high, and the residential market is uncertain. With 701 Sutter the price was right and the layout appears to be perfect for housing.

"The building has character," he said.

Apartment Owners Agree to Pay for Restricting Kids

Bob Egelko, San Francisco Chronicle, February 16, 2023

The state of California announced a \$3 million settlement Tuesday with owners of 48 Bay Area apartment complexes who were sued for discrimination for refusing to let children play outdoors on their property.

The California Civil Rights Department sued Vasona Management Inc. and more than 30 apartment owners in Alameda County Superior Court in 2020 on behalf of a group of residents. The suit accused the owners of violating state and federal laws prohibiting discrimination against families with children under 18.

Based on a report from the nonprofit advocacy group Project Sentinel and the department's own investigation, the suit said Vasona and the owners prohibited all outdoor play activities on their property and required parents to supervise children under age 14 in all common areas. Tenants who violated those rules could be evicted. Under the settlement, the department said, Vasona will

pay \$3 million to the families, stop enforcing its restrictions, and obtain the department's approval for any future rules on outdoor activities or parental supervision. Vasona also agreed to provide tenants with brochures on their rights, establish procedures for tenants to report discrimination, provide four hours a year of anti-discrimination training to anyone involved in managing or renting property, and report annually to the state on its compliance, the department said. The settlement will take effect once a judge approves it.

"Overly restrictive rules that discourage or prohibit children from enjoying their home unlawfully limit where people can live and harm families," the department's director, Kevin Kish, said in announcing the settlement.

Vasona is based in Campbell and has properties in 18 Bay Area locations. The company did not immediately respond to a request for comment.

from page 2

Editorial

now she would own a house worth more than a million dollars free and clear. Her equity would be the entire \$1,000,000-plus value of her house. (Far fetched? Not really. The average price for listed houses on the market in Berkeley in July 2022 was \$1.71M.)

So, the best scenario is that, with rent control, she managed to accumulate a million-dollar investment portfolio. Though highly unlikely, this is possible and is about the best she could have done with her rent subsidy.

Flatlands houses in Berkeley in 1980 were available for not much more than \$100,000. Had my tenant purchased a house then, her mortgage would have started at a bit more than her controlled rent, but a fixed mortgage payment for 30 years would have been an even better deal than her controlled rent. By the start of this new millennium, her hypothetical mortgage would have been less than her controlled rent.

Compare these scenarios. ONE: with rent control, my tenant has a one-bedroom apartment at \$700 a month and a volatile net worth at somewhere between zero and a million dollars. Or TWO: had she bought a house, she would now have a three-bedroom house, worth at least a stable million dollars or likely more; maybe even much more. Did rent control really benefit this tenant?

About 20,000 Berkeley rental units have had at least one increase to market thanks to Costa/Hawkins. There are still maybe 3,000 units which have not. Of these Berkeley tenants — those who remain and those who have moved on — some number had the wherewithal to buy a house. *For those who might have done so but did not because of a controlled rent, rent control was no bargain.* They passed up an opportunity to own and control their home which, as an appreciating asset, would over time cost less than zero. By opting for controlled rent, they instead opted to keep their perceived benefit of cheap rent and they still live in housing owned and governed by someone else.

What a lost opportunity. What a shame.

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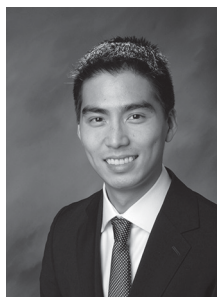
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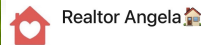
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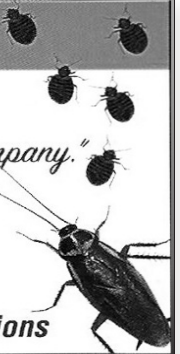
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MARCH EVENTS

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

***April Showers Bring May Flowers, but
Don't Let Water Become a Problem!***

Thursday, March 9, 3:00 PM

***Monthly Owners Forum
with Sam Sorokin, Premium Properties***

Thursday, March 16, 3:00 PM

***Red Alert: 9 out of 10 Landlords are
Underinsured — Are You?***

Thursday, March 23, 3:00 PM

***Mold, Mildew & Mayhem:
Protecting your Property***
Thursday, April 13, 3:00 PM

Check the BPOA calendar for more details.



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