

APR
2023



*The Advocate for
Berkeley's Rental Housing Providers*

*Founded 1980 • Charter Member, California Rental Housing Association
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Know Your Tenants

Mark Tarses, President, BPOA

You might be surprised at how often landlords get into trouble in court because they didn't clearly identify who was to occupy an apartment. It is your job as a landlord to clearly identify in your leases who is to live in a unit. Here are some common mistakes landlords make in naming the occupants in a lease:

1. Name the tenants. Don't number them. Leases used to say things like: 'This apartment is to be occupied by no more than 3 people.' Some lease forms still say things like that. Don't just specify the number the people who will live in an apartment. Name them.
2. Confirm the names of your applicants. Does the name that an applicant put on your application form match the name on the applicant's driver's license or passport? If they don't match, you need to ask questions. Sometimes there is a simple explanation. A woman may have gotten a divorce since she renewed her driver's license and is now using her maiden name again.
3. Name the children. Some landlords reason that since a baby cannot sign a lease, the baby's name doesn't need to be on the lease. That is bad thinking. Every person who is going to live in your apartment, regardless of age, should be named in the lease as an occupant. And — a baby is a person.
4. Clearly identify pets. 'Dog' is not an adequate description. What kind of dog is it? Be specific, describe, and name the pet in your lease. If you just say that a tenant can have a 'dog' in your lease, the 20-pound dachshund you saw at the lease signing may turn into a 120-pound Rottweiler when the tenant moves in. Then what do you do? A Rottweiler is a dog.

APRIL EVENTS

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

***Monthly Owners Forum with Sam Sorokin,
Premium Properties***
Thursday, April 20, 3:00 PM

***Guaranteed Rent Payments?
Tell Me More!***
Wednesday, April 26, 12:00 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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Deputy Director:

Tiffany Van Buren

Our Office Location:

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

Office Hours:

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

About the Newsletter

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

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

Direct comments and material to our Bancroft Way office or to bpoa@bpoa.org

Editorial

Cities in California Have Too Much Autonomy

Albert Sukoff, Editor

Cities in California have too much leeway in what they are empowered to do. It need not and should not be so. Cities are a creature of the state. They are — and can only be — what the state law says. Were it so inclined, the state could eliminate all cities and make counties the instrument of local governance. As it stands, however, cities — particularly charter cities — are too free to go their own way.

A previous editorial on these pages addressed how different rent controls in different California cities result in differential treatment of both owners and tenants, arguably in contradiction of Fourteenth Amendment protections. This Amendment precludes states from treating citizens differently under the law.

Berkeley first passed rent control ordinance in 1972. It was the first city in the state to do so. Surprise, surprise. The 1972 law was later declared unconstitutional, but for reasons having nothing to do with equal treatment.

At that time and until very recently, there were virtually no overriding state controls on municipal action in the area. Costa/Hawkins imposed the first statewide limitation on cities but that didn't happen until 1995. While that state law imposed this one major restriction and some lesser ones on cities, cities were still free to have very different rent control programs. Only in 2019 did the state enact a statewide rent control law. In doing so, however, it grandfathered in existing ordinances, allowing then to have restrictions greater than those imposed by the state. As a result, this omnibus state law is more favorable to property owners than the strictest municipal ordinances, including Berkeley's.

The treatment of owners and tenants in abutting cities in the same housing market is unsupportable by any economic theory or logical reasoning. Clearly, a tenant on the Berkeley side of the Berkeley/Albany line has a government-established benefit denied to his/her counterpart in Albany.

As we all know, the state used Covid to place a moratorium on evictions. The state has now determined the date that the Covid-caused health emergency will come to an end. Yet Berkeley (and Oakland) has, by local legislative fiat, declared that the emergency still exists and that therefore the moratorium on evictions within its borders will continue. This is a stretch even greater than that required to justify differential rent control in the same housing market. *How can there be no health emergency in the State of California but nevertheless such an emergency continues in Berkeley (and Oakland) but nowhere else?*

Most large policy issues should be established statewide. A good reason to limit the authority of cities is that they are too often homogenous enough to push more extreme measures in pursuit of extreme goals. The Berkeley City Council hasn't a clue as to whether or not there is a health emergency either at the state or the city level. It hasn't studied the matter, nor does it have the resources to do so. It has taken the extreme position because renters are a more powerful constituency than are owners. They did it because they could. Simple as that.

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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.**

Is The Eviction Moratorium Coming to an End?

The California state of emergency due to Covid ended on February 28. The Federal government intends to end the nation's state of emergency on May 11. Municipalities throughout the state (and around the country) have ended or are planning to end local states of emergency. And yet, Berkeley City Council and the Mayor have decided to continue our local state of emergency. Their decision went against the recommendation of the city's Health Official (a medically licensed doctor). The mayor pointed to EBMUD's recent report showing the presence of Covid in waste water and claimed that was the reason the state of emergency needed to continue. This despite the city's own Covid dashboard showing to date, 93% of residents were fully vaccinated.

In the three years since the start of the pandemic Berkeley has seen 74 deaths in total. In comparison, the cities of San Leandro, Hayward, and Alameda — all of whom have almost *half the population* of Berkeley — had an average of 203 deaths each over the last three years.

But Berkeley loves to “do Berkeley” and be different, so their state of emergency continues. But what does this have to do with the eviction moratorium? We are afraid it has a lot to do with the eviction moratorium. The moratorium all hinges on the state of emergency ending. But as long as the council can keep the state of emergency going, they believe they can keep the moratorium going.

All this to say that on March 21, they voted to extend the eviction moratorium to August 31, 2023.

Here's what you need to know:

- Come May 1, 2023, we will enter the “Transition Period” which is scheduled to end on August 31, 2023. The time from March 17, 2020, to April 30, 2023, is called the “Covered Period.” These two time periods are referenced in the wind-down of the eviction moratorium and are important to know.
- On May 1, 2023, *some* evictions may resume. They include a limited number of Owner Move In evictions; any tenancy where it is believed that the tenancy did not have a *Covered Reason for Delayed Payment* for nonpayment of rent at any time during the Covered Period; and regular nonpayment of rent. If the owner

believes the tenant could have been paying rent but chose not to, or the tenant does not pay standard rent on May 1, a 3-day notice to pay or quit may be served to a tenant starting May 1, 2023.

- All other evictions to resume September 1.

The Threat to Costa Hawkins — Again

Every two years we battle legislators and others' attempt to take away our rights under Costa-Hawkins. Costa-Hawkins came into play in 1996 and prohibits local jurisdictions from enacting rent control on single family homes, condos/townhomes, and new construction in its first 15 years as well as allowing an owner the right to raise the rent on a rent-controlled unit when a tenancy ends. Our industry has already battled two statewide voter initiatives (Prop 10 in 2018 and Prop 21 in 2020) and won. In between ballot measures we fight legislators who have written legislation taking away our property rights under Costa Hawkins. We unfortunately will be battling both over the next 20 months.

SB 466, a bill authored by Democrat Senator Wahab out of Fremont, would take away the rent control exemption for single-family homes, condos, and townhomes. That means they would be subject to Berkeley's local rent control if construction of the unit was more than 15 years ago. While the bill does not touch vacancy decontrol (the ability to set a new rent on a rent-controlled unit when a tenant vacates the unit) any modification of Costa Hawkins chips away at owner rights and we must defend it.

If you seek to limit the damage done to rental housing providers as well as limit the risk of your investment, there is no better way than an investment in the BHRC. We hope you will consider our request one of both reasonability and necessity. Contact krista@bpoa.org for more information.



Bay Area Will End Sales of Gas Furnaces and Water Heaters

Claire Hao, San Francisco Chronicle, March 15, 2023

The move affects both existing homes and new construction, which will be required to turn to electric home appliances.

If you live in the Bay Area and your natural gas-powered water heater stops working after 2027, you will be required to install an electric model instead.

Bay Area regulators voted Wednesday to adopt rules to phase out the sale and installation of natural-gas furnaces and water heaters over the next eight years, one of the most ambitious plans in the country to replace gas appliances with electric alternatives.

The rules, approved by the Bay Area Air Quality Management District, are meant to reduce air pollution from some of the worst home-appliance offenders. The main pollutants targeted are nitrogen oxides, or NOx, which can cause acid rain and smog as well as increase risk for asthma and other respiratory diseases.

People will be able to repair their gas appliances if they break — but the rules take effect when existing gas-powered furnaces or water heaters no longer work and need to be replaced. New construction will also be required to have zero-NOx — effectively, electric — furnaces and water heaters.

Here's what to know about how the rules affect you:

What appliances do the rules apply to?

The rules target natural-gas-fired furnaces and water heaters, which account for about 90% of the nitrogen oxides emitted from the Bay Area's 1.8 million homes, according to the BAAQMD.

They require zero-NOx models be sold and installed in the Bay Area — essentially requiring that gas-powered water heaters switch to electric, and that gas-powered furnaces switch to heat pumps.

The rules do not apply to gas stoves. They also don't apply to gas-powered dryers, water heaters larger than 2 million BTU/hour, appliances that use propane or other non-natural gas fuels and mobile home furnaces.

When do the rules take effect?

By 2027, zero-NOx models for water heaters smaller than 75,000 BTU/hour are required. By 2029, zero-NOx models for furnaces are required. By 2031, zero-NOx models for water heaters larger than 75,000 BTU/hour and smaller than 2 million BTU/hour are required.

However, the air district could push back those deadlines if it determines that the burden of compliance by those

dates will be too difficult.

The district doesn't expect the region's 1.8 million homes to entirely switch over for nearly 25 years.

What homes are affected?

The Bay Area Air Quality Management District's regulatory jurisdiction comprises Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, southwestern Solano and southern Sonoma counties. Roughly two-thirds of all Bay Area households use natural gas appliances, according to the air district.

The furnace rules do not apply to mobile homes.

What is the goal of the rules?

The primary goal of the adopted rules is to improve outdoor air quality, as natural gas-powered heaters and furnaces release pollutants outside. Requiring zero-NOx appliances would not only reduce nitrogen oxides but also particulate matter 2.5 (PM2.5), tiny pollutants small enough to infiltrate lungs and even blood.

The air district estimated that 37-85 premature deaths from health complications caused by air pollution would be avoided each year due to the adopted proposals. That translates to approximately \$400 million to \$890 million in estimated annual health benefits, according to the air district's calculations.

It would also speed up the region's transition to electric appliances and reduce reliance on fossil fuels, with many public commenters at the approval meeting Wednesday speaking in favor of the rules' potential benefits in mitigating climate change.

How much does a replacement cost?

In the lead-up to approval, the rules have prompted deep concerns from residents about the costs and logistical challenges of upgrading home electrical panels and appliances in the given timeline.

The air district released its estimates of equipment costs: \$8,030 for zero-NOx space heaters (which would substitute for gas furnaces) and \$2,820 for zero-NOx water heaters.

Installing electrical appliances may also require upgrades to home electrical panels, which the air district estimated will cost \$2,630 for zero-NOx space heaters and \$960 for

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History of Rent Control in Berkeley

By ChatGPT

n.b. ChatGPT is an AI program that will answer a question or write an essay on almost any subject. Its emergence has been described as a Gutenberg Moment. Asked to produce a History of Berkeley Rent Control, this is what the ChatGPT came up with in a matter of seconds. Please note that there is no human either writing, editing or fact-checking the essay. It is based on a search of relevant literature by ChatGPT and its own internal rules of composition. Comments in italics are mine; they correct the mistakes/omissions in the essay. Ed.

The history of rent control in Berkeley dates back to the 1970s, when the city was experiencing a severe housing crisis. Tenants were being priced out of their homes, and landlords were taking advantage of the booming real estate market to raise rents and evict tenants to sell their properties. Activists formed the Berkeley Tenants Union in 1972 to fight for rent control and tenant protections.

Arbitrary evictions were an issue, but no one was evicting tenants to sell his/her property. There is no reason to do this. Rents in the late 1970s were rising at an alarming rate, The real impetus for rent control was a perceived failure of owners to pass Proposition 13 savings on to their tenants.

In 1980, the Berkeley City Council passed the Rent Stabilization and Eviction for Good Cause Ordinance, which established a system of rent control and eviction protections for tenants in the city. The law limited rent increases to a maximum of 8% per year, required landlords to provide a valid reason for evicting tenants, and established a Rent Board to oversee the program and mediate disputes between landlords and tenants.

The 1980 Ordinance was a voter initiative; it was not passed by the City Council. It made permanent a temporary 1978 Ordinance which rolled back rent to pre-Proposition 13 levels. Rents were thereafter controlled but they were never limited to a specific 8%.

The passage of rent control in Berkeley was a major victory for tenants' rights advocates, but it faced legal challenges from landlords and property owners, who argued that it violated their property rights and was unconstitutional. The legal battle over rent control in Berkeley lasted for years, with multiple lawsuits and appeals challenging the law's constitutionality. In 1986, the California Supreme Court ruled in favor of rent control, finding that it was a valid exercise of the city's police power and did not violate landlords' property rights.

The California Supreme Court did so rule in Fisher v City of Berkeley, but much more importantly, the United States Supreme also upheld the constitutionality of the Berkeley law.

Over the years, Berkeley's rent control program has undergone revisions and updates. In 1995, the city passed the Costa-Hawkins Rental Housing Act, which limited the scope of rent control in California by exempting certain types of properties, including single-family homes and condominiums, from rent control. This law had a major impact on Berkeley's rent control program, as it made it more difficult to regulate rents in certain types of properties.

The major import of Costa-Hawkins was that it granted owners the right to set a market rent on a vacant unit. It was enacted by the State of California, not by the City of Berkeley which in fact vigorously opposed the law.

Despite these challenges, Berkeley's rent control program has remained effective in stabilizing rents, protecting tenants from unfair evictions, and preserving affordable housing in the city. According to a 2015 study by the Urban Displacement Project, rent-controlled units in Berkeley were much less likely to experience displacement than market-rate units, and were more likely to remain affordable over time.

Today, Berkeley's rent control program continues to be a cornerstone of the city's housing policy. The city has taken steps to strengthen and expand the program, including increasing the maximum annual rent increase to 3.5% and implementing new eviction protections for tenants. The city has also explored new approaches to addressing the housing crisis, including building more affordable housing and increasing tenant protections for vulnerable populations such as seniors and disabled tenants.

The annual rent adjustment depends on the CPI; it is not 3.5%.

In conclusion, the history of rent control in Berkeley is a story of how tenant activism and political action led to the establishment of one of the most successful and effective rent control programs in the country. Despite legal challenges and changing laws, Berkeley's rent control program has continued to provide crucial protections for tenants and preserve affordable housing in the city. As the housing crisis continues to impact communities across the country, Berkeley's rent control program offers a model for how cities can protect tenants and ensure access to affordable housing.

Conclusion very much shows a left-leaning bias, likely reflecting the predominance of such opinion in the source material. It judges rent control to be a raving success mentioning no counter arguments.

Bill Proposes Grants to Convert Vacant Offices to Housing

J.K. Dineen, *San Francisco Chronicle*, February 28, 2023

In the three years since the pandemic emptied out downtown San Francisco, the idea of converting office buildings to housing has been discussed ad nauseam in the city's civic and political circles.

There have been special reports, panels, academic white papers and architectural studies all exploring the feasibility of converting vacant office buildings into housing.

Yet, despite the interest, the number of actual conversion applications that have come into the city planning department can be counted on one finger. Only the owner of 988 Market St., the historic office building next to the Warfield Theater, has submitted a conversion application. Another housing group bought a building at Sutter and Taylor and intends to convert it to housing, but has yet to file paperwork with the city.

Now, Assembly Member Matt Haney has introduced legislation that could make office-to-residential conversions faster, easier and less expensive. Taking a page from a program in place in the Canadian city of Calgary, it would even offer grants to developers willing to do conversions.

The Office to Housing Conversion Act, or AB1532, would “stop local governments from slowing down or killing office-to-housing conversions by making their approval automatic and imposing strict time limits on all building permits,” according to Haney's office.

It would also “block local governments from ‘nickel-and-diming’ projects to death by capping unnecessary fees and design requirements.” The creation of a fund — the California Downtown Recovery Catalyst Fund — would provide grants to projects that turn unused office space into housing.

The legislation could face opposition from local groups that won't want to lose control of the planning approval process. In addition, the idea of giving taxpayer grants to developers will likely be opposed by some.

The bill is being sponsored by YIMBY Action, which advocates for legislation that will remove barriers to housing production.

“Isolating jobs from housing was always a mistake,” said Laura Foote, executive director at YIMBY Action. “It's time to use the space we have to reimagine what's possible for our downtowns. It's time to create vibrant, mixed-use communities.”

Since the pandemic began, San Francisco has struggled to bounce back, with a 27 percent vacancy rate and a daily

occupancy rate that is roughly 40 percent what it was prior to March 2020. About 35 percent of Bay Area residents currently work from home. Downtown San Francisco currently has about 150,000 fewer workers on an average day than it had before the pandemic.

Haney said that “turning empty offices into housing is one of the only paths forward to saving our downtowns.”

“How people work was permanently changed by the pandemic and the downtowns that relied on commuters are starting to look like ghost towns,” said Haney.

Under the legislation, city councils, boards of supervisors and planning commissions would not have the power to deny and delay conversions. Conversions would be allowed in all parts of cities, regardless of local zoning. And planning departments would have to respond to all conversion applications within 90 days.

All projects would have to ensure that 10 percent of proposed units be affordable to low- and moderate-income families, which is significantly less than the 22 percent currently required in San Francisco in new developments.

Based on the program in Calgary, the California Downtown Recovery Catalyst Fund will provide grants on a square footage basis to projects located in high density, historic downtown areas that convert unused office space to housing.

Haney said the details of who would be eligible for conversion grants — it would likely target projects with higher levels of affordability — would have to be worked out.

“It's not going to be every building, but there are a number that could work,” he said. “We have a desperate need for housing and plummeting demand for office space so this just makes sense.”

He said the legislation was crafted with the input of developers and those in the construction trades who are looking at potential conversions, and their message was clear: “It has to happen quickly. They can't have a bunch of fees piled on top. And it should happen without a lot of roadblocks.”

And Haney said the issue isn't going away: As current leases start to expire over the next few years, the office vacancy rate could jump even higher

“This is a statewide challenge,” Haney said. “California has a number of cities that have been the slowest to recover. Our downtowns were built for a different type of work where most people came to cubicles in big office buildings. Those workers are not coming back.”

Court: Rent Control Applies to Berkeley Remodel

Bob Egelko, San Francisco Chronicle, March 11, 2023

Court: Rent control applies to Berkeley Rehab

Bob Egelko, San Francisco Chronicle, March 11, 2023

In a victory for advocates of rent control, a state appeals court says Berkeley can limit rents on two apartment buildings that the owners bought as rooming houses in need of repair, which they upgraded and provided to new tenants.

The Costa-Hawkins Act, a 1995 state law supported by property owners, barred local governments from enforcing rent-control laws on single-family homes, condominiums and new apartment units. The provision at issue in the Berkeley case exempted housing from rent limits if the owner received a "certificate of occupancy" after Feb. 1, 1995. A rooming house is a home where tenants share some spaces, like kitchen or bathroom facilities.

The two properties, three-story homes on Dana Street and Warring Street near downtown Berkeley, were purchased by new owners in 2012 and 2014. They built new rooms, staircases and entrances, converted each building to a three-unit "triplex" apartment, then obtained new certificates of occupancy from the city because the buildings had formerly been classified as single-family homes, though they had been used as rooming houses with numerous residents.

After renting the apartments, the owners claimed exemp-

tions from Berkeley's rent-control law. But the city's rent board said four of the six new units had previously been rented for residential use and were subject to rent control. On Thursday, the 1st District Court of Appeal in San Francisco agreed. "These four units reflect a mere conversion from one form of residential use to another, rather than an expansion of the housing stock," Justice Alison Tucher said in the 3-0 ruling, upholding a decision by Superior Court Judge Stephen Kaus in the city's favor.

The intent of the Costa-Hawkins Act, Tucher wrote, was "exempting new construction from local rent control, so long as a property owner played by the rules and obtained a certificate of occupancy."

She cited a precedent-setting decision by another state appeals court, in the Burien case in 2014, allowing local rent control of a building whose owner converted it from an apartment to a condominium and then received a new certificate of occupancy.

Because the four Berkeley apartment units "were converted from space long dedicated to residential use, Burien teaches that Costa-Hawkins does not exempt them from local rent control as new construction," Tucher said.

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Tiffany Van Buren, BPOA Deputy Director

Preparing Your Residents for Power Outages

Berkeley has been dealing with some extreme weather events, from wildfires and windstorms to rising water tables and atmospheric rivers. A couple weeks ago a perfect storm of rains and high winds produced mud slides and felled trees, taking out power lines and plunging much of Berkeley into darkness. In moments such as this some residents seem bewildered, unable to correlate the storm with the loss of power. They submit a maintenance request, hoping a quick flip of a breaker switch will solve the issue, and are distressed to learn they have to wait on PG&E to fix the outage because they were not prepared to handle a complete loss of electricity.

I've put together this "Power Outage Preparedness" checklist with some helpful tips for you to pass on to your residents so they can feel a little better the next time they're hit with an unexpected or planned power outage.

- If PG&E is in their name, they can sign up for PG&E Outage Alerts. It's free.
- Don't panic, and don't call your housing provider. PG&E will send crews to assess the situation and work on restoring power as quickly and safely as possible. There is nothing your landlord can do.
- Make sure all heat-producing appliances (ovens, stovetops, irons) are OFF to prevent fire when power is restored.
- Unplug computers and other electronics that could be damaged by a surge in power when power is restored.
- If it's cold outside, keep window coverings closed to preserve heat.
- Have battery or solar-powered light sources on hand for emergencies. Avoid using candles! The last thing

you need is an apartment fire during a power outage. Stick to safe alternative light sources.

- Keep a power bank charged for your cell phone & laptop.
- Keep your fridge door closed. The more frequently the door is opened, the warmer it will become inside the fridge.
- Keep non-perishable food that doesn't require cooking on hand for emergencies.
- To extend the shelf-life of perishables, place bagged ice in bowls in the fridge.
- Put your milk/things you want frequent access to in a cooler with a bag of ice.
- If you have a gas stove, you can use a match to carefully light a burner. Better yet, keep a battery-powered electric "plasma" igniter on hand — they're safe and inexpensive.
- Wear extra layers of clothes to stay warm. Wrap up with a blanket.
- If it is safe to be on the roadways, spend time at a friend's house who has power, visit a café, or go to the library.

No one enjoys power outages, but with some advanced planning, they can be a lot less stressful. So, when nasty weather is in the forecast or you hear about an upcoming planned PG&E outage, sharing these tips with your residents can save you the frustration from answering those "Sorry, there's nothing I can do!" phone calls, and give your residents the opportunity to get themselves better prepared.

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PROPERTIES

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Demolition Permits Issued for 28-Story Downtown Apartment Building

Andrew Nelson, *Sfyimby.Com* March 1, 2023

Zoning permits have been filed to demolish five properties ahead of construction for the 28-story residential tower at 1974-1998 Shattuck Avenue in Downtown Berkeley, including 1950, 1974, 1984, 1998 Shattuck Avenue, and 2071 University Avenue. The property, extending along Shattuck from University Avenue to Berkeley Way, is set to become the tallest tower in Berkeley, rising 317 feet tall, higher than the UC Berkeley Campanile Tower.

NX Ventures is the project developer. Trachtenberg Architects is responsible for the design. Renderings show the building wrapped with an off-white metal cladding punctuated by floor-to-ceiling windows.

The covered outdoor decks will create focal points on the 14th floor and rooftop. Along the base, the retail will be wrapped with double-height curtain wall glass.

The project is poised to create 599 new apartments with a rooftop restaurant and ground-level commercial space. The application uses the State Density Bonus Program to achieve its height and apartment capacity. Senate Bill 330 has provided the project with ministerial streamlining.



While 1974-1998 Shattuck Avenue is set to become the tallest tower in Berkeley. There are two more applications in the city's pipeline set to contribute to a burgeoning skyline. Close to the Downtown Berkeley BART Station, Landmark Properties aims to create 326 apartments at 2190 Shattuck Avenue with a 268-foot tower also de-

signed by Trachtenberg Architects. Further east, the slab-like 288-foot tower for 2128 Oxford Street by Core Spaces could create 485 apartments. Designed by DLR Group, the modern design will bring a contemporary style overlooking the UC campus.

The 317-foot tall structure will yield about 412,400 square feet, with 396,030 square feet for housing and

16,370 square feet for commercial space. The project uses the State Density Bonus program, exceeding base zoning by 50%. Of the 599 units proposed, 60 will be deed restricted as affordable housing for prospective tenants earning less than half of the Area's Median Income. Current plans include parking for 154 cars and 256 bicycles, though further access is expected on the ratio to meet future tenant and retail needs.

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Appeals Court Rules for City of Berkeley

The case drew arguments from both sides of the rent-control issue. The California Apartment Association and the San Francisco Apartment Association filed briefs in support of the property owners, while the city attorneys of San Francisco and Oakland sided with Berkeley.

This ruling will not promote or encourage the renovation, adaptation, and expansion of existing aged housing stock," said Curtis Dowling, a lawyer for the two apartment associations. He said the owner of each property "expanded the housing supply in Berkeley by converting each into a triplex, and is now effectively being punished economically by the Berkeley Rent Board for having done so."

Scott Freedman, lawyer for the property owners, said they would probably seek review of the case from the state Supreme Court.

"We fear that the effect of this ruling will be to discourage the creation of new housing, and the investment in rehabilitation of the existing housing stock," Freedman said.

But San Francisco City Attorney David Chiu said a ruling in the property owners' favor "would have upended consensus interpretation of the law and set a flawed precedent effectively allowing landlords to opt out of rent control."

California Rental Housing Association

CalRHA has taken positions on key policy bills introduced this year. Bills are beginning to be set for policy committee hearings and CalRHA has scheduled a Lobby Day in Sacramento for April 2023. Below are some of the bills CalRHA is opposing or supporting.

Legislation CalRHA is Opposing — Top Threats

- **AB 919 (Kalra, D-San Jose) Sale of Rental Properties: First Right of Offer** — Would require an owner of residential real property, defined to include a single-family residential property that is occupied by a tenant or a multifamily residential property to take various actions before offering the residential real property for sale to any purchaser, soliciting any offer to purchase the residential real property, or otherwise entering into a contract for sale of the residential real property.
- **SB 567 (Durazo, D-Los Angeles) Tenancy** — Spot bill that is intended to change the statute for no-fault just cause evictions, expand the population of protected tenants, and lower the annual rent cap. *Note: this would only apply to those units currently subject to state law AB 1482.*
- **SB 466 (Wahab, D-Fremont) Costa-Hawkins Rental Housing Act** — For more detailed information, check out the BHRC Corner.

Additional Legislation CalRHA is Opposing

- **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 309 (Lee, D-Milpitas) Social Housing** — This bill would define "social housing" for purposes of the Zenovich-Moscone-Chacon Housing and Home Finance Act and make findings and declarations relating to social housing and would state the intent of the Legislature is to further the Social Housing Act to address the shortage of affordable homes by developing housing for people of all income levels, prioritizing low-income households.
- **AB 1317 (Carillo, D-LA) Unbundled Parking** — Would require the owner of residential real property that provides parking with a residential unit to unbundle parking from the price of rent ("unbundled

parking" selling or leasing parking spaces separate from the lease of the residential use).

- **ACA 1 (Aguiar-Curry, D-Woodland) Lowering of Voter Threshold** — 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 395 (Wahab, D-Fremont) Statewide eviction database** — Would state the intent of the Legislature to enact subsequent legislation that would require landlords to report all evictions to a new statewide eviction reporting database.

Legislation CalRHA is Supporting

- **AB 42 (Ramos, D-San Bernardino) ADU Sprinkler Requirements** — Current law prohibits a local agency from requiring an accessory dwelling unit to provide fire sprinklers if they are not required for the primary residence. This bill would prohibit a local agency from imposing or enforcing any requirement to provide fire sprinklers for any dwelling with a total floor area of less than 500 square feet.
- **AB 932 (Ting, D-San Francisco) Junior ADU: Application Approval Time** — Would streamline ADU applications from 60-days to 45-days.
- **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.
- **SB 569 (Glazer, D-Orinda) Renter's Tax Credit** — Would require that the Franchise Tax Board recompute 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 help determine the outcome.



Office Buildings Might Yield Housing for Thousands in City

Noah Arroyo, *San Francisco Chronicle*, February 26, 2023

More than 2,700 housing units could theoretically be built in downtown San Francisco by converting 12 office buildings to residential use, according to a study by a local architecture firm.

The firm, Gensler, identified the properties in the Financial District by analyzing a slew of characteristics, like how easily the interiors of older office buildings could be retrofitted into desirable apartments and condominiums.

San Francisco's downtown remains hollowed out, recovering from the COVID-19 pandemic more slowly than the urban cores of other American cities. Real estate developers are transforming offices into housing in other places, but San Francisco's costs have convinced some in the building industry and city government that such conversions are not financially feasible here, at least not without government subsidies or incentives.

Gensler's findings — that one-third of buildings it analyzed were good candidates — are the latest evidence that projects could be doable in San Francisco, too. Conversions, among the nearly 50 ideas from Mayor London Breed to revive downtown, could add to the city's housing inventory while diversifying the downtown area with more residents and an economic ecosystem to support them.

"It's really the single-use office culture in what we're calling the downtown area, during the pandemic, which is what we think has led it to becoming this ghost town," said Holly Arnold, project director at Gensler. The company provides design services on conversion projects, and stands to gain financially if more happen.

Remote work exacerbates the problem, leaving many office buildings with unused space or entire firms not renewing leases or walking away from them. Yet almost no conversions are in motion in San Francisco. The government could encourage the projects with policy changes that provide the "money to help these structural upgrades that will be needed in plenty of these buildings," Arnold said.

If all 12 office buildings were converted, it would create an estimated 2,775 housing units, said Amy Campbell, design architect and senior associate at Gensler. That could help San Francisco avoid the heavy penalties that would come with failing to build a state-mandated 82,000 units over the next eight years. More importantly, said Gensler staff, the work could help slow or reverse the downtown area's decline, which is projected to cause property tax

revenue shortfalls and cuts to citywide public services in coming years.

Of the buildings it analyzed, the company gave the Chronicle five addresses that were particularly good candidates for conversion — though that doesn't necessarily mean that housing would be their highest and best use, staff said. Many are decades older than the crown jewels of the city's business district, like the Salesforce Tower, which would be far more expensive to convert.

The five include 575 Market St., which Chevron built in 1975 as part of its headquarters. Inside the 40-story, nondescript masonry shaft there are tall ceilings and panoramic views, as well as subterranean parking, according to the building website. Nearby 601-605 Market St., built in 1917, has 14 stories. About four blocks north is 417 Montgomery St., built in 1936, with 10 stories and a Planet Fitness on the ground floor. Another good conversion candidate is 475 Sansome St., 21 stories and built in 1969, a stone's throw from the Transamerica Building. An outlier is the much newer 275 Sacramento St., built in 2000 and with eight stories.

Gensler used publicly available property information and a proprietary scoring system to judge how suitable downtown San Francisco's buildings were for conversion, with higher scores indicating that projects would be easier and more profitable to developers. The system factors in the shape and size of a structure's floors, its "envelope" or outer skin, parking and loading zones, and aspects of the surrounding area like walkability and public transportation. The company used interns to conduct the assessments.

The company provided only five specific addresses out of the dozen buildings it determined were likely candidates. Some owners didn't want their properties' addresses shared, staff said, likely to avoid public pressure to convert or giving "a false impression to current or potential tenants." When contacted for comment by the Chronicle, two owners declined and three did not respond.

Turning an office building into homes is complicated, running up a tab often high enough to kill a project in the crib. Major expenses can include adapting plumbing and electrical systems for individual living spaces, rather than congregate work environments.

Gensler scored a random selection of 36 buildings on a 0-100% scale, finding 12 that scored at least 75%, the cutoff

continued on page 16

Cal Move Out: Help Student Residents Have a Sustainable Move Out, Avoid Fines!

It's almost that time of year again! Avoid fines up to \$1000 for illegal dumping during Cal Move Out (mid May to early June). Property owners and managers have an important role in ensuring that public health and safety are protected as students move out at the end of the academic year. Any objects that are dumped on the curb are a violation of City policy and a public safety hazard.

Tips to avoid fines: Plan ahead, Call the City at (510) 981-7270

- Order extra curbside pick up or short-term dumpsters
- Schedule free bulky waste pick up (1-4 unit properties)
- Schedule free curbside mattress pick up (1-9 unit properties)
- Purchase prepaid trash or plant debris bags at the *Transfer Station* or *Ace Hardware*
- Visit the City's *Zero Waste webpage* for additional information on the City's waste and recycling services (mattresses, short-term dumpsters, bulky item collection, etc.)

Tips for recycling and reusing: Inform tenants how to reduce waste

- Sort your waste: Use your curbside bins for recycling and compost
- Recycle most electronic devices for free with ewasteCollective.org
- Tell student tenants to visit CalMoveOut.com — a website designed by students, for students — to learn about how to donate (or claim) reusable furniture and household items and have a sustainable Move Out
- Check the RE:Source Guide at www.StopWaste.org for local reuse, repair, recycle & safe disposal options for everything from batteries & bicycles to clothes & furniture
- Spread the below message to all tenants!

Please share the following information with your tenants who are moving out:

1. **Safety First! Do NOT dump unwanted items or furniture on the curb.** Materials left on the curb pose a risk to the homeless population, sanitation workers, people using the sidewalk, and elderly or vulnerable neighbors. It is illegal to leave materials on the curb and can result in imprisonment or hefty fines.
2. **Plan ahead.** Make a plan for what you will do with your furniture and unwanted items before your lease expires.
3. **Take advantage of Cooperative Reuse,** a student-led initiative to give reusable household items a new home. Reusable furniture and mattresses collected and made available, May 19-30 at the SW parking lot of Clark Kerr. Visit CalMoveOut.com for more information.
4. **Donation resources.** Check out RE:Source Guide at www.StopWaste.org for a list of places that are still accepting donations. Unopened food can be donated at BerkeleyFoodNetwork.org and during Cooperative Reuse program dates.
5. **Dispose of waste properly.** See the Ecology Center's sorting guide (www.resourcefulapp.com/berkeley#sorting) and tips for keeping curbside recycling safe. Drop off up to 2 mattresses and 2 electronics per visit at the *Berkeley Transfer Station* for free. To drop off additional electronic waste, check out the *ewasteCollective* (ewastecollective.org/electronics-recycling) or drop off electronic waste during Cooperative Reuse program dates.
6. **Visit CalMoveOut.com** — a website designed by students, for students — for more tips and resources about a sustainable Move Out.

Look out for more resources from the BPOA in your inbox this May.

QUOTE OF THE MONTH

The trouble with most folks isn't so much their ignorance, as knowing so many things that ain't so.

— Josh Billings

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Gas Appliance Phase-Out in the Bay Area

zero-NOx water heaters. (A different estimate for the air district provided by Energy Environmental Economics, a San Francisco energy consultancy, found that new electric panels cost roughly \$4,300 for single-family homes and just under \$3,000 for low-rise, multifamily homes.)

Are there tax incentives or rebates to replace appliances?

The Inflation Reduction Act passed by Congress last summer includes \$8.8 billion in rebates for home energy efficiency and electrification projects, with more than \$582 million allocated for California.

These rebates will be available to the public in 2024, according to the California Energy Commission. They include an \$8,000 rebate for heat pumps, a \$1,750 rebate for heat pump water heaters and \$4,000 for electrical system upgrades.

Available now for both heat pumps and electric water heaters, a tax credit covers 30% of costs up to \$2,000.

What other concerns exist surrounding these regulations?

Some public commenters at Wednesday's approval meeting highlighted ongoing power outages from the latest atmospheric river to hit California, and voiced concerns about access to heat and hot water in power outages when the regulations take effect.

The air district said Wednesday that another common concern is that electrical system upgrades can take a while, and may leave residents stranded in an emergency.

In response, air district staff said loaner programs of natural gas-fired appliances could be used as upgrades occur.

What is the Bay Area Air Quality Management District?

The BAAQMD creates regulations regarding air quality and air pollution in the nine counties of the Bay Area. It is governed by a 24-member board of directors made up of locally elected officials from each county, with the number of representatives proportional to each county's population.

The agency is best known among the public for its Spare the Air campaign, which alerts residents when air quality is forecast to be unhealthy.

How do these rules compare to other all-electric rules in the region?

California has ambitious plans for an all-electric future: In September, Gov. Gavin Newsom signed climate bills that will require the state to become carbon-neutral by 2045 and produce 90% of its electricity from clean sources by 2035.

No natural gas power plants are to be built. The state plans to ban the sale of new natural gas-fueled heaters by 2030 — a few years after the Bay Area regulations passed Wednesday — though the plan hasn't been formally approved. By 2035, Californians for the most part will not be able to buy new gasoline-powered cars.

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, April 13, 3:00 PM	Mold, Mildew & Mayhem: Protecting your Property
Thursday, April 20, 3:00 PM	Monthly Owners Forum with Sam Sorokin, Premium Properties
Wednesday, April 26, 12:00 PM	Guaranteed Rent Payments? Tell Me More!

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.

Landlords Can Ask Applicants for Criminal History

Bob Egelko, San Francisco Chronicle, March 21, 2023

Ninth U.S. Circuit Court of Appeals Ruling Impacts Oakland, Berkeley

Cities can't completely prohibit rental property owners from asking prospective tenants about their criminal history, although they can prohibit owners from excluding all tenants who have criminal records, a divided federal appeals court ruled Tuesday.

The 2-1 ruling by the Ninth U.S. Circuit Court of Appeals in San Francisco struck down part of an ordinance in Seattle and will also affect laws in Oakland and Berkeley that ban nearly all questioning about an applicant's criminal record. But the court approvingly cited a 2014 San Francisco ordinance that lets owners of affordable housing consider a would-be renter's convictions from the previous seven years.

That ordinance, the Fair Chance law, allows an owner to reject an applicant whose record raises serious concerns about safety, as long as the renter has a chance to present evidence of rehabilitation and recommendations from others.

While San Francisco argued in a court filing that cities should be allowed to go further and ban nearly all inquiries about tenants' criminal records, the court said the

Fair Chance law showed that a local government could protect prospective renters from discrimination while remaining "significantly less burdensome on speech" by the property owners.

On the other hand, Judge Kim Wardlaw said in the majority opinion, owners have no right to automatically exclude all tenants with past criminal convictions. Laws

in Seattle and other cities against such prohibitions serve the legitimate purposes of "reducing barriers to housing faced by persons with criminal records and lessening the use of criminal history as a proxy to discriminate on the basis of race," Wardlaw wrote.

She said formerly incarcerated people are nearly 10 times as likely as the general population to experience homelessness or housing in-

security, and the disparities were far more likely to affect racial minorities than whites.

The court set aside a federal judge's 2021 ruling upholding the entire Seattle ordinance and told the judge to decide whether the city's ban on excluding all applicants with criminal records could stand on its own.

On the other hand, Judge Kim Wardlaw said in the majority opinion, owners have no right to automatically exclude all tenants with past criminal convictions.

APRIL MEETINGS & EVENTS

Mold, Mildew & Mayhem: Protecting your Property

Thursday, April 13, 3:00 PM

Monthly Owners Forum with Sam Sorokin, Premium Properties

Thursday, April 20, 3:00 PM

Guaranteed Rent Payments? Tell Me More!

Abode Services: a non-profit helping to bridge the gap between property owners and potential residents

Wednesday, April 26, 12:00 PM

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

BPOA WORKSHOPS — Go Beyond the Basics

California Rent Control – Round 3?

Andrew Stephens, Yieldpro.Com, March 20, 2023

A new rent control initiative, titled the *Justice for Renters Act*, has been cleared by the California Attorney General to begin the process of collecting enough signatures to qualify it for the ballot.

Who's behind it?

The proposition is being sponsored by some of the same people who were behind the two most recent rent control propositions, Proposition 10 in 2018 and Proposition 21 in 2020, both of which failed to pass by wide margins. Chief among them is Michael Weinstein of the AIDS Healthcare Foundation (AHF), a non-profit which provides HIV/AIDS medical care in 45 countries around the world. In the two previous efforts to pass a rent control ballot initiative, AHF provided the bulk of the funding.

It is interesting that a daughter organization of AHF called the Healthy Housing Foundation (HHF) is a California landlord. The organization operates thousands of low-income housing units in the Los Angeles area. It acquired most of them by buying disused hotels and converting them to apartments. HHF has run into its own problems with tenant satisfaction. While this experience might have made AHF and HHF sensitive to the need for landlords to have enough revenue to properly maintain their buildings, this does not seem to have changed their opinion on the desirability of rent control.

State of play

Currently, rent control in California is governed at the

state level partly by the 1995 *Costa-Hawkins Rental Housing Act* which limited the ability of local governments to impose new rent control ordinances. It exempted single-family homes and condominiums and housing built after 1995 from rent control.

It is also governed by the *Tenant Protection Act of 2019*, which imposed a limit on rent increases of five percent plus local inflation (total cap of 10 percent) in any twelve-month period. This act sunsets January 1, 2030.

Hearing from both sides

A press conference by the proponents of the *Justice for Renters Act* scheduled for March 14 has been postponed to a currently unspecified date.

A presentation on the potential impact of the *Justice for Renters Act* by the Howard Jarvis Taxpayers Association is scheduled for March 30 at 12PM PDT.

The short description approved for the initiative reads:

EXPANDS LOCAL GOVERNMENTS' AUTHORITY TO ENACT RENT CONTROL ON RESIDENTIAL PROPERTY. INITIATIVE STATUTE.

Current state law (the CostaHawkins Rental Housing Act of 1995) generally prevents cities and counties from limiting the initial rental rate that landlords may charge to new tenants in all types of housing, and from limiting rent increases for existing tenants in (1) residential properties that were first occupied after February 1, 1995;



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2519 Bancroft	1	\$3,195 to \$3,595
Higby	st-3	\$2,848 to \$6,950
Jones Berkeley	st-3	\$2,484 to \$5,335
Aquatic Shattuck	st-2	\$2,640 to \$7,940
Hillside Village	st-3	\$3,350 to \$6,800
Aquatic Fourth Street	st-2	\$2,635 to \$5,251
Varsity Berkeley	st-3	\$2,500 to \$7,000
URSA	st-3	\$2,895 to \$6,595
Sterling Berkeley Collection	st-3	\$2,884 to \$7,500
Common Bosco	studio	\$1,774 to \$2,880
Parker	st-3	\$2,633 to \$9,001
Berkeley Central	st-2	\$3,272 to \$7,131
RISE	studio	\$1,650 to \$3,300
The Durant	st-2	\$1,906 to \$7,400

from page 11

Turning Offices into Housing

for good candidates. With that hit rate, San Francisco is no outlier city — across the hundreds of office buildings that Gensler has analyzed in North America, a similar proportion were suitable for conversion.

Additional buildings in San Francisco could be suitable today, Campbell said, because office vacancy has generally risen. More than 24% of office space was vacant in summer 2022, when the study was done, according to real estate brokerage firm CBRE. Vacancy rose to a historic high of 27% by the year's close.

Conversions could become attractive in coming years, said Doug Zucker, principal at Gensler. Some owners will still be paying off the loans they used to buy their buildings,

and if property values fall too far to justify continued payments then they might sell them, even at a loss.

"When that happens, we're going to have this tremendous opportunity," he said. At lower prices, developers could be more willing to buy and adapt them, especially if the government sweetened the pot with eased impact fees or tax abatement programs.

"Say this building is \$100 a square foot from penciling out," Zucker said. "It's a 100,000-square-foot building. So, OK, that's \$10 million. Let's just find \$10 million.

Let's give property tax relief for the next 10 years for this building — it now pencils and somebody is going to do it."

from page 15

New Rent Control Initiative

(2) single-family homes; and (3) condominiums. This measure would repeal that state law and would prohibit the state from limiting the right of cities and counties to maintain, enact, or expand residential rent-control ordinances. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on the state and local governments: Overall, a potential reduction in state and

local revenues in the high tens of millions of dollars per year over time. Depending on actions by local communities, revenue losses could be less or more.

Supporters of the measure have until August 28 to collect the 546,652 signatures from among California's nearly 22 million registered voters required to qualify it for the ballot.

Criminal History Ruling

Wardlaw's decision drew partial dissents from the other members of the panel. Judge Mark Bennett said a property owner "who prioritizes the safety of other tenants" should be allowed to reject any applicant with a criminal record. But Judge Ronald Gould said cities that seek to protect tenants against discrimination should be able to bar all questioning about criminal history.

Property owners could still get pertinent information about an applicant's "rental history, income history, character references, job history," and could ask for references from others who have rented to the prospective tenant, Gould said.

The federal government, under Presidents Barack Obama and Biden, has issued "guidance" statements saying property owners nationwide should consider ending all questioning about prospective tenants' past convictions. "Criminal history is not a good predictor of housing success" and its use can result in discrimination, the Depart-

ment of Housing and Urban Development said in a report last June.

Tuesday's ruling was praised by the Pacific Legal Foundation, a nonprofit property-rights supporter representing owners who challenged the Seattle ordinance.

"The Ninth Circuit's decision recognizes that the First Amendment protects the right to ask questions and receive information relevant to our livelihoods," said Ethan Blevins, the foundation's lawyer in the case.

Despite the court's favorable reference to San Francisco's approach, Jen Kwart, spokesperson for City Attorney David Chiu, said the city would have preferred a ruling that barred all inquiries into rental applicants' criminal records.

"We are disappointed the court struck down this portion of Seattle's ordinance because we believe strongly in reducing barriers to formerly incarcerated people," Kwart said.

Editorial

There are other incidents where local controls aggregate into an ersatz state policy detrimental to the state as a whole. Local control of land use has, over the years, resulted in the profound housing shortage in California with concomitant expensive housing throughout the state. Local control of schools resulted in patterns of overt discrimination and differential educational quality from district to district. As a result, the state has had been forced to institute overlays on land use and school financing in a (largely failed) attempt to rectify these problems.

The danger of extremes is not limited to the left. It is not hard to imagine a small city with a hard-core conservative population pulling from libraries those books found to be disagreeable. (I can't imagine that a city could set its own abortion law, but I don't know that they can't.)

The state should preclude extreme local laws by having statewide control — or at least minimum/maximum parameters — on most issues of wide concern and major consequence. With a population of forty million, it is less likely — in fact, unlikely — that one would get the most extreme positions codified into law. An electorate that diverse would preclude such extremes. Even an overly one-sided government like that now in Sacramento — Democrats firmly in control of the governorship and both

houses — would not allow rent control which controlled rents on newly-vacant apartment units. In fact, to reiterate, it took the state to overrule cities on this issue.

California allows local cities too much autonomy. The result is inconsistent policy in important areas which are not municipal in nature. As owners of rental property, most if not all of us would argue against any rent controls. However, if there are to be limits on rent increases, they should be statewide, or at least they should vary only in different regional housing markets. Likewise for health and safety issues, educational policy and other areas which would be more logically delineated and administered at a broader level.

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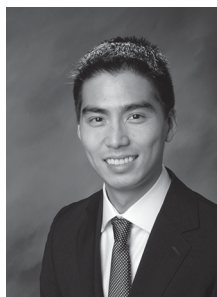
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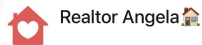
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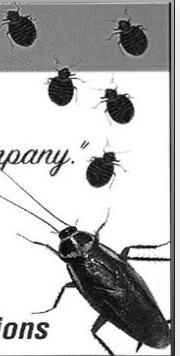
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***Guaranteed Rent Payments?
Tell Me More!***
Wednesday, April 26, 12:00 PM

Check the BPOA calendar for more details.



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