

SEP
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The Advocate for
Berkeley's Rental Housing Providers

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Buying Washing Machines & Dryers for Rentals

Mark Tarses, President, BPOA

When buying washing machines and dryers, the most important thing to remember is that you don't pick appliances for rentals the same way you pick appliances for your own home. The main difference is that with rental appliances, the rule is always — keep it simple.

- The machines should have a minimum number of controls. Be skeptical of touch screens. They can be confusing, they can be very expensive to replace, plus they are more likely to break than turn knobs.
- Don't buy machines with 'Wow!' features. A lot of washing machines have features designed to impress people but that have little or no use, like phone apps and remote controllers. Why would you want to turn on your washing machine by remote control?
- The controls should be easy to understand. Turning on a washing machine should not require lessons. If the controls are complicated, you will get calls from your tenants needing instructions.
- Stick with well-known brands like G.E., Whirlpool, and LG. Spare parts are always available. Don't try to impress your tenants with exotic brands. Parts can be hard to find and can take a long time to get. Get white washers and dryers.
- Never buy compact washing machines unless you have no other option. A full-size load washing machine is only 3" wider than a compact machine, but it holds twice as much laundry. Compact washing machines are frustrating. Front loading washing machines and dryers are more efficient than top loaders but cost about the same. If you buy a machine that needs HE detergent, post a big sign on the machine reminding the tenants of that fact.
- Never reuse washing machine hoses. Get new braided stainless steel hoses. Burst rubber hoses are #1 cause of household flooding!

SEPTEMBER EVENTS

Monthly Owners Forum

Thursday, September 21

Fall Social Mixer

Tuesday, September 12, 5:30 PM

How to Create a Lease Package

Wednesday, September 27, 3:00 PM

Save-the-date! Holiday Party

Thursday, December 14, 5:30 pm

See pages 13 & 14 for details & more events!

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Editorial

Time to Go, Joe

Albert Sukoff, Editor

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

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About the Newsletter

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

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

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

This country will be better served if neither Joe Biden nor Donald Trump run for president in 2024. The Quinnipiac poll reports that only 24% of voters want Biden to run again and only 30% want another Trump candidacy. The voters are right. We do not need a presidential election which is all about whether Trump actually lost the 2020 election and/or whether Hunter Biden is a scam artist who got a slap on the wrist by his father's DOJ.

Trump is an egomaniacal gadfly who doesn't deserve to ever see public office again. His four years in the White House showed a mercurial personality whose world view was whimsical at best. He didn't seem to understand the job and was reckless in both temperament and policy. He is an unabashed blowhard with a tangential relationship with the truth. His attempt to deny the presidency to a duly-elected successor establishes him as a genuine autocrat with no respect for the rule of law. There appears to be no underlying principles which guide his life. In fact, his history, before and after his presidency, convincingly establishes him as a career criminal.

Donald Trump, stripped of money, power, bravado and ego, is no more than the obnoxious uncle you do not want to invite to Thanksgiving dinner. He is a bully, but for a third of the Republican Party, he is their bully. He understands their grievances and plays up to them. As the primaries are structured, Trump will likely win the Republican nomination for president next year. He will do this in 2024 just like he did in 2016. While half or more of his rivals could likely beat him one-on-one in any Republican primary, they split the vote so that 20-25% can win an entire state delegation to the Republican convention.

It is pretty clear that most of the country would sigh in relief were Donald Trump to drop out of the race. As he is apparently driven only by ego, this isn't about to happen. He will likely be the Republican nominee. *The problem is that a second loss to Joe Biden is in no way assured.*

The scariest thing about Joe Biden is that he could put Donald Trump back in the White House. There is much positive one could say about Biden's half-century of public service. It doesn't matter. The country pretty much doesn't like him. His support is tepid at best.

Biden has three things going against him. First, his 82nd birthday is just weeks after the 2024 election. Joe Biden and I were born a couple hundred miles and a month apart. I watch him age with sympathy and understanding. I know his mind is more adept than it appears when he stumbles through a speech or a press conference. Politics, however, is perception. The perception is not good. He may or may not be up to another four years, but much of the electorate believes that he is not.

Then there is Hunter Biden who may or may not be as innocent of wrongdoing as the proverbial new-born lamb. But again, this is politics. Perception is everything. At issue will be his drug abuse, children out-of-wedlock and influence pedaling for profit. Fairly or not, the president's son will be an issue in the 2024 campaign and it will hurt Biden.

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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.**

Surviving in a Highly Regulated Market

One of the biggest pitfalls to owning and operating rental housing in Berkeley is the extreme amount of regulation placed upon an operator. Since 1978, Berkeley has been one of the most highly regulated markets in the United States, second only to New York which implemented rent regulations in 1969 due to increasing rents in post-war construction.

Many common industries in the world are regulated — and appropriately so. Industries like tobacco and medicine may hold a person's life in their hands. Others like the financial service industry may hold a person's life savings in their hands. But what about housing? Should someone's personal property have a level of regulation equal to the financial services or medical industries?

Every time the state or a local governing agency layer on regulation, the time and investment it takes to inform the public on the regulation can be overwhelming. Most government agencies don't have the budget or capacity to properly inform the public of the new regulation. This often leads to unintended violation of regulations by rental housing providers. Social housing activists love to use those missteps to further the story that rental housing providers are nothing but "evil, greedy landlords that wants to evict every tenant that isn't paying market rent." The Rent Board Chair (Leah Simon-Weisberg) especially loves to keep this mantra going.

In our decades of assisting Independent Rental Operators (IROs) on how to manage Berkeley rentals, BPOA has gotten thousands of calls asking us to explain the meaning of regulations. We at BPOA pride ourselves on being able to break down the language of the law into more digestible explanations of their applicability. We have found that as much as the Rent Board says they are there for rental housing providers, most of their communications and outreach budget goes to informing residents of their rights. That leaves our organization as the primary point of contact to explain the regulations.

We also spend a considerable amount of time and our funding to fight increased regulations. We know that many of our members have small profit margins for their rental and depend heavily on the income to be able to

keep the property. Every regulation (and often an associated fee) that gets added to the mix makes it that much harder to be an Independent Rental Operator.

The Berkeley Rental Housing Coalition is the political and legal arm of the association and is responsible for acting as the watchdog and defender of increased regulations. We anticipate that 2024 will bring increased regulations as politicians vie for their political seats. Housing is used as both a weapon and a currency when it comes to gaining votes for office. That means we as organization will be asking you to financially contribute to specific fights that we know will impact the way you do business.

We know it may hurt to reach into your pocket for a sizeable donation, especially if you have been impacted by the recent drop in rental prices or a loss of income to the Eviction Moratorium. But paying the piper upfront is bound to guarantee financial savings in the future. If you see real estate as a long game (and you should) then you will understand the importance of these financial political investments.

Be sure to join us for our Special Membership meeting on Saturday, October 14 at 10:00 am where we will present an outlook for 2024.



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Berkeley is Adding New Housing at the Fastest Rate in Decades

Nico Savidge *Berkeley*, July 25, 2023

Eight housing developments are under construction within a few blocks of the Center Street parking garage in downtown Berkeley, so rush hour gets underway early.

The steady stream of workers in hard hats and bright orange vests who descend on the garage each weekday after 2 p.m. is one more sign of a building boom that has Berkeley adding housing at the fastest rate in decades, according to data analyzed by *Berkeley*.

The city approved plans for nearly 900 homes in 2022 — the most housing Berkeley has permitted in any year since at least 2001, which was the farthest back planning staff could dig up data.

Another 828 newly built units were added to the city's housing market last year, more homes than Berkeley has added in at least the last 32 years, according to housing supply data tracked by two state agencies — the departments of Finance and Housing and Community Development — that go back as far as the early 1990s.

It stands to reason that the last time Berkeley built housing at this rate was even farther in the past.

"It probably is the biggest boom we've seen since the '60s," Mayor Jesse Arreguín said in an interview.

Berkeley historian Charles Wollenberg agreed, saying the city has only seen this much housing construction during a handful of other chapters in its history, including the years after World War II, the recovery from the destructive 1923 wildfire and as displaced San Franciscans swelled the East Bay's population after the earthquake and fire of 1906.

And city officials are planning for the building surge to accelerate: State mandates call for Berkeley to approve nearly 9,000 homes over the next eight years, or about 1,100 units annually.

Several factors have fueled Berkeley's boom, perhaps most importantly the massive demand for student housing. New development has been concentrated around downtown Berkeley and the Southside neighborhood near the UC Berkeley campus, and many of the projects cater to student renters.

High interest rates and soaring construction costs have slowed housing production in other cities, but did little to dampen interest in building in Berkeley: The 828 homes

completed in 2022 more than doubled the 295 units finished in 2021. Meanwhile, San Francisco added 2,910 units last year, down from 5,600 in 2021.

Housing production data from the first half of 2023 was not available, Planning Director Jordan Klein said.

But Arreguín said developers still appear to be interested in Berkeley despite economic headwinds.

"There is a huge need in Berkeley for new housing, particularly to serve the UC Berkeley campus," Arreguín said. "I haven't seen a real slowdown."

State housing laws have also sped up the approval process

for new developments and limited cities' authority to block or delay projects, from backyard cottages to high-rise apartments.

And Arreguín pointed to Berkeley's changing approach to housing — the city cracked down on construction after the 1960s, practically banning apartments and drawing national attention for its efforts to block development over the ensuing decades. More recently, though, Berkeley has adopted plans that

called for denser development downtown, streamlined approvals for accessory units and launched efforts to rewrite zoning rules for every residential neighborhood of the city to encourage more housing.

Arreguín, who is running for state Senate in part by touting a shift toward embracing housing that matches Berkeley's, said the city is seeing the fruits of those efforts.

"The policies that we have been working on over the past decade — from the Downtown Plan to what we're doing to rezone parts of our city for greater density — [are] making an impact," he said.

Affordable housing production falling short

Berkeley exceeded its state mandate for housing production from 2015 to 2022, approving permits for 4,631 homes over that eight-year period compared with a target of 2,959.

But while state mandates call for cities to approve homes at a mix of income levels, the overwhelming majority of the housing approved in Berkeley was for wealthy renters — those making over 120% of area median income, which now stands at about \$100,000 per year.

The city approved permits for 691 homes between 2015 and 2022 that were affordable to renters who are consid-

Berkeley approved nearly 900 homes in 2022, far surpassing state housing production goals, but fell well short of targets for affordable homes.

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Natalie Orenstein, *Berkeleyside*, August 21, 2023

A regional bond measure could fund affordable development in Oakland, Berkeley and beyond at a size and scale never seen before.

A measure likely headed to Bay Area ballots next year could raise money for affordable housing at a scale never seen before in the region.

Efforts are underway for an affordable housing bond for the nine-county Bay Area in 2024 that could provide \$10 billion to \$20 billion.

“Siloing housing resources and development county-by-county hasn’t really solved the problem,” said Kate Hartley, director of the Bay Area Housing Finance Authority. The Bay Area has an inherently regional dynamic, she said, with many residents working and socializing in one county but living in another.

But between and within individual counties, there are a range of appetites and abilities to build affordable housing.

The idea behind the proposed regional bond is that “all of us will be working together at the same time,” Hartley said. “That’s never happened before — and with a huge amount of resources relative to what we typically have.”

The Bay Area Housing Finance Authority, or BAHFA, was created by the state legislature in 2019 to address affordable housing needs on a regional level — the first such entity in California. BAHFA’s board is the same as the Metropolitan Transportation Commission’s but the Association of Bay Area Governments also helps make decisions for BAHFA. MTC and ABAG directed BAHFA to plan for the 2024 bond measure.

Mayor Sheng Thao represents Oakland on the BAHFA board, and former Mayor Libby Schaaf serves alongside her as the federal Department of Housing and Urban Development representative. Alameda County Supervisor Nate Miley, who represents part of Oakland, is also on the board, potentially giving the city considerable sway over the regional board’s decisions.

Carol Dutra-Vernaci, the mayor of Union City, is representing Alameda County cities including Berkeley.

If BAHFA approves the housing bond measure next year, it will go straight onto voters’ ballots in the nine Bay Area counties for the November 2024 election.

The bond would be repaid through an increase in property taxes, at a rate of roughly \$10 per \$100,000 of assessed value, if it’s a \$10 billion bond. So a homeowner of a

house assessed at \$500,000 may be taxed at \$50 or \$100 annually, depending on the size of the bond.

Each county would receive a share of the bond money equivalent to what their residents paid in taxes — a “return to source,” Hartley said. BAHFA would keep 20% of the revenue to distribute as it pleases. More than half of the revenue would need to be spent on new construction of affordable housing, with some reserved for the preservation of existing homes.

Oakland would get its own large chunk of affordable housing funds.

In addition to the county allocations, the largest Bay Area cities — Oakland included, but not Berkeley — would get their own special allotments. If voters approve a \$10 billion bond, Oakland would receive roughly \$383 million. Alameda County would get around \$984 million, some of which could also end up being spent in Oakland.

“This amount of money would be unprecedented — it’s billions with a ‘B,’” said Angelina Cornejo, campaign strategy coordinator with East Bay Housing Organizations, which is leading the bond measure campaign in Alameda County along with the St. Mary’s Center.

Despite the regional nature of the proposal, “each county has its own mini-campaign within the broader one,” enabling conversations around the unique needs in each corner of the Bay Area, said Cornejo. “We want people to weigh in.”

Some public officials and activists already seem to be counting on revenue from the bond. The measure gets mentioned often at meetings about the local housing crisis, as the explanation for how cities or the county will solve vexing housing problems or fund an ambitious idea.

But the measure would come before a hugely diverse Bay Area, where even neighboring cities differ on how to fund affordable housing and whether to raise property taxes. During the same 2022 election when Oakland passed its infrastructure bond, Berkeley rejected a similar measure. In cities that did recently pass bonds, lots of property-owning voters might not want to sign up to pay even more in taxes.

And the regional measure would need strong support to pass: general obligation bonds require approval from at

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Rent Control is Constitutionally Vulnerable

Alexander Talel, Wall Street Journal, August 15, 2023

Is rent control constitutional? To look at the case law, the answer would appear to be yes. The Supreme Court “has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular,” as Justice Thurgood Marshall put it in *Loretto v. Teleprompter Manhattan CATV Corp.* (1982).

But the justices have also acknowledged that the rules have to be “appropriate” and that “if regulation goes too far, it will be recognized as a taking for which compensation must be paid,” as Justice Oliver Wendell Holmes wrote in *Pennsylvania Coal Co. v. Mahon* (1922). New York state’s Housing Stability and Tenant Protection Act of 2019 amended New York City’s rent-stabilization regime in a way that makes it ripe for a constitutional challenge.

New York’s Rent Stabilization Law, originally enacted in 1969, compels certain city landlords to accommodate de facto permanent tenancies at well below-market rental rates. Before 2019, however, landlords could exit the rent-stabilization scheme under certain conditions. The 2019 law eliminated those exceptions.

A group of landlords sued and lost. In February, the Second U.S. Circuit Court of Appeals affirmed the trial court’s decision that rent stabilization, even in its 2019 version, isn’t a government taking, which would require compensation under the Fifth Amendment. The landlords have petitioned the justices to hear an appeal.

The 1969 law was followed by the Emergency Tenant Protection Act in 1974, which allowed the state to renew rent stabilization on declaration of a housing “emergency.” The state has since regularly made that declaration, preventing rent stabilization from expiring, although 1993 amendments allowed landlords to escape rent stabilization when an apartment became vacant or a tenant’s income and the monthly rent both rose above a certain threshold. The 2019 law effectively eliminated both deregulation and the “sunset provision” — the date by which rent stabilization expires absent an “emergency” declaration — thereby ensuring that rent stabilization will apply forever to every covered apartment.

After several unsuccessful legal challenges to previous iterations of the law, *Community Housing Improvement Program v. City of New York* challenged the 2019 version.

The Second Circuit applied *Penn Central Transportation v. New York City* (1978), a Supreme Court decision involving a challenge to the city’s landmarks-preservation law. *Penn Central* encourages courts reviewing a takings claim to engage in “essentially ad hoc, factual inquiries” by considering several factors, including the statutory scheme’s economic impact on a landowner, the extent to which the scheme interferes with a landowner’s investment-backed expectations, and the character of the governmental action. The Second Circuit held that rent stabilization doesn’t invariably do economic harm to landlords and that the Legislature’s judgment was entitled to broad deference.

But that formulaic determination gives short shrift to the economic harm of rent regulation — which other policies implicitly acknowledge. New York state offers a tax abatement for residential construction developers who

have allowed a portion of new units to be rent-stabilized. If government is compensating property owners who voluntarily provide below-market rental apartments, how can it refuse to compensate those it compels to do so? The onerousness of the taking effected by rent stabilization undermines its stated purpose of increasing the availability of

affordable housing units. Owners of buildings with rent-stabilized apartments have begun “warehousing” them — keeping them vacant to prevent permanent occupation by commercially damaging tenants.

Instead of *Penn Central*, the appellants had urged the Second Circuit to apply a more context-specific standard set out by Justice Antonin Scalia. Writing in *Pennell v. San Jose* (1988), Scalia argued that where a price regulation designed to cure a social ill encumbers a property whose owner has neither created nor contributed to that ill — in this case the hardship to which a market rent subjects a tenant — the regulation amounts to a taking. Scalia’s opinion in *Pennell* was joined only by Justice Sandra Day O’Connor.

The Second Circuit’s opinion cites Scalia’s proposed standard in a lengthy footnote, which concludes as follows: “We decline to employ a test that has never been adopted by the Supreme Court.” That was the right thing to do; appellate courts are obligated to follow the precedents of the Supreme Court. The petition for appeal is an opportunity for the justices to take another look.

New York’s 2019 law is so onerous that the Supreme Court may revisit the issue for the first time in years.

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Announcement: Join us for a Special Member Meeting!

Where Will 2024 Take Us? • Saturday, October 14 @ 10:00 AM

Join our Special Members meeting (either in-person or via Zoom) to vote on our proposed new Bylaws, elect our 2024 Board of Directors, and hear about what's on deck politically for 2024.

Our in-person event at Workstation West Berkeley on 6th St will provide coffee, pastries, and networking ahead of the meeting.



Read the proposed bylaws at: www.bpoa.org/bylaws

WORKSTATION – West Berkeley • 2247 6th Street



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Rent Control Vulnerable

Scalia's standard cuts against the notion that a legislature's "broad authority" to regulate the landlord-tenant relationship insulates such regulation from serious constitutional scrutiny. "The fact that government acts through the landlord-tenant relationship," he wrote, "does not magically transform general public welfare, which must be supported by all the public, into mere 'economic regulation,' which can disproportionately burden particular individuals."

Scalia further pointed out that the "traditional manner in which American government has met the problem of those who cannot pay reasonable prices for privately sold

necessities — a problem caused by the society at large — has been the distribution to such persons of funds raised from the public at large through taxes, either in cash (welfare payments) or in goods (public housing, publicly subsidized housing, and food stamps)."

New York's rent-stabilization scheme is at heart a public-welfare program. It may be a worthy one. But it uses private property for a public purpose. The Constitution therefore requires its cost to be borne by the general public, whether through a tax benefit or some equivalent compensation applicable to all affected buildings.



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Tiffany Van Buren, BPOA Deputy Director

Maximizing Your Membership Experience: Touring the BPOA Website Part 1: The Member Compass™

BPOA launched its new website in December 2021, a state-of-the-art platform designed for association management. As thrilled as we were with our upgraded website, we understood that with changes come challenges. Members had to reset their passwords, content was organized differently, and occasionally, a member would happen upon a broken link. In less than six months our “new” website will be two years old! At this point in time, if you’re avoiding the website because you’re uncomfortable with it, that’s a problem we need to fix! Our website lies at the core of member engagement; therefore, over the next few months, I will write a series of short articles, giving you a section-by-section tour. This month, we’ll take a look at the Member Compass™.

The Member Compass™ Dashboard is an area tailored to your membership with BPOA; it’s the page that you land on when you sign on to the website. In the upper right, you’ll see your membership badge with your company name, the year you joined BPOA and the date your current membership will expire. We give a brief explanation of the Member Compass, and in bold font, we’ve added a link that allows you to “*access Intellirent quickly.*”

Along the left side of the page is a column of tabs. With these, you can:

- **Pay Balance** — Submit an online payment using a credit card.
- **Account History** — View &/or print your billing and payment history.
- **My Events** — View upcoming and past events you’ve registered for.
- **Profile** — Update certain information in your member profile.
- **Login & Password** — Change your password and turn two-factor authentication on or off.
- **Payment Methods** — Add a new credit card.
- **Company** — Update certain information in your company profile.
- **People** — If you are the primary member of your company, you can add a co-owner or business partner by clicking this tab. Co-Owners/Partners inherit membership benefits at no additional cost.

See a blue rectangle with a number in it and the words Registered Event? Then you’ve registered for an upcoming webinar, meeting, or social mixer! Click directly below where it says, “View Your Events >” to see the details, including an option to save the event to a calendar of your choosing. Options include Apple, Google, Outlook Desktop, Outlook 365. Pro tip — If you’ve registered for a Zoom webinar, check your Member Compass™ 15 minutes before the start time; your unique Zoom link will be posted in the blue Registered Event box.

What else can I access from my Member Compass™? We’ve added four of the most popular topics from our Content Library as headings, ensuring that the most recent content in each category is easy to find!

- **Information & Resources** — Here you’ll find such resources as our Security Deposit Deduction Guide, the Berkeley Rental Housing Fee Schedule, and the Eviction Moratorium (Update).
- **On-Demand Webinars** — Here’s where you’ll find links to the webinar recordings, which are posted one week after the live presentation.
- **Housing Provider 101** — If you’re new to Berkeley rental housing or need a refresher on the basics, our executive director created this series geared specifically towards you.
- **BPOA Newsletters** — Did you know that we post a digital copy to the website every month? Currently, our online newsletter archive goes back to October 2020.

If you haven’t been utilizing your Member Compass™, I urge you to spend some time exploring. You may be surprised at how useful it is.

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Housing Needed Despite Slow Growth

Emily Hoeven, *San Francisco Chronicle*, August 15, 2023

California's population is expected to remain relatively flat through 2060 but — much to the chagrin of NIMBYs — that doesn't obviate the need for new housing.

A new Public Policy Institute of California analysis found that increased housing production in most large cities hasn't offset pandemic-accelerated population declines. With lower birth rates and families flocking to suburban single-family homes, city household sizes are shrinking. As a result, fewer people are spreading out across more units — and supply still hasn't caught up with demand.

The state's requirement that local governments plan for 2½ million homes by 2030 is critical to addressing this glaring need. But when I checked on local progress, the results weren't pretty.

San Francisco — the city that can never seem to get out of its own way — is high on the Housing Naughty List.

In January, the Board of Supervisors unanimously approved plans to build 82,000 units in the next eight years. But not much has happened since. Although the board did recently slash cumbersome affordable housing requirements and reduce fees that often make projects unrealistic for developers, it's slow-walking another key bill spearheaded by Mayor London Breed.

The legislation would, among other things, eliminate unnecessary hearings and approvals for projects that already meet zoning requirements. But it isn't set to be heard in a key committee until September — even though it was introduced in April and the state housing department considers it critically important.

"Why does it take six months to do something we already said we were going to do?" Jane Natoli, San Francisco organizing director at YIMBY Action, asked me. "There's not a lot to debate."

San Francisco approved an average of just eight housing permits per month in February, March and April. At this comically slow pace, Natoli pointed out, it would take the city 850 years to build the required 82,000 units. That's absurd and shows just how desperately San Francisco's bureaucratic processes need to be overhauled.

Unfortunately, things aren't looking much better in Marin County, where only three of 12 jurisdictions have state-approved housing plans.

One of the noncompliant cities is Mill Valley, which a neighborhood group recently sued over its plans to build a 45-unit affordable housing complex. The lawsuit accuses

the city of, among other things, concentrating all of its affordable housing in "the least affluent and most diverse area" of Mill Valley, thus violating a state requirement to "affirmatively further fair housing."

There's no question that Mill Valley should strive to build affordable housing throughout the city; the state housing department said as much in a July 28 letter rejecting its latest plan.

But it's disingenuous to claim a fair housing violation when the area in question is 70% white and has a median household income of about \$124,000, Jenny Silva, a YIMBY watchdog and board chair for the Marin Environmental Housing Collaborative, told me.

"This is not a poor neighborhood by any stretch of the imagination," Silva said.

Indeed, the neighborhood group — which explicitly opposes high-density housing — seems more concerned with the building's five-story height than it does with fair housing practices.

Patrick Soluri, the group's attorney, said the issues are related. "If the city actually did a legitimate site inventory and identified other (affordable housing) sites ... then they wouldn't need to construct so many units" at this particular location, he told me.

The case causes Silva to fear that fair housing could become "the next CEQA."

Just as the California Environmental Quality Act is often abused to delay or deny climate-friendly projects, rich communities may start filing fair housing lawsuits arguing that affordable housing should instead be built in even wealthier areas, Silva said.

The state Housing and Community Development Department said that fair housing law "should not be used to prevent affordable housing from being built in a particular community but should be used to ensure that affordable housing is being built in all communities."

Yet some cities still seem to be intentionally misinterpreting the concept.

Santa Monica, for example, asked the housing department in April for permission to backtrack on its approved plan to permit higher-density buildings in key commercial

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Golden Gate Fields: 140 Acres of Prime Waterfront Land. What Happens When it Closes?

Nico Savidge, Berkeleyside, July 19, 2023

The sudden announcement of Golden Gate Fields' impending closure could set off the most dramatic showdown yet between developers and open space advocates who have long coveted the 140-acre waterfront site that straddles the Berkeley-Albany border.

With sweeping views of San Francisco, the Golden Gate and Mt. Tamalpais, the property has alternatively been envisioned as a park that would restore a large piece of the East Bay shoreline or the site of a bustling center of homes and offices that would boost tax revenue for the two cities.

The former Bay Meadows race track in San Mateo, which closed in 2008, offers one example of what could replace Golden Gate Fields' grandstand, oval track, stables and expansive parking lots. More than 1,000 homes have sprung up on that site, part of a major redevelopment that also included corporate offices, restaurants, a school and parks built around a new Caltrain station.

But former Albany mayor Robert Cheasty contends inspiration for the future of Golden Gate Fields should come instead from the bayside parks that border it to the north and south.

"This presents a great opportunity to take the Golden Gate Fields property and incorporate it into the McLaughlin Eastshore State Park," said Cheasty, a co-founder of the group Citizens for East Shore Parks. "It's not a great site for a lot of development — it's a great site for a park."

Whether developers agree with Cheasty remains to be seen. It's also not yet clear how the track's owner, the Stronach Group, will handle the property or any potential sale once its final racing season wraps up. Asked by email about those plans, spokesman Stefan Friedman referred a reporter back to the company's press release about the closure, which did not address that topic.

Still, tight zoning rules for the site give supporters of park space an early advantage.

As it stands now, a Bay Meadows-style redevelopment is off the table: Zoning codes in both Berkeley and Albany prohibit new housing on the property and allow for only a few types of commercial uses, such as restaurants. The city border runs just south of the racetrack, putting about 40 acres in Berkeley and 100 in Albany.

Loosening those limits wouldn't be a simple process. In Berkeley, Planning Director Jordan Klein said the city would likely need to update a master plan for the area that dates to 1986 before it could change zoning for the property. Berkeley is in the midst of a multi-year process to update its Waterfront Specific Plan, but Golden Gate Fields wasn't included in the effort.

The process would be even tougher in Albany, where a 1990 ballot measure championed by Cheasty and other development opponents requires approval from voters to make any changes to Golden Gate Fields' zoning.

The prospect of development at the track, which represents a major source of tax revenue for Albany's schools and local government, has long been one of the small city's most contentious debates. While several would-be builders have put forward visions for projects at Golden Gate Fields as horse racing's popularity waned over the decades, none of the projects made it far enough to test voters' appetites.

Cheasty said he believes residents share his group's opposition to redeveloping the site.

"We've had a pretty consistent run of support for having open space and parkland on the waterfront," he said.

More than a decade ago, Albany undertook a lengthy public process meant to gauge residents' desires for what could one day replace Golden Gate Fields. That outreach led to a report adopted by the City Council in 2010 that called for reserving three-quarters of the property as open space, while allowing limited commercial development — with no housing — on no more than 27 of its acres. A survey conducted as part of the process found two-thirds of respondents were opposed to new housing at the site.

Cheasty said he is optimistic that the restrictive zoning rules will help limit the property's price, making it easier for park supporters to pull together funding from various sources to acquire and restore it.

While it's unclear what the property might fetch on the open market, Alameda County assessed the two parcels and facilities that make up Golden Gate Fields at just over \$68 million in total this year.

Developers have long wanted to turn the property into a bustling commercial center, while open space advocates hope it becomes a park.

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Rent-Control Proposal Will Doom Seattle's Housing Supply

Penton Mott, the Seattle Times, July 31, 2023

After years of fighting multifamily development, banning micro-housing, fining new construction and adding regulatory hurdles to existing homes, Seattle City Councilmember Kshama Sawant has exacerbated a housing shortage in Seattle. It would be hard to tailor-make a set of policies better suited to decrease the housing stock.

Renters are rightfully mad at the result. Rents have increased drastically since Sawant's tenure began. Most of the new housing that has been created is luxury, the only type that pencils out. Her solution? Further barriers to the housing supply. Sawant is the sole sponsor of a policy initiative to cap rents at current rates for all time, which is not legal in Washington at this time. Under her proposal, rents would be allowed to move with inflation, but could not increase to cover expenses, improvements or most emergencies.

Rent control has been discredited by economists again and again, leading Assar Lindbeck, former chair of the Nobel Prize in Economics Committee, to assert, "In many cases, rent control appears to be the most efficient technique presently known to destroy a city — except for bombing." It is one of the only things some economists agree on since the law of supply and de-

mand shows that price ceilings result in shortages. Not what most growing cities want.

Without an incentive to provide a superior product, the housing stock will deteriorate and the motion inherent in cities will calcify. In Berlin, a rent-control measure was quickly rolled back after active apartment listings dropped by half. In San Francisco, Stanford researchers found a loss to renters of \$2.9 billion. New York City consumers lose \$500 million annually according to a 2004 Harvard paper.

The final hypocrisy of Sawant's plan is Seattle will become a less welcoming place, increasing the commute time and carbon footprint of newcomers as builders move to more lucrative locales outside the city. Whether housing should be a government service can well be debated, but instead of offering a new way to provide housing, this policy shuts down the one we have and would ensure Sawant's legacy of depressed housing stock remains long after she departs in December.

If price controls aren't the solution, what is?

- Rental subsidies: Expand existing housing voucher programs without distorting market dynamics.
- Zoning reform: Upzone urban spaces to increase density.

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Berkeley Building Boom

ered moderate-, low- or very-low income, representing just 15% of new approvals and less than half of the state target for affordable housing. Berkeley is far from alone in this trend, as cities such as Oakland also fell well short of their affordable housing goals.

Ian Winters of the Northern California Land Trust, a nonprofit working to build an affordable housing project in South Berkeley, said the shortfall is a funding problem. Affordable housing developers face the same increases in materials costs as better-financed market-rate builders, Winters noted, who are their competition when potential housing sites come on the market.

"The scale of subsidy hasn't kept up with the increase in costs," Winters said. "Everyone has made meaningful investments, but it's not enough to bridge the gap between the huge increase in construction costs and land costs."

Arreguín said Berkeley has worked to produce more affordable housing, pointing to efforts such as the \$135 million bond Measure O that helped finance the afford-

able Berkeley Way and Jordan Court apartments, which opened last year, as well as the 87-unit Maudelle Miller Shirek Community now under construction at Adeline Street and Ashby Avenue. And there have been efforts to raise more money at the local level: Berkeley voters rejected a bond measure last November that would have generated \$200 million for affordable housing, and Arreguín is now campaigning for a Bay Area-wide housing bond planned for the 2024 ballot.

But Arreguín said cities will continue to fall short of state affordable housing targets — which are even more ambitious over the next eight years, calling for Berkeley to approve more than 5,000 affordable units by 2031 — unless they get help from Sacramento.

"We need more funding," Arreguín said. "If the state is serious about requiring local jurisdictions to approve more affordable housing, then they need to put their money where their mouth is — otherwise we're setting up cities to fail, and that's not what we want."

Robbie Sequeira, Kansas Reflector, August 6, 2023

More than 30 states prohibit rent control, but several states considered repeals

With rents soaring since the COVID-19 pandemic tightened the housing supply, more local governments are considering rent control to keep increases in check and, ideally, protect struggling tenants whose incomes haven't kept pace.

At the same time, some states are enacting measures to prohibit cities from adopting rent control, a policy that has long divided economists and housing experts.

Some policy analysts say restrictions exacerbate the housing crunch by keeping tenants in place longer than they'd otherwise stay. And some research has raised questions about whether the true beneficiaries are renters with low incomes or those with high incomes.

Rent regulation policies — known as rent control or rent stabilization — dictate how often and by how much a landlord can increase rents. More than 200 local governments have a rent control policy in place, according to the National Apartment Association, an industry group.

More local governments are working to join the list.

Late last month, Maryland's Montgomery County — one of three Maryland counties to adopt rent control ordinances this year and the state's largest at more than a million residents — capped annual rent increases at 6%.

In Massachusetts, Boston Mayor Michelle Wu and the City Council are struggling to push legislation that would exempt the city from the state's 30-year-old rent control ban.

And in Seattle, the City Council in July debated a rent control proposal; but at an Aug. 1 meeting — amid chants of "housing is a human right" — the proposal failed on a 6-2 vote.

The bill would have created a trigger law that would go into effect in the event that Washington state's 42-year ban on local rent control is overturned. Councilmember Kshama Sawant, the bill's main sponsor, said during the vote that the bill was necessary to prompt the state legislature to repeal the law.

In 2019, Oregon became the first to pass a statewide rent control law, capping increases at 7% a year plus inflation. Later that year, California followed by capping rent increases at 10% per year.

Both states have seen actions to expand rent control.

In Oregon, renters were stunned when last year's high inflation led to legal rent increases of more than 14%. In response, lawmakers this year amended the law to cap rent increases at either 10% or 7% plus inflation, whichever is lower.

In California, voters could change the scope of rent control if they pass the Justice for Renters Act proposal in 2024. The ballot initiative would repeal the Costa-Hawkins Rental Act, a 1995 law that exempts single-family homes and condominiums, plus post-1995 construction, from rent control.

At least 30 states preempt local governments from adopting rent control laws. Five states without statewide rent regulations — Maine, Maryland, Minnesota, New Jersey and New York, along with Washington, D.C. — allow rent control at the local level.

The National Multifamily Housing Council tracked 23 states that had measures related to rent control enactment in the works heading into 2023, but none has led to a statewide measure or repeal.

However, a few states were successful in strengthening preemption laws this year.

In March, Florida Republican Gov. Ron DeSantis signed off on a bill preventing local rent control.

Montana enacted a rent control ban on private and commercial property. State Sen. Steve Fitzpatrick, a high-ranking Republican in the legislature, told Stateline that rent control measures could discourage landlords from investing in the state's real estate market.

So far this year, efforts to repeal these preemptions have fallen short.

Legislation that would have repealed Colorado's 4-decade-old ban on local rent control died in a committee. Similar bills in Georgia, New Mexico and North Carolina also failed to advance.

The No. 1 driver of long-term U.S. homelessness, housing policy expand advocates said recently during a joint press call with media members, is rising rents.

Between 2019 and 2021, median rents went up by 12% for renters in households making less than \$15,000, according to the Center on Budget and Policy Priorities, a left-leaning think tank.

continued on next page

- Permitting reform: Reduce the 18-to-24-month wait time on building permits.
- Tax reform: Remove taxes on beneficial things like development. Tax harmful things like carbon emissions.
- Public housing: In 2007, Helsinki, Finland, launched a “housing first” initiative to build public housing. Finland’s homeless population subsequently fell by 35%.

The bill now sits with the eight other council members. Will we position ourselves for growth, or capitulate to debunked populist policy? In an attempt to achieve immortality, the first emperor of China drank mercury. Sawant prescribes the same remedy. Shiny, alluring and toxic.



US Rent Control Overview

According to 2017-2021 census data, more than 19 million renters in the United States are considered rent-burdened, spending more than 30% of their income on rent. In New York City, renters on average spend more than 68% of their income on rent, according to a January Moody’s Analytics report.

There also is a dearth of affordable rental housing. Low-cost rentals fell by 3.9 million units over the past decade, according to the Harvard Joint Center for Housing Studies’ State of the Nation’s Housing report.

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, September 21	Monthly Owners Forum
Tuesday, September 12, 5:30 pm	Fall Social Mixer
Wednesday, September 27, 3:00 pm	How to Create a Lease Package
Thursday, December 14, 5:30 pm	Save-the-date! Holiday Party at Berkeley Yacht Club

And...check out our Rental Housing Provider 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 housing provider in Berkeley. This series is available for playback in the members-only Content Library on our website.

Housing Projects on Bart Land on Hold Due to Dispute with Transit Agency

Matthew Brown, San Francisco Chronicle, July 29, 2023

In June 2022, the City Council approved plans to build up to 3,600 units of transit-oriented housing between the Ashby and North Berkeley stations, located near the borders of Oakland and Albany, respectively. City officials consider the project a critical component to alleviating the Bay Area housing crisis — Berkeley’s housing element for the 2023-31 period calls for 8,934 residential units, up from 2,959 in the previous cycle.

The units at each of the sites would contain a baseline of 35% “below market-rate” affordable housing, with a goal of getting to 50%.

“This project is key to complying with our approved housing element and helping address the critical shortage of housing, not just in Berkeley but throughout the San Francisco Bay Area,” said Berkeley Mayor Jesse Arreguin at a July 18 special meeting.

Berkeley officials have ambitious plans to revitalize the Ashby transit corridor, with the addition of a new plaza, retail space and a permanent home for the Berkeley Flea Market.

Jordan Klein, the city’s director of planning and development, described the effort at the special City Council meeting as “reknitting an urban fabric” — an attempt to right past wrongs. In January 1973, service began at the Ashby Station which was built using eminent domain, shuttering a once vibrant community of predominantly Black residents and businesses.

While BART has agreed with the city on the need for transit-oriented housing — and the critical need for affordable housing in the East Bay — the negotiations are tied up over BART’s proposed replacement, and expansion, of an existing power substation at the Ashby Station. The expanded substation would require a 10,000-square-foot area for maintenance, emergency vehicle access, a temporary substation, a large crane and staging areas.

QUOTE OF THE MONTH

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

— H. L. Mencken

SEPTEMBER MEETINGS & EVENTS

Monthly Owners Forum

with Sam Sorokin, Premium Properties

Thursday, September 21

Fall Social Mixer

Freehouse Pub, 2700 Bancroft Way

Tuesday, September 12, 5:30 PM

How to Create a Lease Package

Wednesday, September 27, 3:00 PM

Save-the-date! Holiday Party

Thursday, December 14, 5:30 pm

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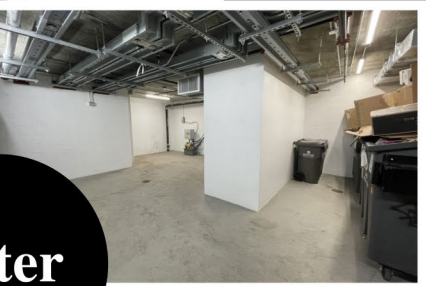
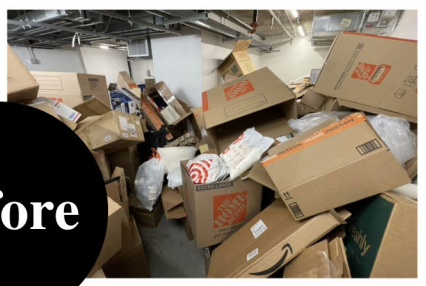


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And then there is Kamala Harris. When I turned 80, I asked *Google* what were the odds that I would see 90. *Google* says 30%. In other words, 70% of 80-year olds will not see their 90th birthday. I interpolated these odds and I estimate that, for 82 year-olds, 28 out of 100 will not reach 86. The US president has access to the best possible health care on the planet, but the job is monumentally stressful at any age. Biden's odds of surviving a second term are probably about one in four. The candidate for vice president in this situation is legitimately worthy of added consideration.

Harris' reviews as vice president have not been great and the country has not taken to her. She is not seen as having the gravitas to be president. Her politics are perceived as San Francisco progressive, i.e. way too far left for the country as a whole. For obvious political reasons, Biden is stuck with Harris. She will not be an asset for Joe Biden in 2024.

As things stand more than halfway through 2023, I would bet that there will be a Biden-Trump race for president and that Biden will win. However, I wouldn't bet much. I have no trouble conjuring up a scenario in which Trump is again elected president.

With libertarian leanings, I do not look forward to either of these guys running the country. Biden is too liberal for my taste, and worse, too beholden to the progressives in his party. Trump, on the other hand, is a petulant teenager who is literally an existential threat to democracy.

Is a third-party candidate an option? In theory, maybe. But recent history implies that could make things even worse. Arguably, Ross Perot cost Bush the Elder the 1972

election while Ralph Nadar put Bush the Younger into the oval office in 2000. For 2024, a group called No Labels is considering running a third slate. The Green Party and the Libertarian Party are both on the ballot in all 50 states. Third-party candidates may take just enough from Biden to elect Trump.

A well-financed campaign with big name support from across the political spectrum with a universally known and respected candidate — like Colin Powell, for example — might pull off a third-party victory. The odds, however, are very much against success and the chances of doing more harm than good are too great. And, besides, Colin Powell is dead.

So...given the not-insignificant chance that Trump could beat Biden, Biden must do the noble thing: pull a Lyndon Johnson and drop out of the race.

Of course, the Democrats would then have to not blow it. The progressive left would have to be denied a veto power over the nominee. They cannot nominate Bernie Sanders, the one Democrat Trump could beat fair-and-square. I'd pick Mark Warner, past governor and current senator from Virginia. Why? He bland as bland can be; almost invisible. He is pretty enough, calm enough, young enough, and articulate enough to be the perfect inoffensive candidate. Juxtaposed with craziness that is Donald Trump, Warner would be an easy winner. So could Amy Klobuchar or Corey Booker. Trump can be kept out of the White House with some certainty if only Biden would step aside and the Democrats don't blow it.

Regional Bond Measure

least two-thirds of voters. An effort to amend the state constitution, lowering that threshold to 55% for affordable housing bonds, is afoot, but it's not guaranteed to pass.

New affordable housing construction is notoriously expensive, with some analyses placing the cost of building a single unit at \$1 million. Even an enormous amount of money like \$20 billion wouldn't create the number of units the Bay Area is supposed to plan for in the coming years.

The state has told the region it should create 180,000 housing units in the coming eight years; Oakland is on the hook for over 26,000 of those, and Berkeley is expected to build 9,000. BAHFA projects that a \$20 billion bond could yield 119,000 units at most.

Ellen Wu, chair of the oversight committee for Measure U, Oakland's 2022 infrastructure bond, said passing a regional measure would stretch the impact of the local revenue much farther.

"The additional funds from a regional housing bond will allow us to have an exponential impact on providing homes for the unhoused and affordable housing for working families," she said.

Whether the measure passes or not, BAHFA aims to become a "self-sustaining regional finance agency" in the coming years, said Hartley, issuing below-market-rate loans for affordable housing construction, and reinvesting the interest it earns on more housing projects.

Rent Control Renaissance

districts. The city argued, ludicrously, that doing so would advance fair housing by “allowing local residents to participate in the local economy.” The housing department said it is still reviewing Santa Monica’s request.

Although some local governments are “encouraging housing production,” others are “trying to get up as close to the line as possible and then sometimes crossing the line,” said David Zisser, housing department assistant deputy director for local government relations and accountability.

The department estimates it sent 173 letters to local governments in the last year reminding them of their obligations under state housing law, including 18 notices of violation. And the Attorney General’s office is repre-

senting the department in several lawsuits against non-compliant cities.

But advocates say there’s no clear predictor of what prompts state authorities to intervene — emboldening NIMBYs to push the limits. Some cities, like San Francisco, seem to be playing a “waiting game — like, ‘Let’s drag this out, let’s go as long as possible, and then maybe we’ll get lucky,’” Natoli said.

These games are getting old. The state needs to call local governments’ bluff and draw a clear line in the sand to ensure California can house not only today’s residents but also tomorrow’s.

Golden Gate Fields

Berkeley Councilmember Rashi Kesarwani, whose district includes the property, said she is open to the idea of development on the city’s portion of the site, noting plans for a large new life sciences campus are in the works just across the Eastshore Freeway at the former home of Pacific Steel Castings.

“Given our city’s growing pension and infrastructure liabilities, I believe we do have an obligation to explore changes that can yield greater revenue for the city’s coffers — and do so in a way that is sensitive to” the property’s waterfront setting, Kesarwani said in an interview. But, she added, “I need to take more time to understand the nature of the site and have greater dialogue with

stakeholders and members of our community.”

In a written statement, Berkeley Mayor Jesse Arreguin said Golden Gate Fields’ closure “presents exciting opportunities” for the site, though he said it was too soon to speculate about what could replace it.

Klein, the Berkeley planning director, said the city expects to work closely with Albany officials in the future to shape what happens next at Golden Gate Fields.

“We care about responsible planning that is good for the region, so I’m sure there will be joint efforts to engage with our neighbors around the future of that site,” Klein said, “but they haven’t started yet.”



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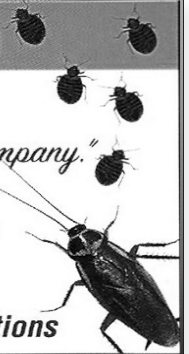
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