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The Advocate for  
Berkeley's Rental Housing Providers

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**There Was No 'Eviction Party'**

Mark Tarses, President, BPOA

On September 12, the Berkeley Property Owners Association held a party to celebrate the end of the city's eviction moratorium. In numerous stories in the press, this party was described as an 'eviction party'. When discussing this matter with other people, I strongly urge you to begin by telling people: THIS WAS NOT AN EVICTION PARTY. Landlords do not have parties to celebrate evictions. However, that isn't the impression you would get from the way the press covered this. Here are some of the headlines of news stories covering this event.

- "Berkeley landlords ripped as 'tasteless and insensitive' for celebratory eviction parties." (msnNOW)
- "Fights erupt at eviction party by Berkeley landlords." (SF Gate)
- "California landlords threw a cocktail party to celebrate the return of evictions. It ended in a fistfight." (Business Insider)
- "Brawls break out while landlords celebrate evictions." (KEPR19)

Here are three key points to remember and tell others:

1. Landlords do not celebrate evictions. I have been a Berkeley landlord for over 50 years, and I can honestly say that I have never heard of an eviction party.
2. Landlords don't make money evicting people. Evictions are expensive. Lawyers make money on evictions. Landlords always lose money on evictions.
3. Berkeley's eviction moratorium was not needs-based. For 3 years, landlords in Berkeley have not been able to evict tenants for non-payment of rent, regardless of whether or not Covid affected a tenant's ability to pay the rent.

Yes, many people did lose part or all of their income because of Covid. That's true, but not everyone lost their income or ability to pay their rent. Not everyone lost their jobs, their trust funds, or their savings. This moratorium was an invitation to abuse. And it was abused.

**OCTOBER EVENTS**

*Monthly Owners Forum*

Thursday, October 19

*EV Charging for Older Buildings:  
How Feasible Is It?*

Wednesday, October 18, 3:00 pm

*Is Your Most Valuable Asset Properly Insured?*

Thursday, November 2, 3:00 pm

*Holiday Party*

Thursday, December 14, 5:30 pm

See pages 13 & 14 for details & more events!

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# Editorial

## Our Goldilocks Climate

Albert Sukoff, Editor

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

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

### About the Newsletter

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

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

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

People in general believe that climate change is a real thing. Digging deeper, however, the issue gets more complicated. Fewer, but still most, people believe that climate change is a global problem with real consequences and that human activity has either caused it or at least contributed to making it worse. However, when the issue becomes what we as a species can do about the problem, the dispute comes into sharper focus. What we *should* do is even more divisive.

Whatever the cause, however, weather events of greater severity seem to have become commonplace. The summer of 2023 saw excessive heat, floods and fires, not only making news, but dominating the news for weeks at a time.

This past summer registered unbearable heat across the southern United States, pretty much from coast to coast. Phoenix seemed to suffer the most, but Texas and Florida were also severely impacted. (Texas also had a winter a few years ago that so taxed its power grid that the state almost lost power.) The August fire in Maui was the worst in the US in over a century. Hugh swaths of Canada burned almost all summer, albeit with less dramatic loss of life. Southern California saw its first tropical storm in over eighty years with a year's rainfall falling in one day causing severe flooding. The Florida Big Bend had its first hurricane in many decades.

All this impactful weather activity raises the question: Is this an anomaly or a new normal? If an anomaly, then this too will pass. If not, we may be in big trouble.

A *PBS Terra* documentary geographically assessed the risk of five natural disasters: heat, storms, fire, flood and drought. The program presented maps showing areas of the United States most vulnerable to each of these phenomena. What was clear from these maps is that the Bay Area — and even more specifically, the East Bay — is about the safest place to live in the entire country.

Alexa, the little know-it-all machine in my office, says that the highest temperature ever recorded in Berkeley was 107; the lowest 24. In almost 60 years of living here, I don't remember a day over 100; maybe one or two overnight temperatures below freezing. The Chronicle last month reported that an 85 broke the record for a day in August by three degrees. An all-time high in a summer month of only 85! What a blessing.

Ironically, three areas of the country most vulnerable to the effects of climate change — Arizona, Texas and Florida — are experiencing the highest levels of in-migration and economic growth. California, on the other hand, has been losing population for the first time since statehood. The press attributes this turn-around in the Golden State to over-regulation, the high cost of living, and increased opportunities for remote employment.

If these and other factors are driving people out of California, will greater immunity to natural disasters countervail? The Bay Area may have had temperatures above historic levels this year but here in the East Bay, we have barely had a day over ninety. We don't get severe storms; heavy rainfall is about as bad as it gets. Like the rest of California, we have had drought years (and yet

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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.**

## *Increased Threat to Private Property Rights*

If managing rental housing in Berkeley feels like it has gotten tougher in the past few years, it's because it has. Increased regulations and a laser focus on rental housing profits have inspired many elected officials to propose legislation that chips away at housing providers' rights.

The past three years have been especially difficult for our members. Our staff has heard repeated horror stories of small owners whose tenants *wouldn't even respond to a request to explain nonpayment of rent* and who, for months on end, didn't pay a dime of rent. There was no recourse on the matter, even if that owner was 100% sure the tenant *could have* paid rent. Some owners even watched tenants acquire new vehicles or were told about the grand vacations the tenants were taking.

Therefore, it may come as no surprise to others in the industry that we, as an organization, wanted to get together to share a collective sigh of relief. We chose to meet and "celebrate" the end of a policy that clearly allowed bad actors to cause extraordinary damage. We weren't there to "celebrate" the ability to kick people out of their homes. No one wants to kick someone out of their home. Most of us just want consequences for actions such as nonpayment of rent, violation of lease, or disturbance of quiet enjoyment for other tenants — something the eviction moratorium had taken away from us.

But leave it to the social housing activists to take it as far as they could. Berkeleyside (a local independent media channel) published the details of the private event, which led to activists organizing a protest in front of the restaurant.

The initial gathering was mild and perfectly representative of Berkeley's free speech movement of the 60s. But it soon turned into a growing number of angry people intent on waging a war against the "evil landlord." They physically tried to prevent attendees from walking into the venue. That quickly turned into the protestors entering the restaurant, surrounding the attendees, and waging a verbal (and sometimes physical) attack on property owners. Armed with a cake that read "Get a Real Job," they smashed it face down on the table in front of one of our members. They chanted, threw food, and grew angrier by the minute.

The chaos of the evening reminded me of a passage in Eric Hoffer's classic, *The True Believer: Thoughts on the Nature of Mass Movements* published in 1951. The author writes, "Common hatred unites the most heterogeneous elements. To share a common hatred, with an enemy even, is to infect him with a feeling of kinship, and thus sap his powers of resistance." This common hatred uniting the protestors of BPOA's private gathering is those of us who own rental housing. The protestors "anti-landlord" movement is fueled by the desire to unite around social housing strategies.

### **What is Social Housing?**

Social housing is rental housing owned and operated by government or not-for-profit agencies. It typically comprises two types of housing: public housing and community housing. In 1976, the Community Ownership Organizing Project wrote *The Cities' Wealth: Programs for Community Economic Control in Berkeley, California*. It focused on "...the techniques of economic and political policy which led toward controlling and reallocating a city's wealth." Moreover, it called for "community control of the police" and "cooperative and community-owned housing [that limits] property speculation and thus deflates or partially expropriates income property values." Many elected politicians today still operate on these philosophies of the 70s. The social housing activists have been indoctrinated by past leaders and strongly believe in their mission to destroy privately held property ownership.

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# *Landlord Sues City of Berkeley to Challenge Rental Unit Registration Requirements*

*Sarah Klearman, San Francisco Business Times, September 15, 2023*

A Berkeley landlord has sued to challenge the legality of a provision in Berkeley's Measure MM that requires owners of certain rental units to pay annual, per-unit registration fees to the city.

Alan Wofsy & Associates, the entity that owns Hearst Commons, a 26-unit rental property in Northwest Berkeley, filed a class action complaint in Alameda County Superior Court Sept. 11, alleging the fees implemented as part of Measure MM, which was voted into law in 2020, violate California's constitution.

Measure MM amended Berkeley's rent stabilization ordinance to apply rental unit registration requirements to between 4,000 and 5,000 units in the city that were previously exempt from that requirement, including single-family homes, condominiums and rental units built after June 30, 1980. Previously, it had only applied to rent-controlled units.

Measure MM also barred evictions of Berkeley renters for nonpayment during state- or local-level states of emergency and limited accessory dwelling units' exemption from rent control unless the unit is the sole ADU on the property of an owner-occupied single-family home.

Neither the city nor attorneys for Alan Wofsy & Associates, helmed by developer and property investor Alan Wofsy, responded to a request for comment Friday.

Units newly covered by the registration requirements under Measure MM have been required to pay an annual fee of \$150 per unit for fiscal years 2021-2022 and 2022-2023, per the lawsuit, which describes those rates as

unreasonable and more than is needed by the city to cover the cost of the program. That, the complaint alleges, is a violation of a clause in California's constitution.

Wofsy's attorneys wrote that the suit was filed on behalf of "hundreds, if not thousands" of property owners who have been required to pay the registration fees under Measure MM since its commencement.

Under Measure MM, exempt rental units — including units owned by nonprofits and units leased to Section 8 tenants — do not pay registration fees, and affordable units that do not qualify for exemption pay \$37 annually. Per-unit fees for non-exempt have since increased to \$178 under Measure MM, according to the website for Berkeley's Rent Board, which sets the fees.

Wofsy bought the 26-unit Hearst Commons in 1998, according to property records; units range in size from roughly 230 square feet to just less than 400, and, as of 2021, rented for between \$1,375 and \$1,600, according to a website for the property. Wofsy, who also owns a smattering of properties in Oakland, previously sued the city of Berkeley over complications related to a proposed residential project in 1989, and took its Rent Stabilization Board to court a few years later in 2000, though the details of that second lawsuit were not available Friday. Wofsy is seeking an injunction on the collection of Measure MM registration fees; unspecified damages; litigation costs; attorneys fees; and a refund of the fees paid by landlords under Measure MM since its enactment, according to the suit.

## *Berkeley Measure MM Registration Fee Class Action*

*Refund Claims, Class Action Lawsuit, & Harsh Penalties • Constitutionality of MM Registration Fees*

*Lance Montauk*

On July 28th, 2020, the Berkeley Rent Board asked the City Council to put a Measure on the November 2020 ballot which, amongst other things, required registration, with a fee, of "partially exempt" rental units — mostly single-family dwellings exempted by Costa Hawkins from rent increase/rent ceiling limitations.

The Board explained that the registration fee would allow the Board to provide "counseling" to those units, claiming they weren't currently receiving this service. The Council agreed, and placed Measure MM on the ballot, but oddly with the opposite argument — namely that the registration fee would pay for Rent Board services those proper-

ties were already receiving. Born of such contradictions, Measure MM passed with 57% of the vote.

California taxpayers have fought for decades against unbridled government controls and taxation, often accomplished through the imposition of "fees", "charges", "assessments", and "levies"; we have passed three Propositions amending California Constitution's Article XIII, to try and limit the damage — Props 13, 218, and most recently Prop 26. Both Prop 218 and Prop 26 were triggered by Courts siding with governmental entities doing end-runs around the Constitutional language. Some positive effects have resulted from these measures — recently

*continued on page 5*

at the urging of the City Attorney, Berkeley’s City Council revamped the refuse collection fee structure to accurately reflect actual costs, instead of sending a few politically favored households absurdly low garbage bills for this municipal service.

Two “partially exempt” Berkeley rental unit owners have independently concluded that the Measure MM fees, passed without the 2/3 majority required by Article XIII, are unconstitutional. However, unlike the City Council, the Rent Board considers itself beyond the reach of the State Constitution. My group of 5 owners recently filed a Claim for Refund from the City, asking for reimbursement of fees and penalties. The second owner, Alan Wofsy, submitted his Claim one year ago, and has now filed a Class Action lawsuit in Alameda County Superior Court — case number 23CV043503 — assigned to Judge Jeffrey Brand. While we share the same goal, it’s reasonable to ask what drives housing providers like ourselves to take onerous steps to vindicate our legal rights, when the registration fees involved are generally not enormous?

### Excessive Rent Board Penalties on Smaller Mom & Pop Landlords

Partly it is because the Rent Board’s Draconian penalty structures frequently violate Civil Code Section 1947.7, which limits the penalties rent control agencies anywhere in the state can impose on good-faith property owners. Here are the first two paragraphs of that law (underlining added):

*(a) The Legislature finds and declares that the operation of local rent stabilization programs can be complex and that disputes often arise with regard to standards of compliance with the regulatory processes of those programs. Therefore, it is the intent of the Legislature to limit the imposition of penalties and sanctions against an owner of residential rental units where that person has attempted in good faith to fully comply with the regulatory processes.*

*(b) An owner of a residential rental unit who is in substantial compliance with an ordinance or charter that controls or establishes a system of controls on the price at which residential rental units may be offered for rent or lease and which requires the registration of rents, or any regulation adopted*

*pursuant thereto, shall not be assessed a penalty or any other sanction for noncompliance with the ordinance, charter, or regulation.*

No one should pay any penalty to the Berkeley Rent Board without first claiming their rights under this Code Section. We property owners asserting our rights under law are not asking for a “waiver” of penalties, since a waiver depends upon the whim of the Rent Board bureaucrats or voting Board Commissioners. Rather we are demanding that a scofflaw Rent Board respect our state’s statutes.

With its terrifying 100% penalties, that double yearly, the Rent Board coerces landlords, especially the smaller ones like our group, who frequently own only one rental property (often inherited from a parent). Over 4,000 owners like ourselves have in the last few years coughed up a million dollars to feed this beast, fattening the Rent Board’s coffers, which currently have a record-high surplus. In fact, the Board’s own data suggests one-third of the Board’s income is from penalties.

As we all know, while this total amount of all fees is large, typically the amounts paid by any individual owner are too small to make it worthwhile to hire a lawyer or otherwise fight the monster. This is part of the Board’s bullying tactics — it believes it can ignore its Constitutional and Statutory obligations and squeeze money out of landlords, especially the smaller ones, who of course have greater difficulty

managing their properties, passing on costs, etc. We send in the money out of fear, unaware we can “preserve” our rights by writing on a check “paid under protest” — or perhaps we do the transaction online and even that mostly symbolic protest opportunity is not available.

Every month the Board’s indifferent bureaucrats consider dozens of requests for so-called “waivers” of Measure MM penalties, thereby creating a sea of paperwork which is exhausting to navigate. Individuals pleading for mercy write in tortured longhand of their travails: the family member who did the books died; someone has terminal cancer; long-term depression has incapacitated a loved-one; political turmoil (such as in Iran) has kept a key property-manager out of the USA; bookkeeping got flummoxed

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# Southside Could Get Taller Buildings to House More Students

Nico Savidge, Berkeleyside, September 5, 2023

## Proposed new zoning rules would allow for up to 12-story buildings on the north end of Telegraph Avenue and surrounding blocks.

A push to rewrite zoning rules to allow more housing in practically all of Berkeley will focus this fall on the city's densest neighborhood.

The Berkeley Planning Commission is taking up a set of zoning changes for the Southside neighborhood on Wednesday that would raise height limits and loosen certain development regulations in the student-centric district near UC Berkeley. If the rules are adopted by the City Council later this year, developers could build up to 12-story apartment buildings along the north end of Telegraph Avenue and several surrounding blocks.

Supporters say the years-in-the-making changes — which affect the area bound by Bancroft Way to the north, Fulton Street to the west, Dwight Way to the south and Piedmont Avenue to the east — will help spur more construction and ease a student housing crunch that exerts pressure throughout Berkeley.

“Without ample units near campus, students end up competing with longtime residents for apartments elsewhere in the city,” Southside Councilmember Rigel Robinson said. “By urgently building new housing that is walking distance from campus, we can curb the gentrifying effect of the growth of the campus community.”

According to the 2020 census more than 11,000 people lived in the census tract that covers most of the Southside neighborhood, where UC Berkeley's nine-story dorm complexes are now the tallest structures.

The Planning Commission will hold a public hearing on the proposed zoning changes during its meeting at 5:30 p.m. Wednesday at the North Berkeley Senior Center.

The new regulations would set an 85-foot height limit for buildings along Telegraph Avenue north of Parker Street, as well as Bancroft Way between College Avenue and Fulton Street, and several blocks of Durant Avenue, Channing Way and Haste Street, among others. That means someone could build a 12-story building along those blocks, thanks to a provision of state housing law known as the “density bonus,” which lets developers exceed local zoning limits by 50% if they include a share of affordable units in the project.

Other blocks would see height limits increased by 10 to 20 feet, though caps would remain the same in a handful of Southside blocks that lie within Berkeley's Hillside Overlay District.

Planning staff are also proposing to loosen mandates for apartment buildings to include open space, by lowering the amount of space projects would have to include and making it easier for developers to meet the requirement. Under the proposed rules, amenities such as fitness centers and multi-purpose rooms, as well as “pedestrian amenity space” at street level outside of a building, could

count toward meeting the open space requirement.

The Southside process is one of several rezoning efforts Berkeley planning staff are developing at the direction of the City Council, which has cast a number of votes in recent years to call for changes to the zoning code.

While actions such as Berkeley's move to abolish single family zoning in 2021

drew regional and even national attention, they only launched processes to draft new land use rules. Over the coming years, those zoning changes will come back before the City Council one by one for final approval — and could become the latest fronts in Berkeley's long-running debates over housing and development.

After taking up the Southside zoning rules this fall, the City Council is expected to decide next year on the results of Berkeley's effort to eliminate single-family zoning, with new development rules that would affect residential neighborhoods throughout the city.

Further in the future, the council is set to rezone certain major streets to allow for greater density, with an emphasis on those in wealthier neighborhoods. And councilmembers have also indicated an interest in one day changing height caps and other development limits downtown.

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*“Without ample units near campus, students end up competing with longtime residents for apartments elsewhere in the city.”*

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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](http://www.bpoa.org/bylaws)  
WORKSTATION – West Berkeley • 2247 6th Street



**UPDATE: This meeting is still planned as an in-person event**

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### Measure MM Lawsuit

during change-of-ownership; registration instructions were confusing or never arrived; and on and on.

These bureaucrats often dismiss such waiver requests because of lack of “evidence” as “required by law” despite the fact that the Board itself, by flouting the Constitution and Statutes, is perhaps the biggest law-breaker in the City. And in any case, why should Berkeley Rent Board bureaucrats be privy to evidence about one’s cancer, or depression, or family crises, or political persecution by a terrorist regime? Why does one need to stoop down and plead for leniency from them? Even when the Board discovers that the penalties it imposed were due to accounting

errors made by the these very same Board bureaucrats, instead of apologizing for the error and the accompanying distress it inflicted on the property owner, the Board merely “waives” the penalty as if it were an act of charity, and blithely moves on to the next target. Never are the property-owners, victims of the Board’s own failures, truly compensated.

Filing claims and pursuing lawsuits are difficult undertakings, just like standing your ground at the lunch counter or on the bus, burning your draft card in public, or chaining yourself to a tree. But such individual acts help protect and sustain our democracy and maintain our civic rights.



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Tiffany Van Buren, BPOA Deputy Director

## Maximizing Your Membership Experience: Touring the BPOA Website Part Two: Exploring the Content Library

In last month's Nuts and Bolts, we explored the Member Compass™, your personal dashboard area of the BPOA website. This month, we'll be looking at the Content Library. Start by hovering your cursor on the Content Library tab. A drop-down menu with four options will appear: Rental Housing Forms, On-Demand Webinars, Rental Housing News, and Rental Housing Topics. Let's take a closer look at each of them.

**Rental Housing Forms**, AKA *The Forms Library*: You'll find our documents and forms here. We've formatted most of our document content as fillable PDFs, but a select few are in Word so that you can customize them for your rental property. Do you need to write a lease? Conduct an RHSP inspection? Serve a Notice of Intent to Enter? Visit Rental Housing Forms! Our forms library houses almost every form and document you need to operate a rental housing property in Berkeley, minus the legal forms — we're not lawyers!

Pro tips: 1) Don't fill out a document while it's open in your browser window; you must first download it and then fill it out. 2) Get into the habit of downloading fresh documents from the website when you're conducting business. We update our lease annually and add and update forms as regulations change; don't risk using a stale document!

**On-Demand Webinars**: While members benefit the most from attending live presentations where they can participate in the discussion and Q&A, we understand that our webinar schedule doesn't work for everyone. We record most of our webinars for playback and post them to the Content Library one week after the live presentation. From the On-Demand Webinars page, you can search for a keyword, such as *Intellirent*, or filter by the topics *Free Webinars*, *Housing Provider 101*, *Owners Forum*, or *Rental Housing* — our catch-all category.

**Rental Housing News**: This is where you'll find our newsletter archives, editorials, and other rental housing-specific news articles. This week, I received an email from a member who hadn't received a paper copy in the mail but was pleasantly surprised to find that he could access the current and back issues on the website. Do you want to look back at what Berkeley was like in those first few months of the COVID-19 pandemic? Currently, you can

read newsletters backdated to October 2020, but we have a digital archive going back to January 2015. You can always find the current issue online, but one of these days, I'd like to make the annals available through 2015.

**Rental Housing Topics**: This tab has a submenu with six different options; *Real Estate Economics*, *Insurance*, *Legal, Policy & Regulatory*, *Property Management*, and *Taxes*. Click one to receive articles on the topic you've selected or click the Rental Housing Topics tab to see all of our rental housing articles in descending chronological order. As our website is still fairly new, not all topics are content-heavy — but we're dedicated to continuing to work on making our content more robust while ensuring it remains current and relevant to Berkeley rental housing providers.

### Corner

from page 3

It is these social housing activists that want to pull us apart. They aim to stress the private rental housing provider to the extent that you go out of business. The more they devalue your property, primarily through increased and strict legislative policy, the more they grab to "reallocate the wealth." Of course, there is no mention of the practicality of such a plan. Or the costs associated with running social housing. Just because you change ownership doesn't mean the repairs, costs, or challenges change.

The only way to survive this mentality is to counter it. And to counter it we must not allow them to break us apart. Now more than ever we must not be afraid to gather, discuss, and educate. We encourage you to put aside your fears and join us for our Special Membership meeting on Saturday, October 14 at 10:00 am where we will present an outlook for 2024. This meeting will be held both in person and on Zoom.

## Beacon Properties

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# Larkspur Approves Rent Control

Adrian Rodriguez, Marin Independent Journal, September 7, 2023

Larkspur has become the second city in Marin to adopt a local rent control ordinance.

After spending more than a year deliberating the issue, the City Council voted 3-1 on Wednesday to approve a rent control program that caps rent increases at 5% plus inflation or 7%, whichever figure is lower.

“This is a big issue,” Mayor Gabe Paulson said Thursday. “I’m proud that we continued a difficult conversation.”

“It’s been such a challenge to keep landlords in business and renters housed,” Paulson said. “But I think we, as policy makers, we have to do that, we have to have this conversation.”

Councilmember Catherine Way cast the dissenting vote maintaining that taking rent control to the ballot would facilitate the most democratic process for such a law.

“It’s an issue of such a strong potential economic impact to so many renters and so many property owners that it really shouldn’t be a decision of the four people on the council, but by the voters of Larkspur,” Way said Thursday.

“Many cities have chosen a referendum on rent control and that makes it so it’s not just the loudest voices in the room, but everyone can participate,” Way said.

When the ordinance takes effect 30 days after the vote, Larkspur will join Fairfax, the first Marin municipality to adopt a rent control ordinance.

The new provision is stronger than state Assembly Bill 1482, or the Tenant Protection Act, which sets the bar at 5% plus inflation or 10%, whichever is lower.

The state law expires on Jan. 1, 2030. The local law is retroactive to May 8 and is set to end on Dec. 31, 2030.

In addition to the rental cap, the ordinance establishes a petition process for landlords seeking a “fair rate of return” that justifies an increase above the ceiling. However, landlords cannot exceed the state rent increase cap.

It also allows the city to charge a fee to administer the program. This will create a rental registry program,

requiring landlords to make annual filings that would be maintained in a database.

“In the meantime, staff is working on some of the plans behind the scenes that we need to implement,” City Manager Dan Schwarz said.

That will include a webpage on the city’s website with information and resources for both tenants and landlords, Schwarz said.

Staff will also be soliciting interest from service providers who can support landlords and tenants. The rental registry program will need to be drafted and vetted at a City Council meeting for approval, Schwarz said.

“I think staff has really learned through this process how much support our tenant and landlord community needs in terms of what the laws are and what their rights

“I’m not just referring to these ordinances, there is a need for both those constituencies everywhere,” Schwarz said. “The rules that govern rent are complicated and people could use help navigating that.”

The rent control law will complement a just-cause-for-eviction ordinance, which is

also retroactive to May 8 and expires Dec. 31, 2030.

That ordinance establishes relocation assistance payments equal to three months’ rent or \$5,000, whichever is greater, for a no-fault eviction.

The ordinance establishes a tenant’s right to return to a dwelling if the landlord chooses to rent the residence within 12 months of eviction. It also has protections for those who are elderly, disabled or terminally ill.

California’s Costa-Hawkins Rental Housing Act prohibits local rent control regulations on properties constructed after 1995. Detached homes and condominiums are also exempt from rent control under the law.

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*“It’s an issue of such a strong potential economic impact to so many renters and so many property owners that it really shouldn’t be a decision of the four people on the council, but by the voters of Larkspur,”*

**Catherine Way, Councilmember**

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# A Message from the Berkeley Rental Housing Coalition

## SECURE YOUR FUTURE: Elevate Your BPOA Membership to the BHRC Level NOW

Dear Fellow Berkeley Property Owners,

In the ever-evolving landscape of property ownership in Berkeley, safeguarding your investments has never been more critical. The best way to safeguard your assets is to invest in the political and legal work of BPOA. Your fellow housing providers implore you to upgrade your BPOA membership to the Berkeley Rental Housing Coalition (BHRC) level. Your support of our political and legal organization is not just an investment in your own property, it is a collective commitment to securing the future of all Berkeley property owners.

Here's why you owe it to yourself and your fellow property owners to make the leap to an upgraded membership:

**1. Championing Our Cause.** Our dedicated Executive Director Krista Gulbransen stands as a tireless advocate for Berkeley property owners. With her unwavering dedication, she has gained the respect and ears of those who wield power in Berkeley, ensuring that our interests are not just heard, but actively represented.

**2. Achievements That Matter.** Look at what we have achieved together:

- You can now add a bedroom to your unit more easily and without neighbor opposition.
- Preserve your ability to charge 10% per additional tenant.
- Held back the Tenant Opportunity to Purchase Act legislation for three years running.
- Prevented the mandatory installation of automatic door openers on four+ unit buildings — a direct financial savings to you.
- Successfully preserved the attempted retraction of the 2023 AGA of 4.4%, preserving your financial stability.
- Defeated the requirement to install stove ventilation in every unit, another significant financial savings for owners.
- Stabilized rent registration fees for five years, giving back to your bottom line.
- Solidified a seat for Berkeley property owners at the state legislative table.
- Prevented legislation that would have allowed demolished units to return at their previous rent-controlled price.
- Prevented an attempt to modify the Rent Stabilization Ordinance in a 2022 ballot measure — an achievement that has not happened in more than a decade!

**3. What's at Stake.** We are working on:

- A pending Supreme Court case on the issue of the constitutionality of rent control.
- Protecting Costa Hawkins, which is vital to the viability of rent-controlled property in Berkeley.
- Diverting rent registration fees from the Rent Board to more useful impacts for rental housing owners.
- Shifting Rent Board elected positions to District-elected ones for more equitable representation.

**4. Looming Threats.** The value of your rental property could plummet by 33% with impending 2024 legislation. Locally, seats on the Rent Board and City Council are up for grabs. Costa Hawkins (and vacancy decontrol) is being threatened for the third time in 6 years at the state level.

Worse yet, consider the Tenant Option to Purchase Act (TOPA). While currently moribund, it could be resurrected, granting tenants the right of first refusal when you sell. This would complicate your sale, deter buyers, and reduce your property's sale price.

**5. Your Crucial Role.** Our Executive Director's effectiveness hinges on funding from BHRC. Currently, only a fraction of Berkeley property owners are members of BPOA, and even fewer pledge at the BHRC membership rate. **It's time to fairly distribute the responsibility of defending our property rights.**

To raise more funds and ensure equal participation, the BHRC board has voted to lower the BHRC dues rate from \$250 per unit, to \$150 per unit. This membership automatically includes your BPOA membership. For example, if you own a five-unit property, your annual contribution will increase from \$325 to \$750.

If you think you cannot afford this — reconsider. Given the stakes, you can't afford not to support this crucial effort.

Together, we can secure the future rights of Berkeley property owners. Safeguard your property's value and your future. Contact Krista Gulbransen at [krista@bpoa.org](mailto:krista@bpoa.org) to upgrade your membership.

Sincerely,  
The BRHC Board of Directors

## Rent Control Question Step Closer to Getting on Massachusetts Ballot

Tréa Lavery [Tlavery@Masslive.Com](mailto:Tlavery@Masslive.Com)

### Rent control was banned in Massachusetts by a ballot initiative in 1994

Massachusetts is one step closer to potentially bringing back rent control after a ballot question that would give communities the option to adopt it was certified by Attorney General Andrea Campbell on Wednesday. State Rep. Mike Connolly, the original filer of the ballot question, said the certification was the next step in addressing the state's housing crisis.

"We're here because we're facing an unprecedented housing emergency. Never in our history has homelessness been this pervasive. Never in our history has affordable housing been this out of reach," said Connolly, a Democrat representing the 26th Middlesex. "This housing emergency is displacing people from our communities. It's pushing out vulnerable seniors, children ... We are confident that the voters of Massachusetts understand this issue, and if they're given the opportunity to lift the statewide ban on rent control, we believe they will."

If the legislature does not enact the proposal on its own, the proponents must then gather another 12,429 signatures by July 3, 2024 for the question to be placed on the ballot.

The ballot question would give cities and towns in the state the option to enact local regulations protecting tenants. Those regulations could govern rent, fees and deposits, including brokers fees, evictions, the removal of units from the rental market and more.

State Sen. Jamie Eldridge, who co-sponsored a bill in the legislature that would similarly restore the local option for rent control, said he had experienced the effects of rising rents firsthand. He said the rent on his home doubled in the past year, forcing him to move to a different community within his district.

"It's not just Cambridge, Somerville, Boston, but it's also MetroWest and I would say communities further west," said Eldridge, a Democrat representing the Middlesex and Worcester district.

Rent control was banned in Massachusetts by a ballot initiative in 1994. Efforts to revive it, including most recently a Boston home rule petition passed in March to reinstate it in the city, have thus far failed. Boston's proposal, despite local support, has still not been taken up by the Committee on Housing.

*continued on page 12*

## A Religious Wrinkle in the Massachusetts Rent Control Debate

Jennifer Smith, *Commonwealth*, Aug 24, 2023

Opponents of a potential ballot initiative allowing for a local rent control option are covering all their bases in urging Attorney General Andrea Campbell not to certify it. In between claims that the ballot measure improperly includes unrelated items in the same proposal and that it would allow taking property without just compensation, coalitions of real estate and property interests include an unusual claim — that the rent control measure tries to put religion on the ballot.

A ballot measure, filed by state Rep. Mike Connolly, that would allow communities to enact policies regulating rents, lists units that would be exempt from such controls, including units in two- or three-family owner-occupied buildings, cooperatives, or hotels and boarding houses where people stay for less than two weeks. But it also includes a carve-out exempting units "in a hospital, convent, monastery, public institution or college or school dormitory operated exclusively for charitable or educational purposes."

Opponents have jumped on that provision, arguing that it constitutes another rationale for tossing the question from the 2024 ballot.

The Massachusetts Constitution lays out rules for what kind of subjects are appropriate for a ballot initiative. Generally speaking, the Supreme Judicial Court has concluded that religious matters cannot be put to a public vote by referendum in order to avoid using the ballot as a launch point for "public political discussion of matters relating to religion."

That is effectively what this small provision of Connolly's measure would do, claim three memos sent to the attorney general from real estate, landlord, and development groups, who have pledged tens of millions of dollars to opposing efforts to bring back rent control.

The ballot measure "invites controversial conversation with its preferential language and exemptions pertaining only to certain religions, religious practices and religious institutions — namely monasteries and convents which

*continued on page 12*

## Rent Control: Back on the Massachusetts Ballot?

Somerville is also working on a rent stabilization law. City Council President Ben Ewen-Campen said at the rally Wednesday he hears from constituents every week who are being forced out of their homes because their building has been sold or their landlord is raising the rent, and called it the “single biggest issue” in the city.

The concept of bringing back rent control has been controversial, as landlord groups and others say it could lead to less development and more deferred maintenance on existing residential buildings.

The Fiscal Alliance Foundation, a government watchdog and advocacy group, opposed the filing of the ballot question and argued last month that it is unconstitutional because it combines multiple topics — regulating rent and regulating evictions — and because they believe rent control entails taking property without just compensation.

The foundation said in a statement Wednesday that it intends to work with other opposition groups to take its

challenge of the ballot question to the Supreme Judicial Court.

“The government-imposed rent control ballot question proposed by state Rep. Mike Connolly is poorly written and would make even poorer policy. Economically, it has been proven time and time again that rent control does not work, and this ballot question would prove a disaster for both renters and property owners,” said Paul Diego Craney, a spokesman for the Fiscal Alliance Foundation, in a press release.

Connolly said Wednesday that the language of the ballot question included exemptions for new construction and small-property owners, which he hoped would alleviate some concerns. He also said last month that the language specified that any regulations created under the proposed law could not “deprive an owner of a fair net operating income.”



## Massachusetts Rent Control Debate

are traditionally associated with Christianity — while containing no express inclusions or exemptions for other religions or faiths, such as Islam or Judaism,” attorneys for the the Small Property Owners Association and Boston Asian Landlord Association wrote.

Legislation that has been filed to allow local rent control options frequently includes a number of exemptions. Along with sponsoring the ballot measure, Connolly has filed a bill to allow rent control that would not apply to renters in owner-occupied buildings with less than three units. A bill put forward by Sen. Patricia Jehlen of Somerville exempts dorms, elder care units, owner-occupied buildings with less than four units, and public authority-regulated units.

The bills don’t include mention of convents and monasteries, but those types of housing units are listed in several existing statutes and ordinances, including anti-discrimination law and the City of Boston’s rental housing equity ordinance.

Gerry McDonough, an attorney for the rent control ballot measure proponents, says the phrase should be read in its broader context, not as singling out monasteries and convents but rather including them among similar types of exempted units.

“The clear purpose of this language in the Tenant Protection Act is to exempt property owners who do not have a profit-maximizing motive and therefore are unlikely to require regulation to protect tenants,” McDonough wrote in a letter to the attorney general responding to the argument raised by the opponents.

Connolly, a Cambridge Democrat, filed his ballot proposal as another potential path to securing tenant protections, with efforts to allow rent control through legislation moving languidly, to say the least, through the Legislature.

Circumventing the legislative process by ballot measure is dividing progressives, some of whom worry a pricey defeat at the voting booth might doom later chances on Beacon Hill, where legislators historically have shown little interest in revisiting the issue since rent control was banned statewide by a 1994 ballot question.

With a recent ballot question — set for a rematch — tossed by the Supreme Judicial Court just last year for including unrelated matters, that often-invoked line of attack is more likely to hold sway with the attorney general. Bringing religion into the debate is an unorthodox effort, but with just weeks before the September 6 certification deadline, every card is on the table.

# Buyer Found for Nearly \$1 Billion in Mortgages Tied to S.F.'S Largest Landlord

Roland Li, San Francisco Chronicle, August 30, 2023

A buyer has been selected for the huge \$940 million mortgage portfolio tied to 2,149 San Francisco apartments controlled by Veritas Investments, the city's largest residential landlord, and its partners.

Ballast Investments is poised to take over ownership of 75 apartment buildings and become one of the city's biggest real estate players, according to a person with direct knowledge of the pending deal who wasn't authorized to speak publicly. The sale has not closed and the price of the mortgages isn't clear.

Veritas began defaulting on mortgages early this year after the pandemic and remote work weakened demand for housing. The apartments account for around a quarter of Veritas' holdings, which now total more than 8,000 units, up from around 6,500 units last year.

"The headwinds facing the entire commercial real estate industry led us to where we are today, but we are beginning to see signs of a potential upturn taking hold. We remain as committed as ever to San Francisco, to our residents and our properties, and see tremendous opportunities ahead," a Veritas spokesperson said.

Veritas' economic distress in some ways mirrors its own rise: The company, founded by Yat-Pang Au in 2007, greatly expanded after its 2011 purchase of around 2,000 apartments from the Lembi family's CitiApartments, which were drowning in debt after the Great Recession.

The company tried to buy control of its own mortgages but was unsuccessful, said the person with knowledge of the pending deal.

San Francisco's economy has been hit hard by the pandemic, but there's still interest in apartment buildings in the supply-constrained city. Last year, Veritas affiliates bought 42 apartments on Russian Hill at 2222-2254 Polk St. for \$33 million and 18 units at 3839 Divisadero St. in the Marina for \$13 million, according to property records.

Ballast, headquartered in San Francisco and owner of the Brick + Timber rental agency, has also been an active local buyer in the past year. The company didn't respond to requests for comment.

Ballast partnered with the Carlyle Group, one of the world's biggest private equity firms, on a \$15.6 million acquisition of a 38-unit Russian Hill property at 899 Green St. last October, according to property records.

A Ballast and Carlyle affiliate also bought the 12-unit 2028 Scott St. in Pacific Heights for \$8.8 million in May 2022, according to property records.

Median rent in the San Francisco metro area is down 4.3% in the past year, one of the biggest drops in the country, compared with a nationwide decline of 1.2% as of August, according to listings firm Apartment List.

*continued on page 17*

## 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, October 19	Monthly Owners Forum
Wednesday, October 18, 3:00 pm	EV Charging for Older Buildings - How Feasible Is It?
Thursday, November 2, 3:00 pm	Is Your Most Valuable Asset Properly Insured?
Thursday, December 14, 5:30 pm	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.*

## *Alameda Housing Units Found Not Exempt from City's Rent Control*

*East Bay Times, September 20, 2023*

In an important decision after a contested administrative hearing, an independent hearing officer concluded that 150 units of former naval housing in Alameda are subject to the city's rent control regulations.

The hearing officer rejected the landlord's contention that state law (the Costa-Hawkins Rental Housing Act) prevents the city from limiting rent increases for tenants of the Admirals Cove property.

"The hearing officer's decision affirms what the rent program has maintained from the beginning and what courts have held in several cases since the passage of Costa-Hawkins," said Bill Chapin, who directs Alameda's rent program.

"Namely, that the legislature intended the limits it placed on local rent control to apply to only newly constructed units that expand a city's housing stock. The Admirals Cove property apartments have been used to house members of the Alameda community as far back as the 1960s, and their current occupants are entitled to the full protections of the rent control ordinance."

The Admirals Cove property contains renovated townhomes on a 15-acre parcel between Alameda Landing and the city's Main Street Ferry Terminal. Comprising 27 four- and six-unit buildings, they were originally built in 1969 to house personnel stationed at the nearby Naval Air Station Alameda and their families.

In 2017, the U.S. government auctioned the parcel and its vacant buildings. The winning bidder, developer Carmel Partners of San Francisco, renovated the units and began leasing them to tenants in October 2019.

Since September 2019, Alameda's rent control ordinance has limited rent increases to an annual cap, known as the annual general adjustment (AGA), calculated at 70% of the change in the Consumer Price Index. As of Sept. 1, the AGA is 2.9%.

While some provisions of the rent control ordinance, including registration requirements and limits on "no-fault" terminations of tenancy, apply to all rental units in Alameda, the Costa-Hawkins Rental Housing Act prevents local governments from imposing an AGA limit on certain housing units, including units built since February 1995 and units that can be purchased individually, such as single-family homes and condominiums.

"The city of Alameda's rent control ordinance is a centerpiece of the city's strong policy of protecting and preserving affordable housing in our community," said City Attorney Yibin Shen. "The City Attorney's Office, including the rent program, is committed to justly enforcing state and local housing laws and ensuring that Alameda remains a place that people from all backgrounds and income levels can call home."

### **OCTOBER MEETINGS & EVENTS**

***Special Members Meeting: New Bylaws & Board Elections***

**Saturday, October 14**

***Monthly Owners Forum***

**Thursday, October 19**

***EV Charging for Older Buildings: How Feasible Is It?***

**Wednesday, October 18, 3:00 pm**

***Is Your Most Valuable Asset Properly Insured?***

**Thursday, November 2, 3:00 pm**

***Holiday Party at Berkeley Yacht Club***

**Thursday, December 14, 5:30 pm**

***BPOA WORKSHOPS — Go Beyond the Basics***



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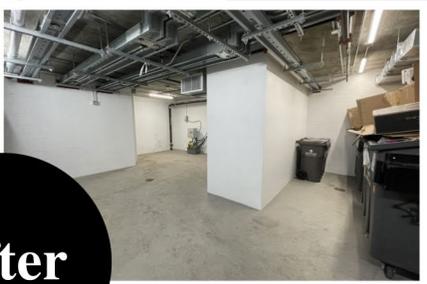


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last year saw almost record rainfall) but the Sacramento River, unlike the Colorado, is hardly drying up. Undulating terrain makes us less vulnerable to flooding, even more so in the watershed area immediately surrounding the Bay. We did have severe fire storms in 1923 and 1989, a vulnerability as much attributable to density as climate. It is not worse than elsewhere.

(Our one unique vulnerability, of course, is earthquakes. This is seismic rather than climatic and pretty much beyond human intervention. It is still a heavy-duty risk. However, it is also baked into life in California. We accept the risk, try to be prepared and move on. And, as devastating as earthquakes can be, severe ones are rare. They don't seem to have been a major historic detriment to the growth and prosperity of the State, or the housing market. In fact, houses in the Bay Area are about the most expensive in the country. To the benefit of the rental

market, renting would be a preferred option to a potential homeowner afraid of a seismic disaster.)

So...other than nice weather is better than nasty weather, is there a point here? There is. The point is that the more that climate change negatively affects other areas of the country — and even other areas of California — the more that the benign climate of the Bay Area — particularly the inner Bay Area — will become even more attractive to people. No matter what high prices, high taxes, over-regulation, crime, congestion and remote employment do to make California less attractive, our weather will assure that there is great demand for housing in the Bay Area, especially the inner Bay Area. We have the Goldilocks climate — never too hot and never too cold — and people like that. They want to live here. They want to rent your apartments.

## *New Law a Win for Berkeley People's Park Plan*

*Sarah Ravani, San Francisco Chronicle, September 9, 2023*

### *Noise made by future residents will no longer be hurdle for UC*

A new law could allow UC Berkeley's plan to build housing at the historic People's Park to move forward. The university has proposed a 148-unit complex for 1,111 students.

Gov. Gavin Newsom has signed a bill into law that amends California's environmental law so housing projects no longer need to study the noise generated from future residents — a big win for UC Berkeley in its quest to build at the historic People's Park.

AB1307, by Assembly Member Buffy Wicks, D-Oakland, whose district includes Berkeley, could allow the university's controversial development to move forward. UC Berkeley, which provides housing for only 23% of its students, the lowest rate in the University of California system, has proposed a 148-unit complex for 1,111 students at People's Park and a separate building with 125 beds.

A state appeals court ruled in February that UC officials did not adequately explore alternative student housing sites and had dismissed legitimate neighborhood concerns about "loud student parties" — dealing a win to neighborhood groups that had sued to block the construction.

After its ruling, the state Supreme Court agreed to decide whether UC Berkeley can take over People's Park and build housing there — the last major hurdle in the uni-

versity's way. In April, Newsom's office filed a brief to the state Supreme Court in support of the university's plan. Dan Mogulof, a spokesperson for the university, previously said UC will ask the Supreme Court to consider the new statute when it issues its ruling.

"California will not allow NIMBYism to take hold, blocking critically needed housing for years and even decades," Newsom said in a statement on Thursday evening.

Wicks introduced AB1307 after the state appeals court decision stalling UC Berkeley's effort. In a statement, Wicks said AB1307 "reaffirms that people are not pollution" and "provides more certainty for housing projects across the state, instead of more red tape and higher construction costs."

Berkeley Mayor Jesse Arreguín, who is running for state Senate, posted on X, formerly Twitter, that "Student noise is not *pollution*. We are committed to getting student housing and supportive housing at Peoples Park to provide housing security for students and our unhoused neighbors."

Opponents of the proposed project have said the university should look at other potential sites for housing and instead take care of the park as a historic landmark.

In another challenge, Veritas tenants have previously accused the company of pushing out residents of rent-controlled units so they can rent to wealthier people, which the company has denied.

The Veritas spokesperson said on Wednesday that the company has also been hired by other property owners to manage and handle leasing of their apartments, using the company's RentSFNow technology.



### QUOTE OF THE MONTH

*We stand today at a crossroads: One path leads to despair and utter hopelessness.*

*The other leads to total extinction.*

*Let us hope we have the wisdom to make the right choice.*

— Woody Allen

### Housing 1% of All Renters, City of San Francisco Responsible for 25% of All Evictions

*From Leaders Question Programs' Evictions in the San Francisco Chronicle, March 21, 2023*

The 75 single-room-occupancy hotels, or SROs, used by San Francisco to house homeless people accounted for about a quarter of all court-ordered evictions carried out by the Sheriff's Department between 2019 and May 2022, even though the buildings housed just over 1% of the city's renters. The true scope of displacement was even higher, reporters found, as countless more tenants were forced out of their homes informally or through channels the city doesn't track.

*And we're the bad guys! [ed.]*



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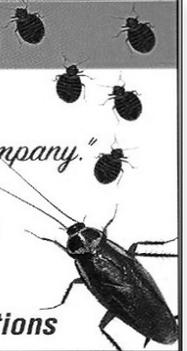
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# Berkeley Property Owners Association

## OCTOBER EVENTS

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

*Special Members Meeting  
New Bylaws & Board Elections*  
Saturday, October 14

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Thursday, October 19

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Wednesday, October 18, 3:00 pm

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Properly Insured?*  
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Thursday, December 14, 5:30 pm



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