

JUL
2023



The Advocate for Berkeley's Rental Housing Providers

Founded 1980 • Charter Member, California Rental Housing Association
2041 Bancroft Way, Suite 203, Berkeley, CA • www.bpoa.org

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Global Warming and Property Insurance

Mark Tarses, President, BPOA

Over the past year, several major insurance companies stopped selling property insurance in California, including Chubb, AIG, Allstate, and State Farm (the nation's largest property insurance company). They cited the growing fire risk as the main reason for their decision.

The problem is global warming. Because of global warming, wildfires are becoming bigger and more frequent here in the West and construction costs have been rising faster than overall inflation; however, insurance companies in California have not been raising their rates as fast as they have been shelling out money in claims. So — why don't they just raise their rates? They can't. In 1988, California voters passed Proposition 103. This law requires insurance companies to get 'prior approval' from the state's insurance commissioner before they can raise rates, and the law requires that the insurance commissioner base his calculations on past experience, not on future projections. As a result, insurance companies are only allowed to raise their rates slowly while their payouts rise rapidly.

State Farm requested a 28% rate hike for property insurance from the state's insurance commissioner. Allstate requested 40%. They didn't get it, so they — and many other insurance companies — left the state. Big increases in property insurance rates in California are inevitable. As painful as that will be, it will have positive consequences. Rising insurance rates will pressure property owners to do things to reduce their insurance bills, things that will cost money in the short run but that will reduce their insurance rates in the long run, things like replacing wood exterior siding with fireproof materials. That's expensive, but property owners will do it if it lowers their insurance bills enough to make it worthwhile.

There is a lesson in this — *government price controls lead to shortages*. (That is something that the advocates of rent control will never understand.)

JULY EVENTS

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

Thursday, July 20, 3:00 pm

**Green House Call:
Energy & Water Saving Freebies**

Thursday, July 13, 3:00 pm

**Credit Screening: How to Compare
Data and Use Reports**

Thursday, July 27, Noon

See pages 13 & 14 for details & more events!

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

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About the Newsletter

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

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

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

Editorial

AI and Berkeley Rent Control

Albert Sukoff, Editor

By choice, I am very interested in Artificial Intelligence. Not by choice, I am very interested in rent control in Berkeley. Anxious to try out the emerging phenomenon that is AI, I asked ChatGPT to write an essay on the history of rent control in Berkeley. The result was published in the April issue of this newsletter.

The piece that ChatGPT produced was amazing in some respects and somewhat disappointing in others. First it was produced in a matter of seconds — not just quickly, but literally a matter of seconds. All the words were spelled right but spell-check has been around for decades. More impressive was the high level of readability. It had the quality of a well-written, college-level essay. It was hard to believe this was produced with absolutely no direct human input. It was written and edited by no one.

It was also fact-checked by no one. There were errors of omission and commission presented with equal authority to those facts it got right. Errors obvious to me with decades of exposure to the subject would have gone uncontested by someone new to the issue. I annotated my comments in italics as part of the piece in the April newsletter.

Curious, I gave ChatGPT another shot at the same task. I made the same request again. What I got was a surprise. All of the errors I found were gone. This does not mean they were corrected; they were mostly omitted or finessed. More importantly the bias was tempered with both sides of the issue presented. Here are some of the changes:

- Evictions were claimed to be a prime impetus for rent control in the first piece; they were not. Evictions were not mentioned in the newer version.
- The original piece incorrectly credited the City Council with enacting rent control in 1980. Enactment was in fact achieved by voter-passed initiatives in 1978 and 1980. The updated version avoids attribution and simply says that rent controls were enacted, albeit in 1979. Close enough.
- There is no repeat of the erroneous claim that rent increases were limited to eight percent.
- The original gave a largely-incorrect version of both the legal battles over the Berkeley ordinance and the passage and the impact of Costa-Hawkins. It actually had the City as the legal entity which passed C/H. Of course, C/H was a state law and the City of Berkeley was very strongly opposed to its passage. The new version makes no mention of the specific challenges or changes to the law, either judicial or legislative. It instead simply says that *the ordinance has undergone several amendments and modifications*.
- The original ChatGPT piece mentions a specific 3.5% allowable rent increase in effect today. This is not and was never the case. Initially rent increases were specified annually by the Rent Board; this was later amended when increases were linked to the CPI. This mistake is not repeated.
- Finally, the original piece had a clear bias in favor of rent control. It called it the *cornerstone of the city's housing policy*, claimed it to be *one of the most successful rent control programs in the country*, and it stated that the

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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.**

Here we go again...Prop 10, Prop 21, and now Version 3.0!

If you haven't heard, the attempt to eradicate the protections afford to rental housing providers in Berkeley (the Costa Hawkins Act of 1996) will be on the state ballot in 2024. Called "The Justice for Renters Act" the ballot measure will strip your rights to vacancy decontrol and impact those exempted from rent control such as single-family homes, condos, and townhomes.

On May 25, 2023, the tenant rights group called "Housing Is a Human Right" and its parent organization the AIDS Healthcare Foundation, delivered more than 800,000 signatures to the California Secretary of State. They have proposed a ballot measure that would repeal statewide rent control exemptions and allow cities like Berkeley to enact vacancy control. The signature-gathering effort far exceeded the 546,651 signatures that were required to get on the state's ballot. Activists, elected officials, and labor leaders announced the milestone at a press conference at Los Angeles City Hall.

Author (and funder) of the ballot measure is none other than AIDS Foundation CEO & Founder, Michael Weinstein. He is at it again with a proposal to empower local jurisdictions to impose horrific rent control measures. If passed, vacancy decontrol (your right to charge market rate rent upon vacancy) will be lost. Rent control exemptions for new construction, single-family homes, and condos will be eradicated and will fall under our local rent control instead.

The same special interests behind 2018's (Prop. 10) and 2020's (Prop. 21) rent control measures are at it again — despite being rejected both times by a large majority of California voters. This time Weinstein and his social housing minions are back with an even more destructive proposal. We cannot afford to lose this fight and we most certainly cannot let this deeply flawed proposition be passed.

We will be requiring your help...it took \$75m in both 2018 and 2020 to defeat these propositions. If we want to defeat it in 2024 as soundly as we did in the last two elections, it's going to require you to pony up some financial support. No matter how bad your cash flow has been, it's going to be even worse if Costa Hawkins' protections

disappear. Keep an eye out for upcoming webinars and educational sessions on our opposition campaign. In these sessions we will discuss the major flaws inherent in the ballot measure and provide some of our key talking points for going to war against our opponents.

Why should you join the fight against this ill-conceived ballot proposition? Here are just a few of the things this deeply flawed proposition will do unless we defeat it in November:

- *Eliminates important protections and exemptions under state law's the Costa-Hawkins Rental Housing Act (1995) covering all housing units — YOU won't be able to increase rent upon vacancy if this initiative passes, and new construction, single-family homes and condominiums will be subject to the most restrictive local rent control.*
- *Allows cities or counties to enact vacancy control — rent on vacant units may only be increased if and as allowed by local jurisdictions. You will no longer be able to increase rent to the market rent upon vacancy.*
- *Decimates property values — Similar laws passed in New York State caused values of rental properties to drop 30% to 40% IMMEDIATELY.*
- *Reduce housing supply by forcing rental property owners out of business.*
- *Gives unelected bureaucrats unlimited power to add fees on housing — hundreds of rent control boards will "spring up" across California.*
- *Add tens of millions of dollars in new costs to local governments to administer local rent regulations — YOU will pay for these increased costs through additional fees and taxes.*
- *All properties older than 15 years will be subject to local rent control laws and lower rent caps — A.B. 1482 would be cancelled.*
- *Makes California's housing crisis EVEN WORSE! If this ballot initiative passes, we will ALL be forced out of the rental housing business.*

It is in your best interest to learn what you can do to help defeat this latest attack on rental housing providers. We did it 2018 and 2020 and we will do it again in 2024!

Reform Plan by Newsom Alarms Housing Advocates

Dustin Gardiner, San Francisco Chronicle, May 30, 2023

Gov. Gavin Newsom recently unveiled a proposal to reform part of the California Environmental Quality Act, a sweeping law often blamed for making it too difficult and expensive to build here. But his plan had one glaring omission: It barely grapples with the law's contribution to the state's crushing housing crisis.

His proposal would apply only to certain clean energy and infrastructure projects challenged under the law, which is commonly known as CEQA. Specifically, Newsom wants to prevent lawsuits filed under the law from delaying those types of projects any longer than 270 days or nine months.

The exclusion of a housing-related CEQA reform from the centerpiece of Newsom's plan didn't go unnoticed by YIMBY activists and other pro-housing advocates. They said one of the most critical needs is to avert CEQA challenges that have exacerbated the housing crisis by making it more difficult, expensive and time-consuming to build multifamily housing.

"It's a nothingburger — there's really nothing that would assist housing in any substantial way," said David Kellogg, a lawyer and housing advocate from Walnut Creek. He took to Twitter to vent his frustration, comparing Newsom's plan to an image of a mountain of triceratops feces from the movie "Jurassic Park."

Kellogg said, "It seems like everything we do from the Newsom administration is just little tiny nudges here and there. We really need a multiplier (on housing)."

CEQA — pronounced "seekwuh" — is a landmark environmental law signed in 1970 by then-Gov. Ronald Reagan. It requires public agencies and local governments to study the significant environmental impacts of a building project before approving it.

However, the scope of the law has expanded greatly over the decades since, often through court rulings that require public agencies to consider the health impacts of growth, such as noise and traffic.

Complaints about CEQA have hit a fever pitch in recent years, especially as California sinks deeper into a housing crisis. For many housing advocates, the concern is that CEQA has become a guise for neighbors to file lawsuits to challenge denser housing in urban areas over concerns that are largely unrelated to the environment.

Newsom, during a recent press conference, didn't dispute that the main piece of his CEQA reform doesn't apply to housing. But he said other pieces of his legislative package

related to permit approvals and administrative document requirements under CEQA would benefit housing projects.

The governor stressed that he has signed more than 20 bills to "modernize" CEQA since taking office in 2019. But those bills have often been carve-outs that benefit pet projects, such as sports arenas in the Bay Area or Los Angeles, or a limited type of construction.

"We've done a lot of work on housing," Newsom said, noting that he hopes to sign other housing-related bills before the Legislature this year. (He declined to specify which ones.) "Tremendous progress has been made in that space."

Alex Stack, a spokesperson for Newsom, told The Chronicle that the governor is looking at many other ways to streamline housing construction, including further potential reforms to CEQA. "It's not off the table," he said.

Newsom's office said the plan he's proposed to expedite CEQA lawsuits and streamline permitting in other areas, which is encompassed in 11 new bills, would make it easier to build housing by providing crucial infrastructure, such as roads, water systems and the energy needed to power homes.

"We're working on both at the same time," Stack said.

But the level of disappointment for housing policy experts and advocates has been palpable. Prior to his announcement, Newsom had been teasing that he would tackle CEQA reforms, leading many to suspect housing was included.

Chris Elmendorf, a law professor at UC Davis who specializes in land-use issues, said he was surprised by the housing omission. He said he's still hopeful that the package could be expanded, though he's realistic that efforts to limit CEQA face powerful opposition in Sacramento.

"Suffice it to say that there are plenty of interest groups that benefit from the status quo and the governor is treading lightly," he said.

Newsom's proposal related to certain infrastructure and clean energy projects would require courts to provide expedited judicial review, to the "extent feasible," when those projects are challenged under CEQA. But Elmendorf said that would be more of a strong suggestion to push judges to act, not an actual mandate.

Even so, Newsom's plan could face major resistance in the Legislature, which must approve the measures. Attempts to reform CEQA have faced fervent opposition from some labor unions and environmentalists.

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John King, San Francisco Chronicle, June 12, 2023

When 12,000 architects descended on Moscone Center last week for their annual convention, they could attend panels on such topics as “Do’s & Don’ts of Data Standards” and “Fundamentals of an Effective Custom Residential Contract.”

But an underlying theme was the vexing reality that plagues not just California but the nation at large: the chasm between the types of housing that an ever-more varied society needs, and what actually is provided.

“Architects are very interested in their communities, and housing is a critical issue across the country,” said Lakisha Ann Woods, CEO for the American Institute of Architects, which held its four-day conference in San Francisco for the first time since 2009. “There’s no one-size-fits-all solution.”

That’s not an easy sell in a nation where single-family homes still are associated with the American dream, and the notion of multistory housing is resisted in many communities. Housing for lower-income residents is linked by opponents to crime and blight — ignoring the reality that a household would need an income of roughly \$125,000 to afford today’s asking price of \$3,120 for rents in and around San Francisco, according to Zillow.

Another wrinkle is the obvious fact that people flourish best in different types of housing at different points in their lives.

This played out with two presentations related to recent residential complexes in the Boston area, a region facing pressures similar to the Bay Area.

One project involves housing for elderly residents in Boston that will open this year and was designed by Mass Design Group, a firm known for socially oriented architecture. Rather than the senior housing norm — long straight hallways with an identical procession of doors on either sides and a “community room” here or there — apartments are clustered into cul-de-sac-like pods of a half-dozen, along a central path that narrows and widens to create different settings along the way.

There also are small outdoor spaces sprinkled throughout the site, rather than a few large lawns that provide greenery but get little use.

“Some people enjoy being the center of attention. Others like observing from the edge,” said Jonathan Evans, a principal at the firm. “We want to provide options, invite people to feel like they are part of the collective.”

For Evans, too much of today’s housing push is to maximize building count rather than use design to enrich lives. This doesn’t mean avoiding density — the Boston complex places the elongated six-story structure across from two-family homes — but doing it in a way that shows “deeper values have a role in the marketplace.”

A different session focused on a Boston project with a much different target market: people in their 20s and early 30s looking to embark on life after college.

That project, on a site in Boston’s South End that once held a newspaper plant, consists of a 14-story building with 353 bedrooms in 180 apartments. The studios are just 308 square feet, with fold-down Murphy beds. Three-bedroom “suites” top out at 780 square feet; a would-be tenant can rent a single bedroom, with the developer playing matchmaker.

Rent includes a biweekly apartment cleaning and the units are fully furnished down to the kitchen appliances — part of the marketing pitch that these aren’t snug nooks but “inclusive living.”

“We’re trying to provide an option for couples and singles to not take up houses that can be used by families,” said Janaya Hart of Elkus Manfredi, the project architect. This meant finding ways to use every square foot of interior space with an eye to livability: “Tall ceilings and big windows make a huge difference.”

At least a half-dozen sessions and architect tours focused on affordable housing: how to fund it, how to design it, how to overcome political hurdles and everything in between.

At one end, members of the YIMBY group East Bay for Everyone detailed the obstacles to surmount on what architect Bryan Alcorn called “the landscape of policy and how it affects everyone.” One speaker on this panel called for the adoption of shared-ownership “social housing” on the model of Vienna and Singapore. Another described efforts to add the “right to housing” to the California constitution via a statewide vote at some point in the next few years.

At the other, architects Larry Scarpa of Los Angeles and Amanda Looper delved into past projects showing how individual design moves can help to humanize low-income housing while making it visually compelling to potential skeptics.

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The History of Rent Control by ChatGPT

As answered in April 2023

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

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

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

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

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

Today, Berkeley's rent control program continues to be a cornerstone of the city's housing policy. The city has taken steps to strengthen and expand the program, including increasing the maximum annual rent increase to 3.5% and implementing new eviction protections for tenants.

As answered in June 2023

Introduction: Rent control is a policy that has been implemented in various cities around the world to address housing affordability and protect tenants from excessive rent increases. One city that has played a prominent role in the history of rent control is Berkeley, California. Known for its progressive values and activism, Berkeley has a rich history of championing rent control measures. This essay explores the history of rent control in Berkeley, examining its origins, development, and impact on the local housing market.

Origins of Rent Control in Berkeley: The roots of rent control in Berkeley can be traced back to the 1970s, a time of heightened social activism and community organizing. The rising cost of housing and concerns over displacement became key issues in the city, as gentrification threatened to displace long-term residents. In response to these concerns, Berkeley saw the birth of the rent control movement, driven by tenant advocacy groups, grassroots organizations, and progressive city officials.

Development and Implementation: In 1979, Berkeley became the first city in California to enact a rent control ordinance, known as the Berkeley Rent Stabilization Board (RSB). The RSB was established to regulate rent increases, provide protections for tenants, and ensure affordable housing options for low-income residents. The initial ordinance was a result of collaboration between community activists, tenants' rights organizations, and local government officials.

Over the years, the rent control ordinance has undergone several amendments and modifications to address changing housing needs and legal challenges. These changes have included adjustments to allowable rent increases, just-cause eviction protections, and provisions to prevent landlords from exploiting loopholes. The RSB has been responsible for overseeing and enforcing these regulations, mediating disputes, and conducting hearings on rent-related matters.

Impact on the Housing Market: Rent control in Berkeley has had a significant impact on the local housing market. Proponents argue that it has helped preserve affordable housing options, prevented widespread displacement, and allowed long-term residents to remain in their homes. The policy has also provided stability for tenants, allowing them to plan their finances and build stronger connections to their communities.

However, critics of rent control argue that it has unintended consequences, such as reducing the incentive for

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The city has also explored new approaches to addressing the housing crisis, including building more affordable housing and increasing tenant protections for vulnerable populations such as seniors and disabled tenants.

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

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landlords to maintain or improve their properties and discouraging new housing development. They argue that rent control can lead to a shortage of rental units, as landlords may opt to convert their properties to other uses or leave them vacant rather than subject them to rent control regulations.

The ongoing debate surrounding rent control in Berkeley reflects the broader national discourse on housing affordability and the balance between tenant protection and property rights. It highlights the complex nature of addressing the housing crisis and the need for comprehensive solutions that consider the interests of both tenants and property owners.

Conclusion: Rent control in Berkeley, California, has a long and storied history, originating from the city's commitment to social justice and affordable housing. From its humble beginnings in the 1970s, the rent control ordinance has been refined and adapted to address evolving housing challenges. It has undoubtedly had a significant impact on the local housing market, providing stability and protections for tenants. However, the ongoing debate and differing opinions on its effectiveness remind us that addressing housing affordability requires a multifaceted approach that balances the needs of tenants and property owners while ensuring sustainable and equitable housing options for all.



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Tiffany Van Buren, BPOA Deputy Director

“When Will I Get My Security Deposit?”

It doesn't matter how bold of a typeface I use or that I have residents sign their initials next to the paragraph explaining the security deposit accounting and return process; regardless of this, one-third of departing residents will email me a few days after they've moved out to ask, “When will I get my security deposit?” It's asked so often; I have prepared a statement that I copy/paste as a reply.

“Dear _____,

The return of security deposits is governed by California Civil Code 1950.5. This was referenced in the Move-Out Package you received, which contained the Acknowledgment of Intent to Vacate, the Notice of Right to Pre-Inspection, and the Move-Out Instructions. If you followed the Move-Out Instructions and the unit was left in clean, damage-free condition, this will likely accelerate the return of your deposit. Rest assured, we comply with state law and local ordinances, and your security deposit, plus interest, will be returned in accordance with CA Civil C 1950.5- within 21 days of lease termination.

Maybe not so surprisingly, quite a few of the now-former-residents doing the asking are the same then-current residents who forgot about their scheduled preliminary inspections and had to reschedule in the final days of their tenancies. When your residents don't have that two-week lead time between their inspection and their move-out date, they might get so overwhelmed with their move-out that cleaning is the last thing on their minds. During the inspection I remind them that cleaning is a deductible expense from their deposit, and their opportunity to clean the unit to restore it to the condition it was received when they moved in is before they return the keys. If I come back to do their final walkthrough and it's not clean, they cannot return to the unit to do more ‘DIY cleaning’. If they've returned the keys, they've surrendered possession, period.

Per California Civil Code 1950.5, you have 21 days to return your residents' security deposit funds. State law dictates that rental housing providers can apply deposit funds to compensate for unpaid rent, make repairs of damages to the premises excluding ordinary wear and tear, or remedy any other defaults under the terms of the lease, such as unpaid utility balances, unpaid pet/parking fees, or to replace lost keys, et cetera. You must also

provide an itemized statement of your security deposit accounting. You can withhold up to \$125 without furnishing receipts, but if you withhold >\$125, be prepared to provide copies of your receipts, invoices, or photocopies of checks as proof of payment. Suppose you have a rent-controlled unit in Berkeley. In that case, you must pay interest on your resident's security deposit upon move-out. The Rent Board has a security deposit interest calculator on their website; the percentage changes depending on the month of move-out.

Please visit the BPOA website Content Library, Rental Housing Forms, under the section titled, “When a Tenancy Ends,” to find our Security Deposit Accounting Statement. We have provided this form as a Word document so those with rent-controlled units can modify the “other” section to accommodate security deposit interest as a credit. If you have any questions, please contact Tiffany@BPOA.org.

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12,000 Architects

“We can't rely on nice materials, because our budgets are tight ... (but) you don't need a ton of spice in your dish to make a really good dish,” said Looper, a principal with David Baker Architects, a San Francisco firm that has designed more than three dozen affordable complexes over the years.

In all, roughly two dozen of the 150 conference sessions touched on housing. Two looked at how to add shared workspaces to multi-unit buildings, a nod to the cultural impact of COVID. There was a presentation by a federal official on designing houses in areas susceptible to wild-fire, and another on psychological issues to consider when designing supportive housing for people who have been living on the street.

The strand that linked them had less to do with quantity than quality — to strive for housing units that provide nurturing homes, whatever the price level or population cohort.

“We need housing. We also need to do it humanely and allow for healthy living,” Mass Design Group's Evans said between sessions. “These things don't need to be in conflict.”

The average reported tenant buyout agreement in San Francisco weighed in at \$53,828 in 2022 according to public records

Whenever the topic of tenant buyout agreements comes up, inevitably we are asked what the average dollar amount owners have to pay out to effectuate a vacancy, and our answer always is that it is all across the board.

Sometimes, there is no money exchanged at all. With the assistance of our office, clients have secured an agreement with tenants whereby there is a voluntary move-out in exchange for a return of the security deposit, a rent waiver, or forgiveness of COVID-related rent debt and so the financial impact is minimal. In other cases, clients have paid six figures and up to \$200K, and so there is a wildly fluctuating range.

SocketSite does an annual review of how much San Francisco owners have doled out to tenants in order to transition a tenant out of the rental unit without the expense and aggravation of litigation.

According to the data reported, two holdout tenants in a six-unit building in Pacific Heights got the most lucrative payday last year with a buyout agreement totaling \$460,000. This may seem like a shocking amount at first blush but we have to consider the upside potential of a vacancy and not all that surprising. In New York City, for instance, we've seen buyout agreements north of \$1 million dollars.

Back in San Francisco, the most frequently consummated buyout agreements were in the Mission, followed by the Sunset, Ingleside, and Haight-Ashbury. The Inner Richmond, Eureka Valley, and Parkside trailed behind.

Are tenant buyouts worth it?

This depends on the unique circumstances, but a buyout agreement — if the dollar amount is reasonable — may be attractive and less expensive than going down the path of litigation if there is a just cause reason to evict. If no just cause reason can be found, the landlord has few other options to effectuate a vacancy.

The fundamental question: what is reasonable?

When a tenant vacates, the landlord can typically raise the rent to market rate, so this vacancy has tremendous value. As a general rule of thumb, every \$1,000 a month in rent that can be obtained for a unit translates to an additional \$100K value in the property.

Yet sometimes, the tenant or their attorney approach owners with an outrageous dollar amount that is out of

whack with reality. We often like to ask the open-ended question to the tenant, "What would you need to leave?" because this dollar amount may be less than what the owner is willing to pay.

Ideally, leave attorneys out of the discussion.

Our strong preference is for the owner to have a heart-to-heart discussion with the tenant in a pleasant environment and leave Bornstein Law out of this dialogue because our involvement can spook the would-be outgoing tenant.

Act one: He or she will likely do a Google search on us, become intimidated, and call an attorney of their own.

Act two: We receive a call or email from the tenant's attorney indicating that their client is willing to vacate for a rent waiver and, say, \$250K or some other unacceptable amount.

Ideally, then, Bornstein Law would provide a coaching role and stay out of the actual discussions with the tenant. We do recognize, however, that some clients are a bull in a china shop, and/or the rental relationship is so acrimonious that there can be no productive conversation between the two parties. If this is true, Bornstein Law can handle the negotiations, but the legal expenses are ratcheted up.

Not just "cash for keys"

In a properly prepared, ethical, and enforceable tenant surrender of possession agreement, while owners are paying to recover possession of the premises, the tenant is agreeing to release all legal claims that may have arisen during the tenancy, and this would include claims the tenant knows about and those claims that are unknown.

For example, the tenant vacates and six months later, claims that there is a respiratory infection because of mold. Because of the agreement, the tenant is barred from making that kind of claim.

Parting thoughts on tenant buyout amounts

It may be painful for housing providers to part with money by paying a tenant to voluntarily vacate the rental unit, especially when the tenant owes rent or has damaged the property. Yet it may be prudent.

Always above the emotional fray, Bornstein Law is all about landlords thinking smartly and strategically about their real estate investments, taking into account time, risk, and attorneys' fees.

Rent Refunds Ordered Under State Rent Control Law

Ben Christopher, Calmatters.Com, June 14, 2023

Tenants complained about steep rent increases from a Silicon Valley landlord. Now, 20 of them will get a refund under a state rent control law.

In 2019, Gov. Gavin Newsom signed a law to shield California renters from double-digit rent hikes and arbitrary evictions. Nearly four years later, the state announced its first enforcement action against a landlord under the California rent control law.

Attorney General Rob Bonta today announced that San Jose-based developer and property manager Green Valley Corporation will be on the hook for hiking the rent on 20 Silicon Valley tenants by an average of 151% — far in excess of the cap set by the law. The settlement also states that the company unlawfully evicted six tenants without providing a “just cause,” another violation.

The attorney general noted that this was a first for his office. “But it won’t be the last,” he said.

Under the terms of a settlement filed in Santa Clara County Superior Court, Green Valley, which also does business under the name Swenson Builders, will be forced to pay \$391,130. Of that, \$331,130 will be refunded to tenants in overpaid back-rent.

The settlement concludes a year-and-a-half long investigation by the Attorney General’s office.

As San Jose Spotlight reported last year, Swenson increased the rent on nearly two dozen tenants living near San Jose’s Japantown in 2021. Some of those tenants reached out to local legal aid organizations, which brought the issue to the state’s Department of Justice. The company reimbursed three tenants and admitted in a letter that the rent hikes were “higher than permitted by law.”

Tenant rights groups have decried the 2019 law as toothless ever since it took effect. Bonta’s announcement of the state’s first-ever enforcement action amounts to a very public flashing of fangs.

“It’s been really frustrating that the Legislature passed [the rent cap law] and then appeared completely unwilling to actually enforce it,” said Shanti Singh, a lobbyist and spokesperson for Tenants Together, a statewide renter advocacy organization. “The Legislature has been doing tenants very few to no favors right now, so Bonta is picking up their slack and we’re very appreciative of that.”

A rent cap in name only?

The 2019 law capped annual rent hikes to 5% plus inflation. The law also requires landlords to put forward a “just

cause” before evicting a tenant without compensation. Justifiable reasons include not paying rent, breaching the terms of a lease agreement or engaging in criminal activity on the premises of the rental property.

State law puts tight restrictions on how cities can enact new rent regulation policies or expand existing ones. When lawmakers agreed to implement a statewide cap in 2019, it was a historic break from a decades-long aversion to anything that even smelled of rent control.

But the law didn’t specify who would actually hold scoff-law landlords to account. Instead, it was left up to tenants, often short on cash and without a lawyer on speed dial, to challenge violations in court. Housing researchers have been unable to figure out just how widely or thoroughly the law is actually followed or enforced, but renter advocates like Singh say violations

10% rent hikes allowed under California rent control law

In recent years, the maximum allowable rent under the law has ballooned across California. When the law went into effect, inflation was below 2%, translating to a cap of around 7%. Since then inflation has soared. Over the last two years, landlords in certain parts of the state have been legally allowed to raise rates up to the law’s 10% ceiling.

Earlier this year, Los Angeles Democratic Sen. María Elena Durazo introduced a bill to bolster the 2019 rent cap law. Though an earlier version of the bill was watered down to remove language that would have lowered the rent cap to 5%, the bill still includes a provision setting financial damages for tenants who sue their landlords. It also explicitly empowers local and state prosecutors to sue on their behalf.

Durazo’s bill passed out of the Senate last month and is now awaiting consideration before the Assembly.

The bill is fiercely opposed by the California Apartment Association, a group that represents large landlords. Debra Carlton, a spokesperson for the group, applauded Bonta’s announcement on Wednesday.

“We certainly support the attorney general in enforcing the law,” she said. “And this demonstrates that the law works.”



Berkeley Rent Board Sent 2,400 Bills in Error

Supriya Yelimeli, Berkeleyside, June 16, 2023

The Rent Stabilization Board sent thousands of Berkeley homes incorrect rental registration bills in May due to a mailing error, according to rent board officials and residents.

The bills, part of the annual crop of Rental Registry fees under Measure MM, went out to about 9,000 Berkeley residents. DéSeana Williams, the executive director, said 2,400 of those were in error — meaning residents exempt from the rent registry received a notice of a bill due by July 3.

Leah Simon-Weisberg, board chair, said the original notices went out May 12, and residents would have started receiving them around May 15.

“On the 25th, we started getting people calling saying something is up,” Simon-Weisberg said.

She said the rent board sent correction emails to residents whose emails they had on file on May 26 and May 30 and followed up with emails by post on May 30.

All paper correction letters should have arrived in mailboxes by this week, and Williams and Simon-Weisberg said they confirmed that no payments were accepted from residents who are exempt.

“We haven’t accepted any payments from any of these properties that are saying, ‘Hey, we got this bill, and we don’t understand,’” Williams said.

For a resident to make a payment in the rent board portal, they have to move through the entire three-to-four-step registration process, Williams said, and the system would show a \$0 bill for an exempt property.

The exempt properties may, at one time, have been rented out or undergone a code inspection that was entered into the rent board’s mailing system. In 2020, the Rent Board initiated the rent registry process following the passage of Measure MM and began migrating “decades worth of information” into a new system, Simon-Weisberg said. This spring, the rent board tried to select certain categories from its mailing list to narrow its notification system, but exempt properties were selected by mistake.

“It’s frustrating, and it’s one of those best-laid plans because we were trying to be more specific with residents about what letters they got — and instead it did this,” Simon-Weisberg said, referring to the “mail merge” process for notices this year. “We never want people to feel any stress when they’re getting letters from the government.

continued on page 17

East Bay City Takes Step Toward Tenant Protections

Judith Prieve, Bay Area News Group, May 10, 2023

Tenants and advocates fed up with landlord problems, lack of repairs and unjust evictions on Tuesday urged the Antioch City Council to take swift action to adopt tenant protections and anti-harassment policies.

And while the council agreed to move forward with drafting rules for such protections, the timeline will not likely be as quick as most had hoped.

Mayor Lamar Thorpe asked fellow councilmembers whether they wanted to speed things up or follow the assistant city attorney’s projected timeline, bringing back a first draft on part of the renter protection proposal in June.

“If we keep shoving things down people’s (the staff’s) throats, we’re gonna get a bad outcome,” he said, noting the staff — especially the city attorney’s office — has been stretched thin in recent months.

Even so, on Tuesday, advocates from East County Regional Group, ACCE Action and Monument Impact nonprofits stood in solidarity with dozens of tenants, many of whom spoke out about their run-ins with landlords who delayed

repairs, harassed them, retaliated against them, and in some cases, forced them out.

But Rachel Hundley, assistant city attorney, cautioned that full implementation of the rent stabilization program passed last fall along with new tenant protection policies will require significant legal and administrative staffing.

The city’s rent stabilization rules control how much rents can be increased during the year, with the cap on rent at 3%, or 60% of the consumer price index, whichever is lower.

“For these programs to really be able to be as effective as they can, they do require some manpower,” she said, noting no additional staff has been approved for programs already in place.

With an estimated 13,960 rental units, Antioch’s rent program would cost about \$2 million, money which would come from rental program fees, Hundley said.

With current staffing levels in mind, she said her projected timeline would be to introduce ordinances in phases:

continued on page 17

California Rental Housing Association

We are now more than halfway through the legislative process for this year when bills had to progress out of their house of origin (either Assembly or Senate) by June 2nd in order to be considered. CalRHA had several wins with bills held in the Appropriations Committees, as well as on the Senate Floor. Fortunately, **SB 395 (Wahab, D-Fremont) – Statewide eviction database**, which dealt with requiring landlords to report all evictions to a new statewide eviction reporting database was held on the Senate Suspense file. Additionally, **SB 594 (Durazo)**, which would have required corporations to disclose the names and complete business or residence addresses of any beneficial owner, was also held on the Suspense File in the Senate.

In our most recent win, we were able to hold **SB 466 (Wahab)**, which would have repealed major protections afforded to the state's rental housing providers under the Costa-Hawkins Rental Act of 1995 and expand local rent regulations. SB 466 stalled with only 15 votes, 6 short of the 21 needed to pass. This was a huge victory for the rental housing industry. However, at the same time the Senate passed **SB 567 (Durazo)**, a bill that modifies the state's law around just cause eviction protections. While the bill did not directly impact Berkeley since we have our own local ordinance regarding evictions, however the proposed bill does impact our fellow housing providers who are subject to AB 1482 (the Tenant Protection Act of 2019). Tenant protection advocates claimed that owners were using the good cause of "substantial rehabilitation" improperly to evict tenants they wanted to get rid of. The bill further clarified what would qualify as substantial rehabilitation. It passed with the required 24 vote minimum. The bill must now make its way to the Assembly

floor for a majority vote. CalRHA will continue to advocate against the bill.

Additional Legislation CalRHA Continues to Lobby
AB 12 (Haney, D-San Francisco) – Tenancy: Security Deposits • OPPOSE • Would prohibit a landlord from receiving a security deposit for a rental agreement in an amount in excess of one month's rent, regardless of whether the residential property is unfurnished or furnished. *AB 12 passed the Assembly and is pending a hearing in the Senate Judiciary Committee.*

AB 309 (Lee, D-Milpitas) – Social Housing • OPPOSE
• This bill would define "social housing" for purposes related to the Zenovich-Moscone-Chacon Housing and Home Finance Act. It would make findings and declarations relating to social housing and would state the intent of the Legislature to further the Social Housing Act and to address the shortage of affordable homes by developing housing for people of all income levels, with prioritization for low-income households. *AB 309 passed the Assembly and is pending a hearing in Senate Housing, as well as Governance and Finance Committees.*

The California Rental Housing Association is a statewide organization representing almost 24,000 members totaling more than 653,000 units. Its purpose is to advocate in the best interest of the rental housing industry and collectively address industry needs. As a member of BPOA, you are automatically a member of CalRHA, our statewide advocacy organization.



QUOTE OF THE MONTH

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— **Ed Koch**

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Rental Housing Providers Need Solutions, Not Limitations to Keep Californians Housed

Mathew Millen, June 21, 2023, Santa Monica Daily Press

Mathew Millen is a Santa Monica resident who in one of the units in his Santa Monica apartment building.

As a rental housing provider, or landlord as we're referred to by most, in California it is commonplace to feel like the deck is stacked against you. California's elected leaders continue to propose legislation that's harmful to small mom and pop rental housing providers, like Assembly Bill 12 (Haney). As property owners, we play a vital role in our communities — we keep families housed in safe, well-maintained homes. In a state facing a worsening housing crisis each year, I do not take this role lightly and wish the California Legislature would see the valuable role we play in our communities — providing housing.

This proposed legislation making its way through Sacramento places limits on the amount of security deposits rental property owners could accept. Assembly Bill 12 would restrict the amount of security deposits to only one month's rent. That limitation does not take into consideration the applicant's financial history, eviction history or whether the current rental unit is furnished or unfurnished.

Under current law, a maximum-security deposit of two months for unfurnished units and three months for furnished units is permitted. The apparent goal of Assembly Bill 12 may be to allow potential tenants more access to housing, but Assembly Bill 12 will have the exact opposite effect and will limit opportunities for individuals and families seeking housing.

A few years ago, I rented an apartment I own near Santa Monica College and collected one month's rent for the security deposit. The renters put a small refrigerator in the living room that leaked. That water damage ruined the carpet and padding in the living room and one of the bedrooms. The carpet needed to be replaced and the hardwood floors below the carpeting refinished. That's just half of the damage — the refrigerator in the kitchen had to be changed. The total repairs to get the apartment market ready to re-rent totaled \$5,000. The rent at that time was \$1,700 for a two bedroom so the damage was nearly three times the security deposit.

Damage like that shouldn't be considered the cost of doing business. Now, when renting to new renters I collect a month and half to two months' rent security deposit. I do that to protect my property. I am a Vietnam Veteran and semi-retired and the income earned from rental properties supplements my social security benefits. I can't be out more than 50 percent, or worse, of the collected security deposit.

I understand the tough place renters can be in. After discharge from the Army, I attended law school on the GI Bill. My first job was as a legal aid attorney in San Pedro where I represented numerous renters. The unfortunate reality is if Assembly Bill 12 passes it will only discourage owners from taking risks on renter applicants that do not quite meet established financial criteria.

continued on page 16

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, July 20, 3:00 pm	Monthly Owners Forum with Sam Sorokin, Premium Properties
Thursday, July 13, 3:00 pm	Green House Call: Energy & Water Saving Freebies
Thursday, July 27, Noon	Credit Screening: How to Compare Data and Use Reports
Thursday, December 14, 5:30 pm	Save This Date! BPOA/BRHC Annual Holiday Party

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 landlord in Berkeley. This series is available for playback in the members-only Content Library on our website.

Study: Banning Investors from Buying Homes Leads to Higher Rents, More Gentrification

Christian Britschgi, Reason, June 21, 2023

Institutional investors that buy and rent out single-family homes are increasingly scapegoated for driving up prices, gentrifying neighborhoods, and depriving working and middle-class Americans of the opportunity for homeownership.

They've come under fire from liberals like Sen. Jeff Merkley (D – Ore.) and conservatives like Sen. J.D. Vance (R – Ohio).

"In every corner of the country, giant financial corporations are buying up housing and driving up both rents and home prices. They're pouring fuel on the fire of the affordable housing crisis," said Merkley last year. He's introduced a bill to tax large investors' purchases of single-family homes.

Several Georgia municipalities in suburban Atlanta have gone so far as to ban build-to-rent housing or otherwise subject it to stricter regulation.

A new study suggests this handwringing is much ado about nothing.

Last week, a team of Dutch researchers affiliated with the University of Amsterdam and Erasmus University released a study on the effects of a new law letting municipalities in the Netherlands ban buy-to-let arrangements. In Rotterdam, the country's second-largest city, officials used the new law to ban investors from purchasing homes in specific neighborhoods.

That allowed researchers to compare home sales, home prices, and the characteristics of new residents between the two types of neighborhoods.

They found that banning investors from buying and converting housing to rentals worked in one sense: The share of investor-owned rental properties in affected neighborhoods fell, and the number of properties bought by first-time homebuyers increased.

On the other hand, however, these new homeowners tended to be richer than the renters they were replacing, and the costs of rental housing increased overall.

"The ban has successfully increased middle-income households' access to homeownership, at the expense of buy-to-let investors. However, the policy also drove up rents in affected neighborhoods, thereby damaging housing affordability for individuals reliant on private rental housing, undermining some of the intentions of the law," write researchers in the study published on SSRN.

The number of homes sold and overall home prices also stayed flat, according to the study.

This cuts against common arguments against investor-owned rental housing: that it's raising prices for everyone else.

Indeed, the Dutch study suggests that institutional investors are playing a productive role in the market by providing rental housing to people who can't qualify for a mortgage.

Another 2022 study likewise found that institutional investment in real estate increases neighborhood diversity by opening up more affordable rental housing options. That study did find that these investors were raising home prices overall.

As The Atlantic's Jerusalem Demsas noted in an essay from earlier this year pushing back on the anti-investor pile-on, these institutional investors are a small portion of homebuyers, owning only about 3 percent of single-family homes.

That challenges the idea that BlackRock's homebuying business is driving major national trends in home prices.

Institutional investors are similar to Airbnb owners and foreign buyers: small, unpopular participants in the housing market that get blamed for high prices caused by a general insufficiency of supply.

Policy makers would do better to look for ways to expand housing supply through deregulation of construction and mortgage finance than passing laws restricting who's allowed to buy a house.

JULY MEETINGS & EVENTS

Monthly Owners Forum with Sam Sorokin, Premium Properties

Thursday, July 20, 3:00 pm

Green House Call: Energy & Water Saving Freebies

Thursday, July 13, 3:00 pm

Credit Screening: How to Compare Data and Use Reports

Thursday, July 27, Noon

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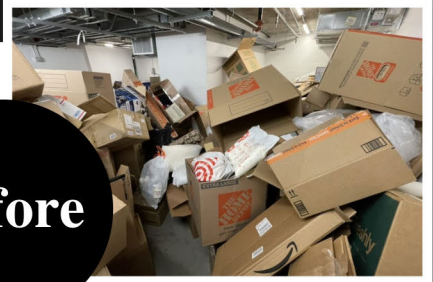
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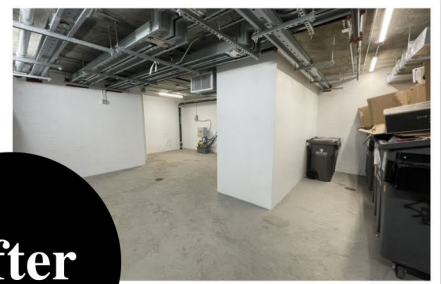
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ordinance continues to provide crucial protections for tenants and to preserve affordable housing. It concludes that Berkeley's rent control program offers a model of how cities can protect and assure access to affordable housing. The newer version has paragraphs of equal length enumerating arguments attributable to both proponents and critics of rent control. The piece concludes that there is a continuing national discourse on the matter. The difference here is significant.

The newer piece is better in that it has no errors of significance and is far more balanced in its discussion of the effects of rent controls. It does so, however, by omitting relevant facts. The original got it wrong, but it did refer to the Fisher and Birkenfeld decisions and specifically mentioned Costa/Hawkins. These were absolute milestones in the history of Berkeley rent control. Their omission is a serious flaw in the new essay.

I am not sure how these changes occurred. I am not even sure I asked the same algorithm for an essay. I'd like to believe that whatever AI program produced the second version actually read my comments and made corrections accordingly. The whole idea of AI is that it has access to all the information, and it can and does process it. I am told, however, that [freebie] ChatGPT only incorporates available data through 2021.

I appreciate that this editorial is more about AI than rent control. However, for rent control and any other matter of public debate, AI will be important, if not decisive, in determining public understanding and appreciation. We fail to pay attention to the power of AI to our detriment. For your own perusal, the two versions of The History of Berkeley Rent Control appear side by side on page 6.

Gov. Newsom's CEQA Reform Plan

Defenders of the law argue it protects low-income and disadvantaged communities from harmful development. A coalition of environmental justice groups, dubbed CEQA Works, recently released a report that states there were only 135 lawsuits filed under CEQA in 2021. The group said the number of legal challenges hasn't increased over the last 20 years. Housing advocates, however, said the report was flawed because the impacts of CEQA, both in terms of permitting delays and cost increases, are much broader than the court record suggests. Brandon Dawson, director of the Sierra Club California, is a member of the pro-CEQA coalition and opposes Newsom's proposed reforms. He said the push to portray CEQA as a "boogeyman" has been driven by wealthy developers because the law gives communities more leverage to oppose projects like warehouses and oil extraction wells. "We understand that CEQA does so much more good than the bad that's shown in the news and the media," they

said. "There needs to be a more robust conversation about the value of CEQA."

But even within the environmental movement, there has been a shift among some advocates. The nexus between climate change and housing density has prompted some environmentalists to align with YIMBY (Yes in My Backyard) groups on housing policy because they say sprawling development has harmed ecosystems and forced people to drive longer distances to access affordable housing.

Brian Hanlon, president of California YIMBY, said many housing advocates like himself are environmentalists and progressives who understand the overlap between climate and urban density. He said Newsom's decision not to include housing in CEQA reform was a "missed opportunity." "CEQA is not really an environmental law, it's better known as a status quo and incumbent preservation act," Hanlon said. "CEQA is incompatible with rapid decarbonization at the scale that we need."

Rental Housing Providers Need Solutions

During the eviction moratorium we carried the financial burden of the pandemic. We shouldn't be expected to continue carrying the financial responsibility of the rental market.

AB 12 is simply not a solution. I know owners who allow applicants to spread their security deposits over a couple of months. There are supplemental programs to help Californians get and stay housed, like Section 8. We need

similar programs to help Californians with security deposits. One potential solution may be some kind of renter security deposit loan program, because at the end of the day renters who don't destroy property get their deposits back.

California's legislators need to recognize the consequences that Assembly Bill 12 will have on their communities and vote no on AB 12.

Sarah Bowles, a Cragmont resident, received a letter from the rent board in May claiming her home was subject to the \$178 rental registration fee. Bowles said her home has never been rented, and she replied to the rent board's message with a long email explaining the home's property history. She hasn't paid any bill, and rent board officials said she wouldn't need to register or pay in a case like this. Still, the process was tedious and stressful, and Bowles said many of her neighbors who received bills had varying experiences disputing the notices with the rent board.

"It says, 'If a payment — isn't sent by the due date, a penalty will be assessed.' You can't send threatening language in a form and then mandate that I fill out this unit status form and go through their unit registry online," Bowles said.

Williams clarified that exempt properties are not required to undergo any unit registry process, and the best way to respond to incorrect notices — which don't require payment — is to call or email the rent board and ensure unit status is correct within their mailing list.

"[The error] really is unfortunate — these are folks that don't have to deal with our system," Simon-Weisberg said. "It was really the wrong people to get it, and we're very sorry that it happened."

Anyone who received an incorrect notice can call the rent board between 9 am to 4:45 pm Mon - Tue, Thu - Fri at 510-9817-368 ext. 2, or email rentregistry@berkeleyca.gov

one on a citywide rental unit registry in June, another prohibiting landlord retaliation in July, anti-harassment policies in August and rules on just cause for evictions in September.

Councilwoman Monica Wilson said she'd like to see anti-harassment and just-cause policies "come sooner rather than later," but Thorpe said it was important to understand the burdens on the staff.

"Rent stabilization is a new service that is operating in our city, our city attorney's office, that's something we've never done before," he said. "So, when our staff says it's going to take time to write these things up, I think we need to be cognizant of that."

Councilman Mike Barbanica meanwhile said he would wait until a renter protection ordinance is drafted to make a decision, and he would like to see an education component for both landlords and tenants.

"Generally speaking, as long as it's not going overboard, and it does provide protection, this is not going to affect the majority of landlords that are out there," he said. "This is going to affect people, theoretically, who are choosing to abuse the system."

"I do not believe in kicking people out of their house," he added. "That is the last resort."

As for the timeline, despite tenants' pleas, the mayor and council members deferred to the assistant city attorney, agreeing to follow her plan in bringing forth the protection policies.



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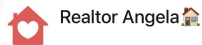
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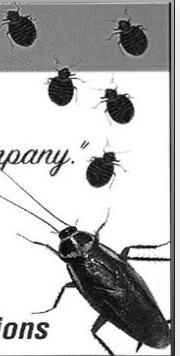
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*Save the Date! Holiday Party
Berkeley Yacht Club*

Thursday, December 14, 5:30 pm



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