

FELLOW SMALL PROPERTY OWNERS and supporters, thank you for all the effort and dedication you put into working for Prop. 98. Prop 98 would have ushered in the beginning of the end of rent control, clearly a government taking that forces a group of private citizens to assume what should be government's role—supporting needy renters. We, a tiny minority, did all that we could have done. We can now hold our heads up and go forward with our efforts to achieve fairness. The only other alternative is to do nothing and accept things as they are. Our organization would not have existed these past 10 years if the status quo were an acceptable situation.

Prop. 98 goes down, but the fight for fairness continues, and SPOSFI is there

Editorial comments by Noni Richen, President of SPOSFI

Electing moderate supervisors is top priority

We have a vital and challenging task before us right now. The November San Francisco Board of Supervisor elections, with seven seats open, offers a rare opportunity for SF property owners to change the tenor of the Board by electing moderates in two or three seats and supporting moderate candidates in districts that have elected moderates in the past. Two seats, D3 (Peskin) and D1 (McGoldrick), and possibly D11 (Sandoval), offer strong moderate possibilities already; electing a reasonable, sensible candidate in even one of these districts would be a major victory for a livable San Francisco that is not the laughingstock of the rest of the nation.

We will be calling on each of our members to contribute time, and—if possible—money, to effect this change. We will ask everyone to volunteer in a candidate's campaign office. Everyone can do something—man telephone banks, stuff envelopes, solicit donations, shuttle our housebound members to offices. We will wear pins that identify us as members of SPOSFI (our lobbying organization), so the candidates will recognize

that our endorsement means more than words on paper. If you live in one of the targeted districts, consider holding a houseparty for our candidate. Other members and the SPOSFI board of directors will assist you. Supervisory elections are very dependent upon grassroots efforts. What may seem like an inconsequential effort can, in fact, be powerful, introducing our endorsed candidate to all of your friends and neighbors. Right now, we need to hear from members who know they want to help in contacting other members. It doesn't matter which district you call home; helping in the targeted districts will benefit us all. Don't wait for us to contact you, because we might not know about your talents. Please send us a note at info@smallprop.org or phone us at (415) 647-2419. The fruits of our efforts will be apparent in 2009 and far beyond. 🏠



By David Brownell, SPOSFI member

FOR TRUE BELIEVERS, rent control is a religion, not a reasoned policy. Never examining the effect of past measures, never considering the experience-based conclusions of economists, never daunted by defeat, they press onward with a steady stream of new proposals.

Boston rent control redux

Sometimes we think that San Francisco is uniquely crazy. It isn't. In December 2004, Boston's City Council defeated a rent control proposal 8–5, in the third major local defeat for rent control in a short period. Tenants and housing activists in the Boston area protested loudly, and ever since have ceaselessly proposed new measures, being careful not to call them rent control. Expect to see some of these regulations

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SF Rent control: much more about 'progressive' power than tenants' rights

Homeownership and affordable rents are sacrificed to political power

By Karen Crommie, SPOSFI member

Among the most politically influential groups affecting housing policy in San Francisco are the Tenderloin Housing Clinic (THC) and SF Tenants Union (SFTU). Over the years, both have burnished their reputations as champions of tenants' rights and affordable housing. So it's most revealing, though it comes as no surprise to us, when a prominent "progressive" admits that rent control is really all about power.

In a May 14, 2008 article in the online www.BeyondChron.org ("SF's Skyrocketing Condo Conversions"), Randy Shaw, director of THC, frankly admitted that maintaining the number of rent-controlled units in the city is really about progressive voting power. Oh, sure, there was some mumbling about maintaining "economic diversity," but that mask quickly dropped when he took a hard look at the numbers.

Citing the incidence of condo conversions since 1998 (4,147), Shaw warns, "Over time, a tipping point could be reached where the number of rent-controlled tenants is too small to significantly impact political decisions." Per Shaw's figures, condo conversions are occurring at double the

legal ceiling of 200 per year. This, he reasons, is due to the fact that two-unit, owner-occupied buildings are exempt from the conversion cap. The exemption was originally created because people who could not afford a single-family home in the city could afford to buy a two-unit building. The rationale for the exemption, Shaw says, is no longer valid and should be overturned: "Duplexes in neighborhoods like Noe Valley, the Castro, Haight Ashbury, and the Marina now routinely sell for more than the cost of a house in other city neighborhoods. In other words, the policy for exempting owner-occupied duplexes from the condo limits no longer exists." But Shaw overlooks the fact that even if a duplex costs more than a single-family home, it is the income from the second unit that permits a person of lesser means to own in San Francisco.

When those duplex units then sell as condos, twice as many people become homeowners. Home ownership is a good thing: for those involved, for children, for neighborhoods, and for the city as a whole. To sacrifice an opportunity for home ownership at the altar of Progressive Power is shortsighted, selfish, and even-

“While many argue that the proliferation of new market-rate housing poses the greatest threat to the city’s progressive politics, the steady loss of rent-controlled housing poses far greater harm, as it eliminates the city’s most consistently progressive voting bloc: rent-controlled tenants.”

—Randy Shaw, Director,
Tenderloin Housing Clinic

tually, crippling for the future of San Francisco.

The great number of market-rate units now on the drawing board is even more troubling to Shaw and his compatriots. Building more market-rate housing will exert a downward pressure on rents in general, lessening the need for tenants to cling so tenaciously to their rent-controlled units and giving them the freedom to move up. But this is no consolation to Shaw: more market-rate renters in the city simply further dilute the power of the progressive voting bloc.

But, one might ask, what about the mandatory 12-17% "affordable" units required of all new construction? Shaw says it doesn't provide nearly enough "to help families struggling to stay in the city." I suspect, however, just as with rent control itself, it's not the struggling families that concern him as much as the prospect of seeing the tenant power base being whittled away. And if Shaw's article is the harbinger of an upcoming ballot measure bringing two-unit, owner-occupied buildings under the condo conversion cap, which I suspect it is, the "tenants rights" activists will need all the votes they can muster. 🏠

SPOSFI news

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Caution: idealogues at work (cont'd from p. 1)

being proposed here one of these days:

- A proposal in Boston would prevent tenants in a foreclosed property from being evicted for the duration of ownership by a bank or any other forecloser unless the owner proved in court that the tenant was in violation of one of the “just causes.” Failure to pay a rent increase is not one of the causes, so the new owner could not effectively raise the rent. As the owner could not deliver the property to a purchaser empty, available for his use, the property sale would be slowed and its price reduced. Meanwhile, the bank would be in the property management business—something banks are loathe to do. A foreclosed property is likely to be in need of repairs, too, so tenants could withhold rent

“For true believers, rent control is a religion, not a reasoned policy . . .”

on the grounds that repairs are needed and insist that the bank make them. Tenants are not required to put the rent money in escrow, so they may end up paying no rent for some time.

- A bill is moving forward in the Massachusetts legislature which would prevent landlords from evicting tenants who claim to be victims of domestic violence, even if they damage the property, awaken other tenants in the middle of the night with noise, and continue to live with the alleged abuser. Presumably, the other tenants could move out or sue the landlord for not providing “quiet enjoyment” of their unit.

- In 2007, the Boston City Council soundly defeated a proposal to require landlords to meet with their tenants twice a year for up to six hours for “voluntary” collective bargaining. The proposal is seen as a step toward compulsory collective bargaining.

- Somerville, which borders Boston, proposed allowing any tenant to claim that a rent increase was “unreasonable” and intended as a step toward eviction and condo conversion. A landlord would have to prove in court that the rent increase was “reasonable.” Another proposal would have imposed a lengthy notice period before tenants could be evicted as part of a condo conversion. The proposal failed, but is being redrafted.

- A “non-utilization tax on vacant property” is proposed in Boston. The tax would amount to 10% of the assessed value of the property, payable each year, as compared to typical property taxes of 1%. The intent of this confiscatory rate is to force owners to sell empty property fast—at whatever price. During the years

when rent control was in force, Boston and Cambridge had strict rules against leaving units vacant.

For more information about rent control proposals in the Boston area, go to www.spoa.com.

Tenant activists propose citywide rent strike

A San Francisco group calling itself “The No Business Collective” is distributing leaflets proposing that all renters refuse to pay rent: “We see housing as a human necessity (like health care) that should be

available to everyone for free.” They feel that being forced to work to pay the rent prevents renters from living and degrades relationships. “Deconstructing relationships of power and business are essential to exposing

the time and materials of life that could be available to everyone if there was NO BUSINESS.” (Yes, I’m quoting exactly.) A rent strike will change everything, and if enough renters join in, it will be impossible to evict everyone. “Real estate companies will think twice before investing in a city full of trouble makers, so all we have to do is make trouble.” For more rhetoric, see www.rentstrike.org.

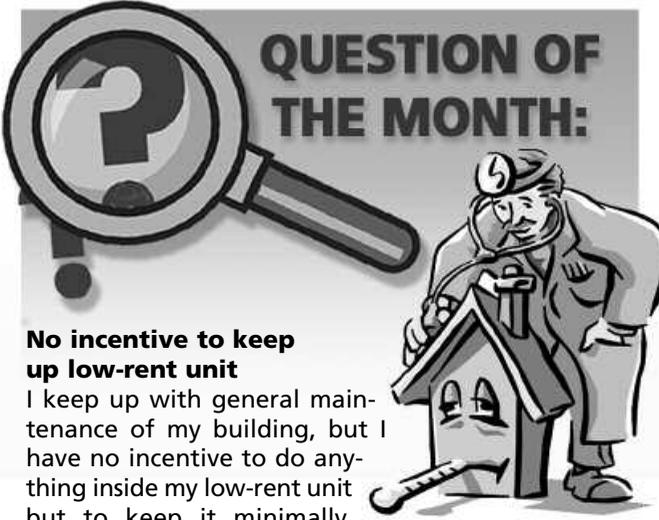
The leaflet does not explain what will happen after the successful rent strike has provided everyone with free housing. Some questions do occur to me:

- Who will pay for maintenance and do the work? (They describe people like us, with jobs and mortgages, as “the living dead.” If we cease to receive rent, does that entitle us to free housing, too, and to someone else who will do the work we’ve done or paid for?)
- If no one is paying rent, how does the city collect taxes to provide services and build new housing? (They’re opposed to private investment.)
- Is a corollary of the right to free rent and health care the right to free food, water, and clothing?

Predictably, such bothersome practical questions don’t seem to deter the Tenants Union and Housing Rights Committee: **they support the rent strike.**

The moral of this tale? There will continue to be a steady flow of proposals from people who believe that it’s possible to get something for nothing, that benefits can be had without any cost, or that they’re entitled to live by the sweat of someone else’s brow. Each new specious proposal will have to be argued against. Whenever one makes it onto the ballot, the voters will need information about its harmful effects. If SPOSFI didn’t exist, it would have to be invented. But it does exist: to make it effective, we need to support the organization with our time and money, recruiting additional members, and educating the voters. 🏠





QUESTION OF THE MONTH:

No incentive to keep up low-rent unit

I keep up with general maintenance of my building, but I have no incentive to do anything inside my low-rent unit but to keep it minimally habitable. My market-rate units have fresh paint and modern appliances; the low rent unit hasn't been painted since the tenant moved in in the eighties. Selective deferred maintenance is another downside to rent control. Resentment on the part of market rate tenants is another.

—Steven Edwards

Can't afford to do it right

- Exterior paint: the building looks awful, but I just can't afford to get it done right: with permits, scaffolding, lead abatement, etc. I know that once I start the project it will open up a can of worms.
- Total roof replacement. I just patch it up each time and cross my fingers.

I can pass these charges on over a period of time, but I still have to pay for it up front. Small property owners don't have "bill control." Contractors get paid on the spot, whatever the market allows.

And when my tenant lets the toilet leak for two months without telling me (until I get the bill), another \$2,000 is literally flushed down the toilet.

—Miren Alvarez

Only what's absolutely necessary

Yard and garden have been neglected. Repairs that could wait have waited. It may seem as if these items are unimportant or they would get done regardless, but when small repairs pile up, and various types of work are needed, it becomes a burden to clear many at once. Repairs should be done in a timely manner for an efficient upkeep of property.

—Muriel Wanderer

What maintenance or improvements have you deferred because of low rental income?

I'm holding off on exterior paint and the back stairs, which need to be rebuilt but are instead being patched and repatched just to keep them safe; installation of new hallway carpeting will just have to wait.

—Ilse Cordoni

Used to be far more fastidious

At one time, I washed all windows in my building every six months. I was very fussy about repainting rooms about every five years, even when the tenants lived there. Carpeting was steam cleaned every six months. But not any more! Once they move out, if ever, the unit will get totally renovated anyway. It really bothers me as the common areas and yard are immaculate. In fact, I just spent over \$20,000 on new sidewalks, driveway, and sewers. The proverbial wind has been taken out of my sails as far as doing anything inside except health and safety repairs. Thanks to rent control the city has lost a landlord that used to care a lot.

—Dennis Wolframski

Where do I start?

Our middle-floor tenants just served us with a lawsuit claiming that because we didn't replace their carpet in what they deemed a "timely matter," they are entitled to \$500,000 (yes, half a million dollars) in compensatory damages for "mental anguish." As tenants, they are eligible for free legal aid: we are not. So now we have to pay a lawyer a \$5,000 retainer to fight this ludicrous claim. This lawsuit follows a recently completed \$4,000 renovation of their unit, but our contractor had to delay replacing the carpet because eye-surgery had rendered him temporarily blind. The delay amounted to approximately 8 weeks, and the carpet had never been replaced by either of the previous landlords in the 10 years that these tenants had occupied the unit. These tenants occupy a full-floor, three-bedroom, 1,800 sq. ft. unit. They sublet rooms out to various people and are currently actually making a profit on our rental property. Their rent? A ridiculous \$1,100 a month.

—Name withheld

An SPOSFI member speaks out and puts his money where his mouth is!

SPOSFI recently received a generous \$300 membership renewal check from member John Johnck along with a handwritten note in response to last month's newsletter editorial ("*Re-energizing our membership through active participation is job ONE*"). Here's what he had to say:

"I don't understand the complaint cited in your editorial that SPOSFI is not doing enough. Maybe that member should personally spend some time lobbying and going to City Hall committee meetings. He could also get involved in soliciting new members for SPOSFI. I believe we're a front-line assault team, the only ones working in the trenches and answering back with intelligent facts as ammunition against the socialist forces that control our city. I enclose \$100 per rental unit knowing you are my comrades-in-arms."

Just barely getting by

I have three rental units—one 3-bedroom and two studios. The big unit has been at about half market value—maybe \$1,200 a month under market. I just rented the studio apartment, and calculate that the new tenant is paying twice as much per square foot as the three people in the big unit. The other small unit is about \$300 below market. That's \$18,000 a year that I don't get.

I try very hard to fulfill my responsibilities to my tenants and to maintain my building. For some years I've only had enough money to make essential repairs, with the following priorities: 1) whole property, inside and out: health and safety and prevention of further deterioration; 2) tenant units: replace appliances as needed and deal with essential services; 3) our unit. There hasn't been enough money for any work in our unit for about five years: the bathroom floor has old vinyl held together with duct tape and a water-damaged wall, because I've not been able to afford to get it tiled.

My wife died in 2006 at the age of 61 after several years of increasingly severe health problems. During those years our outside income dwindled: she couldn't work and needed my time. In 2005, our worst year, our adjusted gross income was \$20,000. That year a major problem developed with the footings of two essential support posts at the back of the house. I tapped my last resource to pay for the work, borrowing \$10,000 on my life insurance. If I'd had

NEXT MEETING: TUESDAY, JUNE 10, 7 p.m.

St. Mary's Cathedral, Parish Hall

1111 Gough St. at Geary Blvd.

Refreshments, always plenty of free parking!

GUEST SPEAKERS:

Miren Alvarez, Bay Area Reverse Mortgage: The growing popularity of reverse mortgages; and **Scott Moeller**, Magna Carta Equities: How to increase your cash flow, diversify your real estate investment portfolio, and preserve equity gains

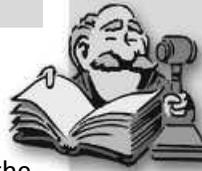


PLEASE NOTE: No membership meeting or newsletter in July. See you in August!

Have your legal questions answered by the experts ...

Don't miss our monthly Legal Panel, 6:30-7 p.m.

Guest panelist: tenant's attorney **Andrew Westley**. Moderated by attorney **Paul Utrecht** of Zacks Utrecht & Leadbetter, P.C.



the additional \$18,000 I would have been able to pay for that job without taking on debt and to provide some comforts for my wife.

Here's a partial list of jobs I would have done if I'd had the money: increasing my insurance coverage; installing seismic shear walling; replacing the last of the old galvanized pipe in the two small units with copper; replacing a flight of stairs at the back of the building to get rid of dry rot (it leads to my unit, and no one but me uses it, so I let it wait); repainting the large unit; refinishing floors in the large unit and my unit; tiling a bathroom in one of the small units, and in my unit; replacing windows for energy efficiency; repairing damaged plaster in the large unit ... And I've always wanted to convert the two small units, which have a full building's worth of attic space above them, into one three-bedroom unit.

My mother's death in 2006 freed up some family money, enabling me to deal with the most urgent of these jobs. So far this year I've spent \$17,000 on dealing with the pipe and the back stairs, and am committed to spend another \$5,000 on tiling the tenant bathroom. That's more than two-thirds of the rental income I'll receive.

—Name withheld

Merging units and legalizing an illegal unit

By M. Brett Gladstone, Esq.

City policy on merging of dwelling units

The Planning Code permits the merger of dwelling units into fewer units. However, the Planning Commission strongly discourages the practice. There is a discretionary review policy (an automatic Planning Commission hearing) for most building permit applications for dwelling unit mergers. For the following kinds of mergers, such a hearing may not be required (or if a hearing is required, Planning Commission approval is more certain):

- Projects involving merging units for occupancy by owner or family members, bringing a building with four units or less closer to its original architectural configuration, particularly as part of restoration of an architecturally significant building.
- Projects merging one set of two units, or a portion thereof, for an owner occupant or family members, in a building with six or more units, particularly when it is shown that no existing unit is large enough for the family seeking the merger.

Where Discretionary Review is considered by the Planning Commission, the Commission will likely look for development alternatives that would reduce the total loss of dwelling units on the site and respond to dislocation issues of residential tenants. There may be other impediments to such mergers, including the strict new owner-move-in eviction rules and a recent Planning Code amendment.

Legalizing an Illegal dwelling unit

If a unit has been authorized by building permit, it is legal; if not, it is illegal, no matter how long it has been established or what the rules were at the time. The Report of Residential Record (3-R Report)—although often inaccurate—purportedly provides information from the city's building permit records, including the property's last authorized use. There may be instances where a unit has been in continuous existence from before the 1906 fire (which destroyed building permit records), in which case the 3-R Report may not be helpful. In such cases, because zoning laws which govern residential density were not adopted until 1921, the unit could be considered legal if sufficient evidence of its existence can be gathered from other records, such as from the Water Department.

The last use authorized by permit is the only

legal one. For example, if a building once contained three dwellings authorized by building permit but a permit was subsequently issued to remove one unit, the record would show that only two units are legal. If a third unit is then added without a building permit, that unit would be illegal whether or not it was once authorized. If no permit had been issued to authorize a unit, there is no "grandfather" status. Besides being required by law, obtaining a building permit for installing a dwelling unit is an advantage to the current and subsequent owners by recording the unit's authorization and establishing its grandfathered status in case the zoning laws change in such a way as to disallow it in the future.

Planning code criteria for legalizing a unit

If a unit illegally established without permit cannot be approved under current regulations, it cannot be legalized and must be removed. However, if a unit illegally established without a permit can be allowed under current zoning regulations and the Building Code and all other current applicable laws, the owner may apply for a building permit to legalize it. If legalizing the unit does not constitute any expansion of the building's external dimensions in any direction, only three Planning Code provisions—density, off-street parking, and useable open space—need to be met.

If the proposal fails to meet all applicable Planning Code provisions, the unit cannot be legalized even if it meets all other code requirements, unless a variance is obtained.

Permit requirements for legalizing a unit

A building permit application must be accompanied by two sets of drawings showing the situation prior and the proposed work to be done. They must be accurate and drawn to scale, and include complete plans for all floors in the building, indicating the use of each room, major features, location and dimensions of required off-street parking plus sufficient graphic information to show that the useable open space requirements will be met. The drawings must include a site plan of the subject lot, accurately locating the building and the proposed changes relative to the lot lines and, if the property is located in a residential district, drawings must include full site plans of the two adjacent lots showing the location and height of their buildings. Site plans must be drawn by a licensed surveyor or licensed architect. 🏠

Brett Gladstone is a San Francisco attorney specializing in land use, real estate, and condominium law. He may be reached at (415) 434-9500 or via e-mail: brett@gladstoneassociates.com.


 Get plugged in!

SPOSFI RESOURCE GUIDE

The following are businesses that are supportive of our organization and have joined at the **Business Level**. For a full listing with complete contact information, check our website at:

www.smallprop.org/resources/guide/

When selecting service providers, always exercise good judgment to meet your specific needs. SPOSFI makes no claims or warranties of any kind, and provides these service references for your convenience only. The decision as to where you place your business rests with you.

Note: All phone numbers are area code 415 unless noted otherwise.



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for the rights of small
property owners
through advocacy
& education

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E-mail address: _____ Fax: _____

Employer: _____ Occupation: _____ Self-employed Retired

How many units do you own? _____ In which Supervisorial District (1-11) do you reside? _____

Sign me up as a: **\$75-Regular member** **\$125-Supporter** **\$200-Sponsor** **\$375-Business member** (includes listing in Resource Guide)
same address). Enclosed is my contribution of: \$50 other: _____

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