



August 13, 2026

Hon. Lynda Hopkins
Chairperson
Bay Area Air District
375 Beale Street, Suite 600
San Francisco, CA 94105

Re: Comments on the Rule 9-6 – Opposition

Dear Chair Hopkins and Members of the Board:

The California Apartment Association and San Francisco Apartment Association appreciate the Bay Area Air District's willingness to revisit Rule 9-6 governing residential water heaters and acknowledge the significant implementation challenges that have become apparent since its adoption.

The proposed amendments represent an important recognition that many existing buildings face practical and financial barriers to electrification and that additional flexibility is necessary. We commend the Air District for engaging stakeholders and attempting to address these concerns.

Proposed Rules are Preempted

We continue to maintain, consistent with CAA's position as a plaintiff in *Rinnai America Corp. v. South Coast Air Quality Management District*, __ F.4th __, 2026 WL 1912093 (9th Cir. 2026), that zero-NOx requirements such as those imposed by Rule 9-6 are preempted by the federal Energy Policy and Conservation Act under the reasoning of *California Restaurant Association v. City of Berkeley*, 89 F.4th 1094 (9th Cir. 2024). We submit these comments in good faith pending completion of further judicial review, and our participation in this rulemaking process should not be understood as waiving or conceding any legal challenge to zero-NOx requirements.

Proposed Rules Impact Housing Affordability

And, while these amendments are a step in the right direction, we remain concerned that the proposal does not adequately account for its impact on the region's existing rental housing or on the residents who depend on that housing remaining affordable.

The Bay Area continues to face one of the nation's most severe housing affordability crises. Policymakers at every level of government have emphasized the need to preserve existing housing and avoid imposing unnecessary costs that make housing more expensive to own, operate, and maintain. Accordingly, any regulation that substantially increases the cost of

maintaining rental housing should be carefully evaluated not only for its environmental benefits, but also for its potential impacts on housing affordability.

Air District Should Conduct Enhanced Socioeconomic Analysis on Proposed Rule

This principle is aligned with a proposed policy currently under consideration by the Air District: to prepare enhanced Socioeconomic Impact Analysis reports for proposed new or amended rules and regulations. The stated goal of this policy is to minimize adverse socioeconomic impacts on Bay Area residents. Given that the recent amendments to Rules 9-4 and 9-6 are the most significant and sweeping rule changes adopted by the Air District over the past two decades, it is incumbent on the Air District to also prepare an enhanced Socioeconomic Impact Analysis report on both Rules 9-4 and 9-6.

Preparation of an enhanced Socioeconomic Impact Analysis report would allow the Air District to better understand compliance costs (including exemption applications and reporting requirements), cost-effectiveness, regional economic effects, impacts on businesses and workers, and consumer impacts on Bay Area households. An enhanced Socioeconomic Impact Analysis report should be used to guide and inform additional exemptions, extensions, and other policy improvements.

Replacing a Water Heater is More Complicated than the Rule Contemplates

Additionally, in many older multifamily buildings, replacing a conventional gas water heater with a heat pump water heater is far more complicated and more costly than simply replacing one appliance with another. It often requires electrical service upgrades, panel replacements, new wiring, structural modifications, ancillary work related to asbestos and lead-based paint abatement, utility coordination, and additional permitting before hot water service can be restored.

These infrastructure requirements can increase replacement costs by many thousands of dollars beyond the cost of the appliance itself. For much of the Bay Area's rental housing stock, the expense is not limited to a single water heater but may require upgrades to electrical systems serving an entire building. These projects can take days or even weeks to complete, extending the time before residents once again have reliable hot water. When projects also rely on PG&E or other utility upgrades, they can routinely take more than six months.

These costs do not exist in isolation. Rental housing providers are already facing substantial increases in insurance premiums, utility rates, labor costs, construction materials, and compliance with an expanding array of state and local housing regulations. Layering additional infrastructure mandates onto existing buildings increases the overall cost of operating housing.

Those increased costs ultimately affect housing affordability. While many housing providers operate under rent stabilization or other limitations that restrict their ability to recover unexpected capital expenses, those costs do not disappear. Instead, they reduce resources available for ongoing maintenance, property improvements, energy efficiency upgrades, and

reinvestment in aging housing. Over time, policies that increase the cost of preserving existing housing can discourage investment in rental properties, reduce the quality and longevity of the existing housing stock, and contribute to higher housing costs for current and future residents.

Proposed Rule Jeopardizes Housing Stability, Housing Quality & Habitability

We are also concerned that the proposed amendments continue to create uncertainty for emergency replacements. Housing providers have a legal obligation under California law to provide safe and habitable housing, including reliable hot water. When a water heater fails, owners often have only hours—not weeks—to restore this essential service. A lack of hot water is more than an inconvenience; it can render a rental home uninhabitable and expose both residents and housing providers to significant hardship. Regulations governing replacement water heaters should recognize the urgency of these situations and ensure that compliance requirements do not unnecessarily delay the restoration of an essential service. In emergency situations, housing providers need a practical and timely path to restore service, not one that is delayed by infrastructure constraints or administrative requirements. During an emergency equipment failure, property owners should be able to restore hot water to residents as quickly as possible without navigating lengthy or uncertain administrative processes.

Although the Air District has proposed additional exemptions, the rule still effectively makes electrification the default replacement pathway while requiring owners to demonstrate eligibility for alternative compliance. Moreover, many of the exemptions most relevant to rental housing providers grant only temporary relief. For example, the exemptions addressing ventilation, ceiling-height, and electrical constraints are limited to a single installation. Likewise, the contractor temporary-replacement exemption requires removal of the noncompliant water heater *within 12 months*. The multifamily-building exemption applies only to water heaters manufactured before January 1, 2033. These provisions therefore merely delay the required transition and the associated burdens, disruption and costs, even when the underlying infrastructure or feasibility constraint may remain after the exempt replacement.

We respectfully encourage the Bay Area Air District to continue refining the proposal by:

- Preparing an enhanced Socioeconomic Impact Analysis report to better understand the compliance costs, regional economic effects, consumer impacts, and adverse socioeconomic impacts on Bay Area residents. An updated Socioeconomic Impact Analysis report should also be used to inform consideration of further exemptions and extensions.
- Expanding exemptions for existing multifamily residential properties where electrification would require substantial electrical infrastructure upgrades or is otherwise impractical.
- Providing an expedited and clearly defined emergency replacement process that allows housing providers to restore hot water immediately with permanent, not temporary, non-electric appliances when existing equipment fails.
- Simplifying exemption requirements and reducing administrative burdens for owners of existing buildings.

- Further evaluating the cumulative housing affordability impacts of these regulations, particularly in light of the Bay Area's ongoing housing shortage and affordability challenges.
- Considering compliance approaches that reduce emissions while preserving flexibility for existing buildings where full electrification is not yet feasible.

Housing providers support reasonable efforts to improve regional air quality and reduce emissions. However, environmental policies should also recognize that preserving affordable housing requires maintaining the financial viability of existing rental properties and ensuring that essential services can be restored quickly when systems fail. Regulations that significantly increase the cost or complexity of replacing essential building systems inevitably make housing more expensive to maintain, reducing investment in existing housing, delaying critical repairs, and ultimately undermining the shared goal of keeping safe, reliable, and affordable housing available throughout the Bay Area.

We appreciate the opportunity to provide these comments and look forward to working collaboratively with the Air District to develop solutions that advance environmental objectives while also supporting the shared goal of preserving safe, affordable, and well-maintained housing throughout the Bay Area.

Sincerely,



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Charley Goss
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