BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC DEVELOPMENT COMMITTEE

REGULAR MEETING

Thursday, December 1, 2022
10:30 AM

Committee Members:

Councilmembers Ben Bartlett, Rigel Robinson, and Lori Droste
Alternate: Mayor Jesse Arreguin

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council Land Use, Housing, & Economic Development Committee will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL https://us02web.zoom.us/j/83318619669 If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the “raise hand” icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **833 1861 9669** If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Land Use, Housing, & Economic Development Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - July 7, 2022, July 19, 2022, and November 22, 2022

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. Referral to City Manager: Tenant Habitability Plan and Amendments to Relocation Ordinance
From: Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor)
Referred: October 31, 2022
Due: May 14, 2023
Recommendation: Refer to the City Manager and City Attorney:
(1) To review and develop proposed amendments to the Berkeley Municipal Code to require a Tenant Habitability Plan for major construction or renovation at tenant occupied properties. Proposed language modeled after the City of Los Angeles' Tenant Habitability Plan requirements is attached for consideration. The City Manager should also return with information on the costs and staffing needs for implementation for future budget discussions.
(2) Refer to the City Manager and City Attorney recommendations from the 4x4 City Council/Rent Board Joint Committee on Housing for amendments to the City's Relocation Ordinance, BMC Chapter 13.84 to strengthen and improve enforcement of the ordinance.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100

3. Amending BMC Chapter 13.84 to Expand Relocation Assistance and Conflict Resolution for Tenants
From: Councilmember Taplin (Author)
Referred: February 8, 2022
Due: December 31, 2022
Recommendation: Adopt a first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.84 enacting the following changes to the City's Relocation Ordinance:
(1) Section 13.84.010 – Delete language referring to "Relocation Services";
(2) Section 13.84.020 – Create definition of Emergency Relocation to establish process and expectation for owner to provide relocation money for emergency events;
(3) Section 13.84.030 – 1) Change title to clarify that tenants are entitled to payments when Relocation applies, rather than "Services or Assistance". 2) Clarify the type of determination notices that parties would receive from City officials;
(4) Section 13.84.040 – Create different procedures for "Planned Relocation" and "Emergency Relocation". Move "Owner Responsibilities" content to other sections;
(5) Section 13.84.050 – 1) Change title to clarify that it is about procedure and not payments. 2) Add Notice and Order to "Determination Notice". 3) Move Section B and C to Appeals Section;
(6) Section 13.84.060 – 1) Change title to clarify Relocation Prompted by owner. 2) Include language to indicate that Relocation can also be requested by owner when there is no building permit application. 3) Clarify in Section E that the "Owner must provide" proof of notice;
(7) Section 13.84.070.A – 1) Include Moving and Storage to Short term Relocation entitlements if applicable to the situation. 2) Section 13.84.070.A.3 regarding a tenant's ability to pay costs up front. 3) 13.84.070.A.4.b – meal allowances. 4) 13.84.070.B.2.b – reimbursement for moving and storage costs changed to pay up front. 5) 13.84.070.B.3 – Changing how Rent Differential is calculated 6) Section 13.84.070.B.4 – Consider specifying different utility costs, such as disconnection and reconnection. 7) 13.84.070.N1 – Consider meals Per Diem rates for what is appropriate for the region. 8) Add Section to speak to replacement unit reservation costs and potential cancellation costs if move back notice is given earlier than expected;
(8) Section 13.84.080 – Remove;
(9) Section 13.84.100 1) Change Title 2) Change process for receiving notification that Relocation is or is not required. 3) 13.84.100.A.4 Change HAC to Hearing Officer. 3) Section 13.84.100.A.5 - Change appeal timeline from 5 to 10 days. 4) Section 13.84.100.B – Change Language to mirror HAC Process outlined in 19.44.
Financial Implications: Staff time.
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

4. Amendments to BMC Chapter 13.110 COVID-19 Emergency Response Ordinance
From: Councilmember Wengraf (Author), Councilmember Harrison (Author)
Referred: November 14, 2022
Due: May 8, 2022
Recommendation: Adopt the first reading of an ordinance to approve the proposed amendments to BMC Chapter 13.110 COVID EMERGENCY RESPONSE ORDINANCE.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

5. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals
From: Councilmember Harrison (Author)
Referred: July 28, 2020
Due: April 25, 2023
Recommendation: Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Items for Future Agendas

- **Discussion of items to be added to future agendas**

Adjournment

~~~
~~~

COMMUNICATION ACCESS INFORMATION:
To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

~~~
~~~

BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC DEVELOPMENT COMMITTEE

REGULAR MEETING MINUTES

Thursday, July 7, 2022
10:30 AM

Committee Members:

Councilmembers Ben Bartlett, Rigel Robinson, and Lori Droste
Alternate: Mayor Arreguin

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council Land Use, Housing, & Economic Development Committee will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL https://us02web.zoom.us/j/83333124582. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the “raise hand” icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **833 3312 4582**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Land Use, Housing, & Economic Development Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

MINUTES

Roll Call: 10:32 am. Councilmembers Droste and Robinson present.

Councilmember Bartlett absent.

Public Comment on Non-Agenda Matters: 3 speakers.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes – May 5, 2022
Action: M/S/C (Droste/Robinson) to approve the May 5, 2022 minutes.
Vote: Ayes – Droste, Robinson; Noes – None; Abstain – None; Absent – Bartlett.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. Efficiency Unit Ordinance
From: Councilmember Taplin (Author)
Referred: April 25, 2022
Due: October 11, 2022
Recommendation: Refer to the City Manager and Planning Commission to adopt objective standards for Efficiency Units pursuant to California Housing and Safety Code § 17958.1, developing an ordinance to amend the Berkeley Municipal Code modeled after standards implemented in the City of Davis and the City of Santa Barbara.
Financial Implications: Staff time
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: 3 speakers. M/S/C (Droste/Robinson) to approve the item with a positive recommendation.
Vote: Ayes – Droste, Robinson; Noes – None; Abstain – None; Absent – Bartlett.

Committee Action Items

3. Referral: Keep Innovation in Berkeley
From: Councilmember Robinson (Author), Councilmember Taplin (Co-Sponsor), Mayor Arreguin (Co-Sponsor), Councilmember Harrison (Co-Sponsor)
Referred: June 13, 2022
Due: November 28, 2022
Recommendation: Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:
1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a [Zoning Certificate/AUP].
2. Updating the "District Purpose" sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
4. Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D.
5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.
Financial Implications: Staff time
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
Action: 2 speakers. Discussion held. Item continued to a special meeting on Tuesday, July 19, 2022.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

4. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals
From: Councilmember Harrison (Author)
Referred: July 28, 2020
Due: October 25, 2022
Recommendation: Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Unscheduled Items

5. Amending BMC Chapter 13.84 to Expand Relocation Assistance and Conflict Resolution for Tenants
From: Councilmember Taplin (Author)
Referred: February 8, 2022
Due: October 25, 2022
Recommendation: Adopt a first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.84 enacting the following changes to the City's Relocation Ordinance: 1. Section 13.84.010 – Delete language referring to "Relocation Services"; 2. Section 13.84.020 – Create definition of Emergency Relocation to establish process and expectation for owner to provide relocation money for emergency events; 3. Section 13.84.030 – 1) Change title to clarify that tenants are entitled to payments when Relocation applies, rather than "Services or Assistance". 2) Clarify the type of determination notices that parties would receive from City officials; 4. Section 13.84.040 – Create different procedures for "Planned Relocation" and "Emergency Relocation". Move "Owner Responsibilities" content to other sections; 5. Section 13.84.050 – 1) Change title to clarify that it is about procedure and not payments. 2) Add Notice and Order to "Determination Notice". 3) Move Section B and C to Appeals Section; 6. Section 13.84.060 – 1) Change title to clarify Relocation Prompted by owner. 2) Include language to indicate that Relocation can also be requested by owner when there is no building permit application. 3) Clarify in Section E that the "Owner must provide" proof of notice; 7. Section 13.84.070.A – 1) Include Moving and Storage to Short term Relocation entitlements if applicable to the situation. 2) Section 13.84.070.A.3 regarding a tenant's ability to pay costs up front. 3) 13.84.070.A.4.b – meal allowances. 4) 13.84.070.B.2.b – reimbursement for moving and storage costs changed to pay up front. 5) 13.84.070.B.3 – Changing how Rent Differential is calculated 6) Section 13.84.070.B.4 – Consider specifying different utility costs, such as disconnection and reconnection. 7) 13.84.070.N1 – Consider meals Per Diem rates for what is appropriate for the region. 8) Add Section to speak to replacement unit reservation costs and potential cancellation costs if move back notice is given earlier than expected; 8. Section 13.84.080 – Remove; 9. Section 13.84.100 1) Change Title 2) Change process for receiving notification that Relocation is or is not required. 3) 13.84.100.A.4 Change HAC to Hearing Officer. 3) Section 13.84.100.A.5 - Change appeal timeline from 5 to 10 days. 4) Section 13.84.100.B – Change Language to mirror HAC Process outlined in 19.44.
Financial Implications: Staff time.
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Items for Future Agendas

- **None**

Adjournment

Action: M/S/C (Robinson/Droste) to adjourn the meeting.
Vote: Ayes – Droste, Robinson; Noes – None; Abstain – None; Absent – Bartlett.

Adjourned at 11:58 a.m.

I hereby certify that this is a true and correct record of the Land Use, Housing, & Economic Development Committee meeting held on July 7, 2022.

_____

Sarah K. Bunting, Assistant City Clerk

BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC DEVELOPMENT COMMITTEE
SPECIAL MEETING MINUTES

Tuesday, July 19, 2022
4:00 PM

Committee Members:

Councilmembers Ben Bartlett, Rigel Robinson, and Lori Droste
Alternate: Mayor Arreguin

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council Land Use, Housing, & Economic Development Committee will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL https://cityofberkeley-info.zoomgov.com/j/1603583371. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the “raise hand” icon on the screen.

To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter Meeting ID: **160 358 3371**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Land Use, Housing, & Economic Development Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

MINUTES

Roll Call: 4:02 pm. Councilmembers Droste and Robinson present.

Councilmember Bartlett present at 4:03 pm.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

Committee Action Items

1. Referral: Keep Innovation in Berkeley
From: Councilmember Robinson (Author), Councilmember Taplin (Co-Sponsor), Mayor Arreguin (Co-Sponsor), Councilmember Harrison (Co-Sponsor) *(Item contains revised material)*
Referred: June 13, 2022
Due: November 28, 2022
Recommendation: Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments, codified performance standards, and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:
1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards.
a. Performance standards should regulate and mitigate potential impacts on quality of life, public health, and environmental health, such as noise, odors, fumes, vibrations, dust, light pollution, hours of operation, and disposal and storage protocols for flammable, combustible, chemical, and hazardous substances.
2. Updating the “District Purpose” sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
4. Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D.
5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process
Financial Implications: Staff time
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
Action: 3 speakers. Discussion held. M/S/C (Robinson/Bartlett) to approve the item with a positive recommendation.
Vote: All Ayes.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

2. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals
From: Councilmember Harrison (Author)
Referred: July 28, 2020
Due: October 25, 2022
Recommendation: Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Unscheduled Items

3. Amending BMC Chapter 13.84 to Expand Relocation Assistance and Conflict Resolution for Tenants
From: Councilmember Taplin (Author)
Referred: February 8, 2022
Due: October 25, 2022
Recommendation: Adopt a first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.84 enacting the following changes to the City's Relocation Ordinance: 1. Section 13.84.010 – Delete language referring to "Relocation Services"; 2. Section 13.84.020 – Create definition of Emergency Relocation to establish process and expectation for owner to provide relocation money for emergency events; 3. Section 13.84.030 – 1) Change title to clarify that tenants are entitled to payments when Relocation applies, rather than "Services or Assistance". 2) Clarify the type of determination notices that parties would receive from City officials; 4. Section 13.84.040 – Create different procedures for "Planned Relocation" and "Emergency Relocation". Move "Owner Responsibilities" content to other sections; 5. Section 13.84.050 – 1) Change title to clarify that it is about procedure and not payments. 2) Add Notice and Order to "Determination Notice". 3) Move Section B and C to Appeals Section; 6. Section 13.84.060 – 1) Change title to clarify Relocation Prompted by owner. 2) Include language to indicate that Relocation can also be requested by owner when there is no building permit application. 3) Clarify in Section E that the "Owner must provide" proof of notice; 7. Section 13.84.070.A – 1) Include Moving and Storage to Short term Relocation entitlements if applicable to the situation. 2) Section 13.84.070.A.3 regarding a tenant's ability to pay costs up front. 3) 13.84.070.A.4.b – meal allowances. 4) 13.84.070.B.2.b – reimbursement for moving and storage costs changed to pay up front. 5) 13.84.070.B.3 – Changing how Rent Differential is calculated 6) Section 13.84.070.B.4 – Consider specifying different utility costs, such as disconnection and reconnection. 7) 13.84.070.N1 – Consider meals Per Diem rates for what is appropriate for the region. 8) Add Section to speak to replacement unit reservation costs and potential cancellation costs if move back notice is given earlier than expected; 8. Section 13.84.080 – Remove; 9. Section 13.84.100 1) Change Title 2) Change process for receiving notification that Relocation is or is not required. 3) 13.84.100.A.4 Change HAC to Hearing Officer. 3) Section 13.84.100.A.5 - Change appeal timeline from 5 to 10 days. 4) Section 13.84.100.B – Change Language to mirror HAC Process outlined in 19.44.
Financial Implications: Staff time.
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Items for Future Agendas

- **None**

Adjournment

Action: M/S/C (Droste/Robinson) to adjourn the meeting.
Vote: All Ayes.

Adjourned at 4:28 pm.

I hereby certify that this is a true and correct record of the Land Use, Housing, & Economic Development Committee meeting held on July 19, 2022.

_____
Sarah K. Bunting, Assistant City Clerk

BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC DEVELOPMENT COMMITTEE
SPECIAL MEETING MINUTES

Tuesday, November 22, 2022
9:30 AM

Committee Members:

Councilmembers Ben Bartlett, Rigel Robinson, and Lori Droste
Alternate: Mayor Arreguin

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council Land Use, Housing, & Economic Development Committee will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL https://us02web.zoom.us/j/81579865688 If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the “raise hand” icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **815 7986 5688**If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Land Use, Housing, & Economic Development Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

MINUTES

Roll Call: 9:30 a.m. Present: Bartlett, Arreguin (for Droste), Robinson

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

1. Amendments to BMC Chapter 13.110 COVID-19 Emergency Response Ordinance
From: Councilmember Wengraf (Author), Councilmember Harrison (Author)
Referred: November 14, 2022
Due: May 8, 2023
Recommendation: Adopt the first reading of an ordinance to approve the proposed amendments to BMC Chapter 13.110 COVID EMERGENCY RESPONSE ORDINANCE.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Action: 40 speakers. Discussion held. Item scheduled to the next meeting as an unscheduled item.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

Items for Future Agendas

- None

Adjournment

Adjourned at 11:02 a.m.

I hereby certify that the foregoing is a true and correct record of the Land Use, Housing, & Economic Development Committee meeting held on November 22, 2022.

_____
Neetu Salwan, Assistant City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@cityofberkeley.info.

Office of the Mayor

ACTION CALENDAR
November 15, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín and Councilmember Sophie Hahn

Subject: Referral to City Manager and City Attorney: Tenant Habitability Plan and Amendments to Relocation Ordinance

RECOMMENDATION

1) Refer to the City Manager and City Attorney to review and develop proposed amendments to the Berkeley Municipal Code to require a Tenant Habitability Plan for major construction or renovation at tenant occupied properties. Proposed language modeled after the City of Los Angeles' Tenant Habitability Plan requirements is attached for consideration. The City Manager should also return with information on the costs and staffing needs for implementation for future budget discussions.

2) Refer to the City Manager and City Attorney recommendations from the 4x4 City Council/Rent Board Joint Committee on Housing for amendments to the City's Relocation Ordinance, BMC Chapter 13.84 to strengthen and improve enforcement of the ordinance.

BACKGROUND

Relocation Ordinance

The Relocation Ordinance, Berkeley Municipal Code Chapter 13.84, which was adopted in 1986, is the primary tool for tenants who are displaced from their home due to mandated or voluntary code-compliance repairs that requires the tenant to temporarily vacate their home. After a lengthy review process which included input from community stakeholders and City commissions, the Ordinance was substantially amended in 2011. Since its inception, the purpose of the Ordinance has always been "…to provide relocation services and require property owners to make certain payments to ..tenant households temporarily relocated as a result of code enforcement…or voluntary code compliance…" (B.M.C. 13.84.010). The Ordinance applies to all residential households and provides few exceptions when work is mandated (B.M.C. 13.84.020B [definition of household and unit], 13.84.020C, 13.84.030B [definition of natural disaster which exempts property owners from complying with the Ordinance]). [1]

[1] It is noted that there has been some misunderstanding of the Ordinance's applicability within the City. It is important to note that the Ordinance applies to all residential tenancies and not just those covered by the City's

The following section describes how the Ordinance operates in theory and in practice as well as difficulties and concerns that have arisen since it's most recent 2011 implementation.

1. Eligibility

*__Application__:

Initially, the City's Relocation Ordinance is only available to parties if either the City determines the unit cannot be safely occupied while City-mandated code compliance work is being undertaken or if it is determined that voluntary code compliance work or fumigation work initiated by the owner necessitates the tenant temporarily vacating their unit (B.M.C. 13.84.030A; 13.84.060A, C).

* **Practice**:

In practice, the triggering aspect of the Ordinance is one of its greatest blind spots. It is understood throughout the City that there will hardly ever be a circumstance that, when asked, the Building Official will opine that the tenant **must** vacate in order for code compliance work to be done. This aspect of the Ordinance's administration is relevant since the scenario that usually occurs is when either the owner wishes to have the tenant vacate and the tenant doesn't want to, or the tenant wants to vacate and the owner doesn't believe the work requires the tenant to vacate. It is noted that parties are sometimes able to work out these differences and voluntarily comply with the Ordinance's requirements or agree to other terms that are mutually acceptable. This is often done however after substantial counseling, guidance and direction from City staff.[2]

2. Property Owner Responsibilities

*__Application__:

Once the Ordinance is triggered and there is no dispute between the owner and tenant regarding the applicability of the Ordinance, the owner is responsible for providing relocation payments directly to the tenant household (13.84.040). Under the Ordinance, payments fall into one of two categories; work that is to be completed in less than thirty days and work that will take thirty days or more.

For work to be done in less than thirty days all tenant households are to receive a per diem rate currently set at anywhere from $120 to $166 per day depending on size of household with increases of $15 per day for additional household members above three (13.84.070). The rate can increase per Council resolution.

For work that is anticipated to take longer than thirty days the household receives a flat $400 dislocation allowance, moving and storage costs as well as rent differential if the

---

Rent Stabilization and Good Cause for Eviction Ordinance and that fires that are not a "natural event" such as a "forest fire" do implicate and trigger the Ordinance.

[2] It is noted that properties that are damaged due to fire are the exception to these scenarios since fire-damaged buildings will often be yellow or red tagged by the Fire Marshall, thus, in theory, automatically triggering the Ordinance since by the very nature of the City's actions, the unit and/or property is not currently habitable.

tenant finds a comparable unit with a higher rent. The rent differential however may not exceed a ceiling established annually by the Rent Board and is based on the number of bedrooms in the unit (13.74.070B). In lieu of either the per diem payments or rent differential payments, the owner may offer an alternative unit to the tenant household that is comparable to the unit being vacated. The rent, when offered, cannot exceed the tenant's rent from the unit being vacated and the vacating tenant always has the right to return (13.84.070G). The landlord is not obligated to offer the tenant alternative housing and the burden in finding alternative housing lies with the tenant.

*__Practice__:

The primary disconnect that has surfaced regarding the distinction between the two categories of eligibility (thirty days or less versus thirty days or more) is the difficulty tenants have in actually finding short-term housing when the repairs are anticipated to take longer than thirty days. Staff has repeatedly been informed by tenants seeking short-term, temporary housing that it is scarce and hard to find. While sublets can be found, temporary housing for only a month or two is most often found within the student community and usually only for the summer months.

Another concern raised by tenants when entering the short-term housing market is the that the rental price often exceeds the rent differential ceilings established by the City. This results in the tenant paying the excess difference out of pocket. Finally, given the vagaries of the work being done at the tenants' unit, it is often difficult, if not impossible, for the tenant seeking housing to truthfully inform the new landlord just how long their tenancy is going to be. While there is no legal obligation on the part of a tenant to divulge such information prior to renting, may tenants have shared with staff the dilemma this issue often presents.

When the work is anticipated to be less than thirty days, tenants experience different difficulties. Initially, tenants state that the current per diem rates are lagging behind actual hotel rates. Staff has not been able to confirm this and a more recent survey has not been done.

Also of note is the fact that most hotel rooms do not have adequate cooking facilities thus the tenant household must rely on food that does not require full cooking facilities such as oven/stove. This results in a higher per diem expense from the household which already does not include a separate per diem for food cost. As a result of the inherent problems with tenants staying in hotels, many have turned towards short-term rentals such as Airbnb and VRBO. These however often exceed the City's per diem rate and, by their very nature, are limited to stays of fourteen days or less.[3]

[3] While the City's Short-term Rental Ordinance allows stays of up to 90 days, any stay longer than fourteen days converts the occupancy to a potential rent-controlled tenancy, thus many owners limit stays to fourteen days or less (B.M.C. 23C.22 et seq.)

Finally, we believe that the voluntariness of an owner offering a vacant unit to a tenant being relocated should be amended and made compulsory. Given the difficulties in finding alternative housing if an owner has a vacant unit elsewhere in the City it should be offered to the tenant as part of the Ordinance.

3. Challenges/Appeals

*__Application:__

When the code enforcement work is mandated by the City and the City has deemed the unit uninhabitable while the work is being done, the tenant or owner may dispute this determination by seeking a hearing with the Housing Advisory Commission ("HAC") (B.M.C. 13.84.050). To the best of our knowledge appeals of this nature are extremely rare since most commonly the determination by the City in these instances often are the result of a fire at the property resulting in the building being either yellow or red tagged.

When the work is of a voluntary nature to bring the unit/property into code compliance the appeal process is more problematic.

If the tenant disagrees with a landlord contention that the tenant must vacate, or if either party disputes the amount of the relocation benefits to be paid or any other terms of the Ordinance, the parties must first engage in some form of conflict resolution/mediation. As part of its services, the Rent Board offers mediations to try and resolve Relocation Ordinance disputes (B.M.C. 13.84.100).

Only after such efforts have been made with no result, an owner can seek a hearing with the Housing Advisory Commission. Such request must be filed within five days after conflict resolution has occurred (B.M.C. 13.84.100A2).

If a tenant disagrees with the owner's demand that the tenant vacates, a request is to be filed with the Building Official also within five days of completion of conflict resolution. Upon receipt, the Building Official is then empowered to determine whether relocation is necessary. That decision is final (B.M.C. 13.84.100A3).

***Practice:**

In practice, one of the problems lies with the fact that owner challenges to a tenant's right to relocation benefits must first flow through the HAC. Depending on when the HAC is meeting, an inordinate amount of time may pass prior to such hearing. Given the immediacy of the situation, with a tenant moving out, either into a hotel or longer-term temporary housing and seeking immediate relocation payments to cover the move, this built-in delay creates extreme burdens on the tenant household if the owner is, in fact, challenging the tenants' right to the benefits.

The central concern however with the appeal process lies in the fact that, in most cases, if a tenant wishes to move but the owner feels such a move is not necessary,

there is no mechanism for a tenant to seek that type of determination. The actual issue of relocation only rises to the forefront when the owner claims it is necessary when obtaining permits to do the work.[4]
When the Ordinance was last discussed in detail at this committee, former Rent Board commissioner Igor Tregub raised a number of salient points on this issue. Mr. Tregub voiced concerns, which are shared by us, that there are many scenarios wherein a tenant would need to vacate even though the work contemplated could, technically, be done with the tenant remaining in the unit. Mr. Tregub offered compelling hypotheticals such as a tenant who is suffering from illness or severe allergies to dust or mold but is still forced to remain in the unit; a tenant who works from home but now cannot since the repair work would severely disrupt the tenant's use during the day; a senior or disabled tenant whose daily life would be severely impacted if they had to remain in the unit while such substantial repair work was done.

We have heard from staff working on the Ordinance that these are real-life situations which have occurred over the years and is one of the central driving forces behind this effort to revamp and reimagine how the Ordinance operates.

4. <u>City Involvement in Relocation Payments</u>

***Application:**

While the Ordinance anticipates City involvement for issues such as actual determination of the need to vacate, setting the relocation rates and building in an appeal process, enforcement of the Ordinance largely remains up to the parties.

In cases where an owner fails to make required relocation benefits to the tenant, the City may provide such payment and then seek reimbursement from the owner (B.M.C. 13.84.080). Should this occur, the City is then able to assess a lien on the owner's property in order to recover the costs incurred (B.M.C. 13.84.080A).

***Practice:**

In practice this have never happened. We are aware of at least one case where the owner acknowledged the application of the Ordinance, made some initial payments but then refused to continue as required. Tenants in this building asked the City to provide payment as allowed under the Ordinance but the City balked claiming there was no money in the City's budget to allow for such disbursement. This is problematic and is also one of the points raised when the Ordinance was last discussed in detail. We

[4] One of the flaws of the Ordinance and the City's processes is that while certain permits have a small box for owners to check stating relocation is required, this box is hardly ever checked and owners then unilaterally proceed to demand the tenant move. In addition, City staff has made clear that they do not have the resources to review permits in order to ascertain whether relocation would be required. Thus, the entire Ordinance and its administration appears to be hamstrung right at the offset since owners rarely trigger it at the time required, the City doesn't review the permits in real time to determine relocation and the tenant has no recourse under the Ordinance to seek relocation if the owner isn't requesting it.

believe that, at a minimum, this should change and the City should be either be mandated to make payments or the funds need to be provided to make payments when determined. The City, through its assessments and liens is in a much better place to recover these funds than a tenant who is in the midst of relocating, not having the bare resources to pay for such moving expenses and is thus compelled to file a lawsuit which can take years to collect what is legally owed them.

Overview

A review of the Relocation Ordinance shows an Ordinance that was improved back in 2011 but through design and administration has several crucial flaws that need addressing. The actual benefits need to be increased, offering another vacant unit to a displaced tenant should be compulsory, the City should provide payments when the owner refuses, tenants should have a mechanism to trigger the ordinance as opposed to just owners and the requirements for a tenant vacating need to be drastically expanded to cover scenarios other than the technical nature of the work being contemplated.

In response a staff proposal making fixes to the Relocation Ordinance, in December 2019, the 4x4 Joint Committee on Housing made the following recommendation:

Amendments to Relocation Ordinance:
(Tregub/Alpert) Carried: 6-0-0-2. Absent: Robinson, Harrison.
Refer to Council the following recommendations:

> **a. Amend the Relocation Ordinance to specify and broaden the parties who can trigger the Ordinance, including tenants in question.**
>
> **b. Increase the per diem reimbursement rates to current market rate and index regular increases to cost of living increases.**
>
> **c. Institute a new, or strengthen an existing, appeals body to adjudicate appeals related to the Relocation Ordinance.**
>
> **d. Maintain City involvement by establishing a revolving fund, possible with U1 funds, with which the City can pay tenants' relocation costs and seek reimbursement from owners who will not pay tenants directly.**
>
> **e. Amend the Relocation Ordinance to consider tenants' health conditions and chemical sensitivities, and the needs of differently abled tenants in determining whether the Ordinance is triggered.**
>
> **f. Explore how Los Angeles created and implemented their Habitability Plan to learn about best practices that could be incorporated into Berkeley's Relocation Ordinance.**

g. Specify a City Department that will lead the administration, enforcement, and outreach efforts related to the Relocation Ordinance.

h. Explore whether a permit form can be created or existing forms can be amended to help determine if a project triggers the Relocation Ordinance at the time project permits are applied for.

i. Cross-check the Relocation Ordinance with the Demolition Ordinance to identify gaps and ensure compatibility between the two in an effort to make tenants whole.

Despite the 4x4's vote in December 2019, the proposal never made it to Council due to the pandemic which halted pending legislation in order to focus on the City's response to COVID-19. Now that the Emergency Operations Center has disbanded and City employees have returned to their normal duties, these recommendations are being presented to Council with the goal of referring it to City staff for additional review.

Tenant Habitability Plan

As mentioned in the 4x4's recommendations for amendments to the Relocation Ordinance, recommendation (f) calls for learning how to incorporate a Tenant Habitability Plan (THP). This will help resolve concerns about disputes on when a tenant needs to temporarily vacate a unit by establishing objective standards and processes for such an action. This can also be used as a tool to mitigate impacts on adjacent residences in infill developments, which are becoming more commonplace.

A THP would be required for construction and substantial repairs, such as the replacement of any structural, electrical, plumping or mechanical system that requires a permit under the Berkeley Municipal Code. It also includes abatement of hazardous materials, such as lead paint and asbestos, and repairs required by a Building Official in Notice of Violation. This work is most likely to restrict use, access, and peaceful enjoyment of the property.

A THP would provide general identification information for the property owner, general contractor, and affected tenants to maintain proper communication. It will provide a description of the scope of work to be undertaken, including an estimate timeline of the project and its impacts on each unit, and how it would impact each unit (including impacts on personal property, such as the removal of furniture to complete the project). It will identify mitigation measures that would be adopted. If tenants are to remain in place, the landlord shall voluntarily reduce the tenants' rent to compensate for any disruption. If a tenant is not satisfied with the outcome, they can file a petition to the City.

There are several Departments that could administer the THP requirements, including the Permit Service Center, Housing Code Enforcement/Rental Housing Safety Program Staff, HHCS, and the Rent Board. The City Manager should review what Department is best suited to be the main point of reference as a part of this referral.

The responsible agency would review the THP within five days. If there are deficiencies in the plan, they will provide the property owner written indications of what needs to be planned, in which the property owner would be able to make amendments. Both the property owner and tenant would have an opportunity to appeal the determining agency's determination regarding the THP.

A draft of a THP, which is based off the program created by the City of Los Angeles in 2005, can be found in Attachment 1.

FINANCIAL IMPLICATIONS
Staff time involved in reviewing the Tenant Habitability Plan proposal and amendments to the Relocation Ordinance. If adopted additional funding and increased staffing would be needed as well as coordination with other departments to implement proposals.

ENVIRONMENTAL SUSTAINABILITY
No identifiable environmental effects

CONTACT PERSON
Mayor Jesse Arreguín 510-981-7100

Attachments:
1: Draft language of Tenant Habitability Plan
2: Memo Provided to 4x4 Committee on Tenant Habitability Plan (THP) Proposal
3. PowerPoint Presentation to 4x4 Committee on THP
4: City of Los Angeles Tenant Habitability Program, Section 152.00 of LA Municipal Code
5: Current Copy of the Relocation Ordinance, BMC Chapter 13.84

DRAFT

19.40.125 Tenant Habitability Plan

1251 – Purpose and Intent

In its adoption of Section 19.40.125 *et seq.* of this Code, the City recognizes that construction and repairs on Rental Units or adjacent to such Rental units can create hardships on tenants; especially those who are senior citizens, persons on fixed incomes and low and moderate-income households. The City also recognizes that there is a shortage of decent, safe, and sanitary affordable housing in Berkeley. The City further declares, in its adoption of section 19.40.125 *et seq.* of this Code, that it is in the public interest of the people of Berkeley to protect and promote the existence of sound and wholesome residential buildings, dwelling units, and neighborhoods by the adoption and enforcement of such standards, regulations, and procedures as will remedy the existence or prevent the development or creation of dangerous, substandard, or unsanitary and deficient residential buildings and dwelling units.

However, both preventative maintenance as well as code enforcement related maintenance sometimes involves the replacement or substantial modification of major building systems or the abatement of hazardous materials and, by its very nature, such work generally makes rental units untenantable, as defined by California Civil Code Section 1941.1, on a temporary basis.

Additionally, through the passage of AB 68, AB 670, AB 881, SB 13, and SB 9 _____ the State of California has passed several laws which have streamlined the ability to build on lots and in and next to residential units that are already occupied by residential housing. These provisions have recently been extended to include not only units built in owner-occupied lots but also investment properties owned by developers who are not local to the area.

This article is adopted to facilitate landlord investment in renovations and the construction of new housing without subjecting tenants to either untenantable housing conditions during such renovation work or forced permanent displacement. The tenant habitability program requires landlords to mitigate such temporary untenantable conditions, either through actions to ensure that tenants can safely remain in place during construction, or through the temporary relocation of tenants to alternative housing accommodations. These two options should not be regarded as mutually exclusive but rather as complementary approaches that might be appropriate to different stages of the renovation process.

1252 – Definitions

The following words and phrases, whenever used in this article, shall be construed as defined in this section. Words and phrases not defined here shall be construed as defined in Section 13.76.040 of this Code if defined in that section.

Construction means construction on tenant occupied buildings, lots, or adjacent units**.** This includes elective upgrades that do not arise to Substantial Repairs but require permits,

construction of entirely new units or division or creation of additional units from already existing residential units.

Emergency Repairs. Repairs that must be completed in less than 48 hours shall be exempt from the habitability plan process.

Repairs in Response to Notice of Violation means repairs that must be completed to correct a notice of violation.

Notice of Construction on Occupied Buildings

Notice of Substantial Repairs or Construction means a written notice, served by the landlord upon a tenant or tenant household at least 60 days prior to the commencement of any substantial repairs or Construction that uses a form established by the [responsible agency], and advises the tenant of forthcoming Substantial Repairs or Construction, the impact of such work on the tenant, and measures the landlord will take to mitigate the impact on the tenant.

Substantial Repairs means work performed either on a rental unit or on the building containing the rental unit that brings the unit into compliance with the Housing Code by making substantial repairs and that cannot be made while the tenant lives there improves the property by prolonging its useful life or adding value, and involves either or both of the following:

1. Replacement or substantial modification of any structural, electrical, plumbing or mechanical system that requires a permit under the Berkeley Municipal Code.

2. Abatement of hazardous materials, such as lead-based paint and asbestos, in accordance with applicable federal, state and local laws.

3. Repairs required by Building Official in Notice of Violation pursuant to 19.40.100

Temporary Relocation means the payment of relocation costs or the providing of a comparable rental unit in accordance with a Tenant Habitability Plan and Berkeley's Relocation Services and Pavements For Residential Tenant Households Ordinance (Berkley Mun. Code § 13.84.010 *et seq*.) The temporary relocation of a tenant from his/her permanent place of residence shall not constitute the voluntary vacation of the unit and shall not terminate the status and rights of a tenant, including the right to reoccupy the same unit, upon the completion of the Primary Renovation Work and any Related Work.

1253 – Procedure for Undertaking Substantial Repairs and Construction on Occupied Properties

1253.1 Building Permits

A. No landlord shall undertake Substantial Repairs or commence Construction on Property without first obtaining all necessary permits, pursuant to this Code.

B. The Planning Department shall only clear a landlord's application for a permit for Substantial Repairs or Construction on Occupied Properties if all of the following conditions have been met:

1. The landlord has submitted a Tenant Habitability Plan to the [responsble agency], in accordance with sections 1253.2 and 1253.3, which the [responsible agency] finds to adequately mitigate the impact of the Substantial Repairs or Construction upon affected tenants; and

2. The landlord has submitted a declaration documenting service to affected tenants of both a Notice of Substantial Repairs and a copy of the non-confidential portions of the Tenant Habitability Plan in accordance with section 1254.

3. The landlord has paid any plan submission fee established by regulation under Berkeley Municipal Code section 13.76.060(F).

1253.2 Tenant Habitability Plan

A. At a minimum, a Tenant Habitability Plan shall provide the following information, together with any other information Berkeley's [responsible agency]deems necessary to ensure that the impact of Substantial Repairs and Construction or any related work upon affected tenants is adequately mitigated:

1. Identification of the landlord, the general contractor responsible for the Substantial Repairs or Construction, and any specialized contractor responsible for hazardous material abatement, including but not limited to lead-based paint and asbestos.

2. Identification of all affected tenants including the current rent each tenant pays and the date of each tenant's last rent increase. In accordance with California Civil Code Sec. 1798 et seq., information regarding tenants shall be considered confidential.

3. Description of the scope of work covering the Substantial Repairs or Construction. Such description shall address the overall work to be undertaken on all affected units and common areas, the specific work to be undertaken on each affected unit, an estimate of the total project cost and time, and an estimate of the cost and time of renovation for each affected unit.

4. Identification of the impact of the Substantial Repairs or Construction on the habitability of affected rental units, including a discussion of impact severity and duration with regard to noise, utility interruption, exposure to hazardous materials, interruption of fire safety systems, inaccessibility of all or portions of each affected rental unit, and disruption of other tenant services.

5. Identification of the mitigation measures that will be adopted to ensure that tenants are not required to occupy an untenantable dwelling, as defined in California Civil Code Section 1941.1. Such measures may include the adoption of work procedures that allow a tenant to remain on-site and/or the temporary relocation of tenants. If due to a declared state of emergency, childcare, eldercare, documented disabilities or work schedule or place of work that makes 8:00 - 5:00 pm Monday through Friday a grave burden, then a reasonableness standard shall be used reflecting the tenant's specific situation.

6. Identification of the impact of the Substantial Repairs or Construction on the personal property affected tenants, including work areas which must be cleared of furnishings and other tenant property, and the exposure of tenant property to theft or damage from hazards related to work or storage.

7. Identification of the mitigation measures that will be adopted to secure and protect tenant property from reasonably foreseeable damage or loss.

8. Identification of a phone number and email address of a responsible party who will be responsive to tenant complaints regarding the execution of the Substantial Repairs.

9. If tenants are to remain in place, the landlord shall voluntarily reduce the tenants' rent to compensate the tenant for any disruption to their tenancy. If a tenant feels the landlord's rent reduction is inadequate, the tenant may file a petition with Berkeley's Rent Program under section 11.100.070(c) or pursue any other legal remedy.

1253.3 Plan Acceptance

A. The [responsible agency] shall make a determination regarding the adequacy of a landlord's Tenant Habitability Plan within five working days of the [responsible agency]'s receipt of the plan for review. The [responsible agency] shall accept those plans which meet the requirements of section 1251.2 of this section and which it determines, with reference to the standards set forth in California Civil Code Section 1941.1, and in accordance with any applicable regulations or guidelines adopted under section 13.76.060(F)., will adequately mitigate the impacts of Substantial Repairs upon tenants. The Tenant Habitability Plan may allow for the temporary disruption of major systems during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. While brief periods of scheduled untenantability between 8:00 and 5:00 am may be acceptable, a tenant's tenancy shall not be substantially disrupted for extended periods or in a manner that would be unreasonably disruptive to the tenant. In determining whether a disruption is reasonable, the [responsible agency] shall consider any relevant issue raised by the tenant, such as the tenant working from home, sleeping during the day, etc. At no point shall tenants

be exposed to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos.

B. The[responsible agency]'s acceptance of a Tenant Habitability Plan shall be subject to the landlord having no outstanding balances due for rent registration or code enforcement fees.

C. The [responsible agency]shall provide landlords with written indications of deficiencies which must be addressed whenever a Tenant Habitability Plan is determined to be inadequate. A landlord may submit an amended plan in order to correct identified deficiencies.

D. Landlords and tenants may appeal the [responsible agency]'s determination regarding a Tenant Habitability Plan to a hearing officer. The appeal shall be made in writing, upon appropriate forms provided by the [responsible agency], and shall specify the grounds for appeal, such as the plan being overly disruptive or that a temporary relocation should or should not be provided. The appeal shall be filed within 15 calendar days of the service of the Building Division's determination. The requested hearing shall be held within 30 calendar days of the filing of the appeal following the procedures adopted under. The hearing officer shall issue a written decision within ten calendar days of the hearing on the appeal, with a copy of the decision served on the landlord and the tenants by first class mail, postage prepaid, or in person.

1253.4 Notice of Substantial Repairs or Construction

A. Notice of Substantial Repairs or Construction shall be written in the language in which the original lease was negotiated and shall provide the following information:

1. The estimated start and completion dates of any Substantial Repairs associated with the accepted Tenant Habitability Plan.

2. A description of the Substantial Repairs to be performed and how it will impact that particular tenant or household.

3. Whether temporary relocation will be required, and if so, a notice concerning tenants' rights under Berkeley's Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance (section 13.100 et seq.) and Berkeley's Relocation Ordinance (section 11.102 et seq.)

4. Instructions that tenants with questions should consult the landlord or the Rent Board.

5. Notice of a tenant's right to reoccupy the units under the existing terms of tenancy upon completion of Notice of Substantial Repairs

6. Notice that the tenant may appeal the [responsible agency]'s acceptance of a Tenant Habitability Plan provided such request is submitted within 15 days of the tenant's receipt of the Notice of Substantial Repairs

7. Notice that a tenant can make complaints to the responsible party identified in section 1253.2 (A)(1).

8. A disclaimer in at least 24 point bold font on the first page of the notice stating "THIS IS NOT AN EVICTION NOTICE. IF YOU IF YOU HAVE QUESTIONS CONCERNING YOUR RIGHTS AS A TENANT CALL 510-981-_____.

1254 – Notice and Service Requirements

After the [responsible agency] accepts the Tenant Habitability Plan, a landlord shall serve a copy of the Tenant Habitability Plan, Notice of Substantial Repairs or Construction, and a summary of the provisions of this article on the tenant. Service of these items shall be provided in the manner prescribed by Section 1162 of the California Code of Civil Procedure and at least 60 days prior to the date on which the Substantial Repairs or Construction are scheduled to begin.

1255 - Notices of Violation

A. Habitability Plan submittal requirement upon finding of substandard housing pursuant to 19.40.090

1. Building Officials shall include in Notice of Violation pursuant to 19.40.1002 whether Habitability Plan must be submitted;

2. Building Official shall require submittal of Habitability Plan anytime owner or agent of owner has failed to apply for permits or submit a Habitability Plan when it would have been required and all Construction or repairs shall be halted until compliance is obtained.

If such pause in construction leaves the rental unit substandard, temporary relocation may be triggered.

1256 - Remedies

A. A landlord who fails to abide by the terms of an accepted Tenant Habitability Plan shall be denied individual rent adjustments under Section 13.76.120 of this Code, absent extenuating circumstances.

B. In any action by a landlord to recover possession of a rental unit under section 13.76.130(A)(7), the tenant may raise as an affirmative defense the failure of the landlord to comply with any provisions contained in this article. It shall be a complete defense to an unlawful detainer that a tenant's appeal under section 1253.3(D) is pending at the time

of filing the unlawful detainer complaint, or was decided less than fourteen days before the filing of the Unlawful Detainer unlawful detainer complaint.

C. Any person who willfully or knowingly with the intent to deceive, makes a false statement or representation, or knowingly fails to disclose a material fact in any plan or notice required under this article, or in any declaration, application, hearing or appeal permitted under this article, including oral or written evidence presented in support thereof, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this chapter shall be punished by a fine of not more than $1,000.00 or by imprisonment in the County Jail for a period of not more than six months or both.

D. Nothing in this article shall be construed to deprive a person of due process rights guaranteed by law, including, but not limited to, a right to appeal the [responsible agency]'s determination regarding a Tenant Habitability Plan to a hearing officer.

E. The remedies provided by this article are in addition to any other legal or equitable remedies and are not intended to be exclusive. In addition to potentially other violations, a landlord's failure to provide, or bad faith deviation from a Tenant Habitability Plan shall be actionable as a failure to "exercise due diligence in completing repairs" pursuant to section 13.79.060(C)(7).

3.

Jesse Arreguin
Mayor

Leah Simon-Weisberg
Chair, Berkeley Rent Board

Tenant Habitability Plan for City of Berkeley Proposal Discussion

What is the purpose of Tenant Habitability Plan:

1. Prevent permanent displacement when **substantial repairs** are needed;
2. Allow and facilitate substantial repairs while requiring mitigation of the possible negative impact on tenants of said repairs
3. Prevention of unsafe and harassing approaches to construction whether for the purposes of new construction or substantial repairs while tenants remain at property.
4. Create objective standards and processes to best prevent unsafe and harassing approaches to construction.
5. Respond to the recent phenomena of infill projects where tenants are in occupancy. (Harper Street)

When does a landlord need to fill out a tenant habitability plan?

Situations of work inside, outside or adjacent to occupied unit:

1. Planned Repair by landlord
2. Planned Construction by landlord
3. Requested Repairs by tenant
4. Emergency Repairs
5. Tenant complains about unsafe or nuisance construction

Timeframes for notification can be different for the different kinds of work

Option 1) An approved tenant habitability plan is required before **any work** is done to a property with a building that has one or more residential dwelling units. (Simple check-box if no buildings are tenant occupied).

Option 2) RHSP definition: An approved tenant habitability plan is required before **any work** to any dwelling which is rented, leased, let or hired out to be occupied for consideration.

What "work" should trigger the requirement that the landlord must fill out form and provide mitigation?

Menu of Options:

1. Any work requiring a permit.

2. Substantial repair and mediation: seismic retrofits, elevator repairs, and when hazardous materials such as lead paint or asbestos are being remediated.

3. Any work in the following section:

   Berkeley Code Sections Referenced:
   Berkeley Code sections that could be referenced: Title 19 – Buildings and Construction.
   - Berkeley Building Code BMC Chapter 19.29
   - Berkeley Residential Code BMC Chapter 19.30
   - Berkeley Electrical Code BMC Chapter 19.32
   - Berkeley Mechanical Code BMC Chapter 19.34
   - Berkeley Plumbing Code BMC Chapter 19.36
   - BMC Chapter 19.38: Seismic Hazard Mitigation Program for Unreinforced Masonry Buildings
   - BMC Chapter 19.39: Potentially Hazardous Buildings Containing Soft, Weak, or Open Front Stories
   - BMC Chapter 19.50: Elevators-buildings with ten or more units and two or more stories

4. Requiring habitability plan submittal when a property with a tenant occupied structure receives a **notice of violation for code violations** including unpermitted work and other housing code violations. In Berkeley work without permit can be cited by either a building inspector or a housing inspector, both of which are in the Planning Department.

5. Requiring mitigations when work is being done **adjacent to a tenant's unit** for a sustained period of time.

6. Requiring a habitability plan for work on properties that have a structure with a **dwelling unit will cover the ADU situations** we heard about where a tenant could not access their unit or tenant parking spaces were temporarily or

permanently removed due to ADU construction. Building permits are required for all ADUs so no specific requirement for ADUs needs to be included to cover this situation.

Who should Administer the program?

Berkeley Departments that could administer habitability plan requirements:

- Permit Service Center (within Planning Department)
- Housing Code Enforcement and Rental Housing Safety Staff (both are also within Planning Department)
- HHCS (as long as they are involved in Relocation Ordinance)
- Rent Board, Rent Board Hearings unit best to assist with hearing/complaint process

UPDATE ON TENANT HABITABILITY AND PLAN IMPLEMENTATION

Jesse Arreguin
Mayor

Leah Simon-Weisberg
Chair
Berkeley Rent Stabilization

Revise Berkeley B.M.C. Chapter 13.84 ("Relocation Ordinance") to better protect tenants during construction due to necessary repairs, new construction of ADUs and other additional housing units.

4x4 Housing Task Force, July 12, 2022

REVIEW

1. We reviewed memo accessing the gaps in our relocation ordinance when tenants are facing **repairs** in their units and **construction**
2. **Reviewed Recommendations**

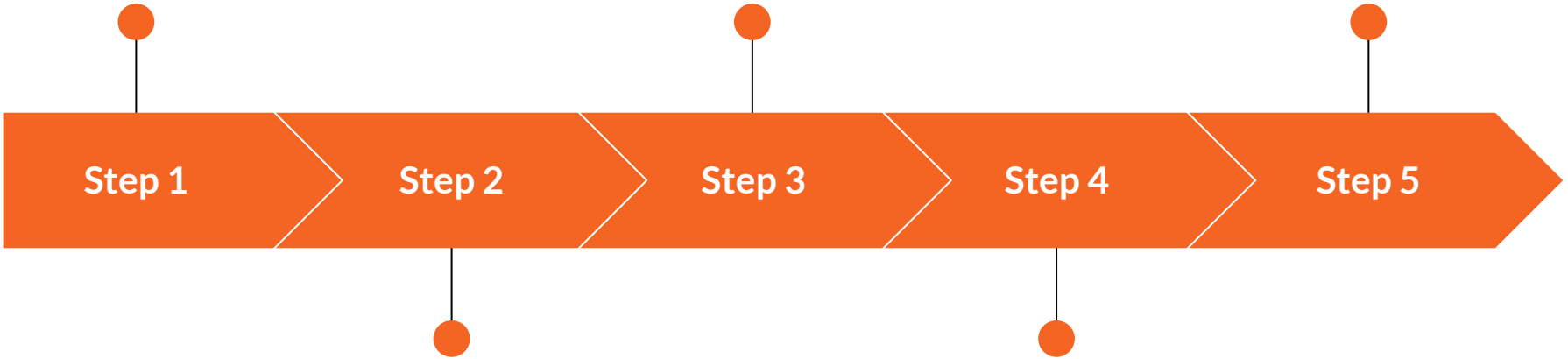
Goals for next meeting

Reminder of what a Tenant Habitability Plan

Provide THP to permitting agency

Landlord may apply for permit

Construction begins!



5 days for agency to approve or deny based on objective standards

Approved THP served on tenant 60 days before work can commence with Notice of Primary Renovation Work;
THP plan, summary of plan and relocation option if work will last more than 30 days.

Tenant Habitability Plan
City of Berkeley Proposal

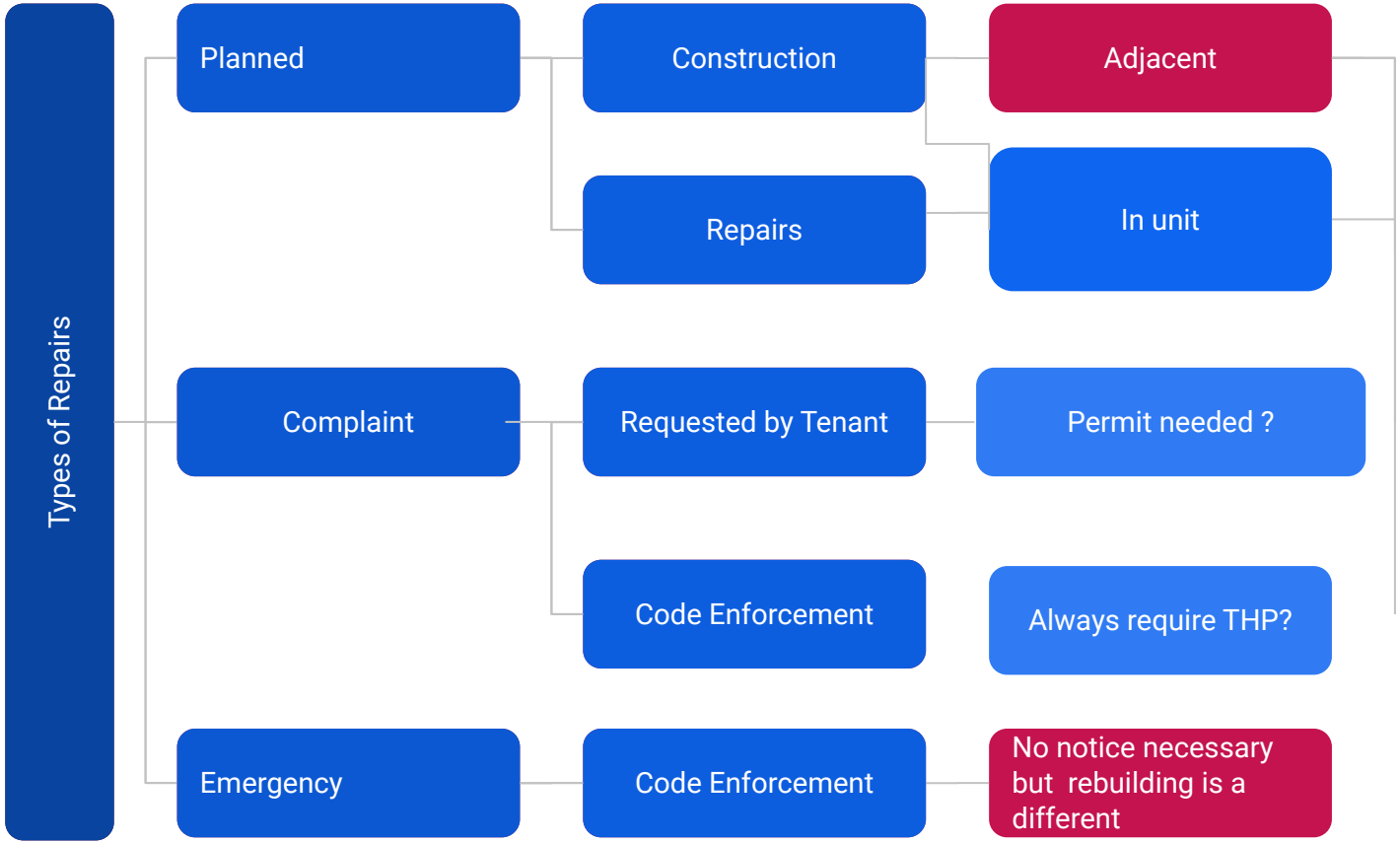
What is the purpose of Tenant Habitability Plan:

1. Prevent permanent displacement when **substantial repairs** are needed;
2. Allow and facilitate substantial repairs while requiring mitigation of the possible negative impact on tenants of said repairs
3. Prevention of unsafe and harassing approaches to construction whether for the purposes of new construction or substantial repairs while tenants remain at property.
4. Create objective standards and processes to best prevent unsafe and harassing approaches to construction.
5. Respond to the recent phenomena of infill projects where tenants are in occupancy. (Harper Street)

Context and consideration:

Situations of work inside, outside or adjacent to occupied unit:

1. Planned Repair by landlord
2. Planned Construction by landlord
3. Requested Repairs by tenant
4. Emergency Repairs
5. Tenant complains about unsafe or nuisance construction


Types of Repairs
Planned
Construction
Adjacent
Repairs
In unit
Complaint
Requested by Tenant
Permit needed ?
Code Enforcement
Always require THP?
Emergency
Code Enforcement
No notice necessary but rebuilding is a different

When does a landlord need to fill out a tenant habitability plan?

Situations of work inside, outside or adjacent to occupied unit:

1. Planned Repair by landlord
2. Planned Construction by landlord
3. Requested Repairs by tenant
4. Emergency Repairs
5. Tenant complains about unsafe or nuisance construction

Timeframes for notification can be different for the different kinds of work

Option 1) An approved tenant habitability plan is required before **any work** is done to a property with a building that has one or more residential dwelling units. (Simple check-box if no buildings are tenant occupied).

Option 2) RHSP definition: An approved tenant habitability plan is required before **any work** to any dwelling which is rented, leased, let or hired out to be occupied for consideration.

What “work” should trigger the requirement that the landlord must fill out form and provide mitigation?

Menu of Work

1. Any work requiring a permit

2. Substantial repair and mediation: seismic retrofits, elevator repairs, and when hazardous materials such as lead paint or asbestos are being remediated

Menu of Work

3. Any work in the following section:

Berkeley Code Sections Referenced:
Berkeley Code sections that could be referenced: Title 19 – Buildings and Construction.

- Berkeley Building Code BMC Chapter 19.29
- Berkeley Residential Code BMC Chapter 19.30
- Berkeley Electrical Code BMC Chapter 19.32
- Berkeley Mechanical Code BMC Chapter 19.34
- Berkeley Plumbing Code BMC Chapter 19.36
- BMC Chapter 19.38: Seismic Hazard Mitigation Program for Unreinforced Masonry Buildings
- BMC Chapter 19.39: Potentially Hazardous Buildings Containing Soft, Weak, or Open Front Stories
- BMC Chapter 19.50: Elevators-buildings with ten or more units and two or more stories

Menu

4. Requiring habitability plan submittal when a property with a tenant occupied structure receives a **notice of violation for code** violations including unpermitted work and other housing code violations. In Berkeley work without permit can be cited by either a building inspector or a housing inspector, both of which are in the Planning Department.

5. Requiring mitigations when work is being done **adjacent to a tenant's unit** for a sustained period of time.

6. Requiring a habitability plan for work on **properties that have a structure with a dwelling unit will cover the ADU situations** we heard about where a tenant could not access their unit or tenant parking spaces were temporarily or permanently removed due to ADU construction. Building permits are required for all ADUs so no specific requirement for ADUs needs to be included to cover this situation.

Who should Administer the program?

Berkeley Departments that could administer habitability plan requirements:

- Permit Service Center (within Planning Department)
- Housing Code Enforcement and Rental Housing Safety Staff (both are also within Planning Department)
- HHCS (as long as they are involved in Relocation Ordinance)
- Rent Board, Rent Board Hearings unit best to assist with hearing/complaint process

Direction for next steps?

ARTICLE 2

TENANT HABITABILITY PROGRAM

(Added by Ord. No. 176,544, Eff. 5/2/05.)

Section

152.00 Title.
152.01 Declaration of Purpose.
152.02 Definitions.
152.03 Procedure for Undertaking Primary Renovation Work.
152.04 Notice and Service Requirements.
152.05 Permanent Relocation Assistance.
152.06 Temporary Relocation and Temporary Replacement Housing.
152.07 Remedies.
152.08 Authority of Commission to Regulate.

SEC. 152.00. TITLE.
(Added by Ord. No. 176,544, Eff. 5/2/05.)

This article shall be known as the Tenant Habitability Program.

SEC. 152.01. DECLARATION OF PURPOSE.
(Added by Ord. No. 176,544, Eff. 5/2/05.)

In its adoption of Section 151.00*et seq.* of this Code, the City recognized that displacement from rental housing creates hardships on renters who are senior citizens, persons on fixed incomes and low and moderate income households, particularly when there is a shortage of decent, safe and sanitary housing at affordable rent levels in the City. The City has also declared, in its adoption of Section 161.101*et seq.* of this Code, that it is in the public interest of the people of Los Angeles to protect and promote the existence of sound and wholesome residential buildings, dwelling units and neighborhoods by the adoption and enforcement of such standards, regulations and procedures as will remedy the existence or prevent the development or creation of dangerous, substandard, or unsanitary and deficient residential buildings and dwelling units.

The primary renovation program has been established to encourage landlords to extend the useful life of the rental housing stock in Los Angeles by reinvesting in the infrastructure of their properties. Through rent adjustments authorized by this chapter, landlords are able to recover a substantial portion of these renovation costs. However, Primary Renovation Work involves the replacement or substantial modification of major building systems or the abatement of hazardous materials and, by its very nature, such work generally makes rental units untenantable, as defined by California Civil Code Section 1941.1, on a temporary basis.

This article is adopted to facilitate landlord investment in Primary Renovation Work without subjecting tenants to either untenantable housing conditions during such renovation work or forced permanent displacement. The tenant habitability program requires landlords to mitigate such temporary untenantable conditions, either through actions to ensure that tenants can safely remain in place during construction or through the temporary relocation of tenants to alternative housing accommodations. These two options should not be regarded as mutually exclusive but rather as complementary approaches that might be appropriate to different stages of the renovation process.

SEC. 152.02. DEFINITIONS.
(Added by Ord. No. 176,544, Eff. 5/2/05.)

The following words and phrases, whenever used in this article, shall be construed as defined in this section. Words and phrases not defined here shall be construed as defined in Sections 12.03, 151.02 and 162.02 of this Code, if defined in those sections.

Notice of Primary Renovation Work. Written notice, served by the landlord upon a tenant or tenant household at least 60 days, or as otherwise modified pursuant to Section 152.04, prior to the commencement of any Primary Renovation Work or Related Work and using a form established by the Department, advising the tenant of forthcoming Primary Renovation Work and Related Work, the impact of such work on the tenant, and measures the landlord will take to mitigate the impact on the tenant. **(Amended by Ord. No. 183,893, Eff. 11/22/15.)**

Temporary Relocation. The moving of a tenant from the tenant's permanent residence to habitable temporary housing accommodations in accordance with a Tenant Habitability Plan. The temporary relocation of a tenant from his/her permanent place of residence shall not constitute the voluntary vacation of the unit and shall not terminate the status and rights of a tenant, including the right to reoccupy the same unit, upon the completion of the Primary Renovation Work and any Related Work, subject to any rent adjustments as may be authorized under this chapter.

SEC. 152.03. PROCEDURE FOR UNDERTAKING PRIMARY RENOVATION WORK.
(Added by Ord. No. 176,544, Eff. 5/2/05.)

A. Building Permits.

1. No landlord shall undertake Primary Renovation Work without first obtaining a permit, pursuant to Sections 91.106, 92.0129, 92.0132, 93.0201, 94.103, or 95.112.2 of this Code. This requirement applies to all Primary Renovation Work, regardless of whether such work is eligible for a rent adjustment under any of the provisions of Section 151.07 A.1. of this Code and regardless of which provision of that subdivision, if any, is intended to be used as a ground for seeking a rent adjustment following the completion of the work.

2. The Department shall clear a landlord's application for a permit for Primary Renovation Work if both of the following conditions have been met:

a. The landlord has submitted a Tenant Habitability Plan which, in accordance with Subsection C. of this section, the Department finds to adequately mitigate the impact of Primary Renovation Work and any Related Work upon affected tenants; and

b. The landlord has submitted a declaration documenting service to affected tenants of both a Notice of Primary Renovation Work and a copy of the non-confidential portions of the Tenant Habitability Plan.

B. Tenant Habitability Plan. At a minimum, a Tenant Habitability Plan shall provide the following information, together with any other information the Department deems necessary to ensure that the impact of Primary Renovation Work and any Related Work upon affected tenants is adequately mitigated:

1. Identification of the landlord, the general contractor responsible for the Primary Renovation Work, and any specialized contractor responsible for hazardous material abatement, including but not limited to

lead-based paint and asbestos.

2. Identification of all affected tenants including the current rent each tenant pays and the date of each tenant's last rent increase. In accordance with California Civil Code Sec. 1798 *et seq.*, information regarding tenants shall be considered confidential.

3. Description of the scope of work covering the Primary Renovation Work and any Related Work. Such description shall address the overall work to be undertaken on all affected units and common areas, the specific work to be undertaken on each affected unit, an estimate of the total project cost and time, and an estimate of the cost and time of renovation for each affected unit.

4. Identification of the impact of the Primary Renovation Work and Related Work on the habitability of affected rental units, including a discussion of impact severity and duration with regard to noise, utility interruption, exposure to hazardous materials, interruption of fire safety systems, inaccessibility of all or portions of each affected rental unit, and disruption of other tenant services.

5. Identification of the mitigation measures that will be adopted to ensure that tenants are not required to occupy an untenantable dwelling, as defined in California Civil Code Section 1941.1, outside of the hours of 8:00 am through 5:00 pm, Monday through Friday, and are not exposed at any time to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos. Such measures may include the adoption of work procedures that allow a tenant to remain on-site and/or the temporary relocation of tenants.

6. Identification of the impact of the Primary Renovation Work and Related Work on the personal property of affected tenants, including work areas which must be cleared of furnishings and other tenant property, and the exposure of tenant property to theft or damage from hazards related to work or storage.

7. Identification of the mitigation measures that will be adopted to secure and protect tenant property from reasonably foreseeable damage or loss.

C. Plan Acceptance.

1. The Department shall make a determination regarding the adequacy of a landlord's Tenant Habitability Plan within five working days of the Department's receipt of the plan for review. The Department shall accept those plans which meet the requirements of Subsection B. of this section and which it determines, with reference to the standards set forth in California Civil Code Section 1941.1 and in accordance with any regulations or guidelines adopted by the Commission, will adequately mitigate the impacts of Primary Renovation Work and any Related Work upon tenants. The Tenant Habitability Plan may allow for the temporary disruption of major systems during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, without requiring the relocation of tenants in order to adequately mitigate the impacts upon the affected tenants. However tenants should not be exposed at any time to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos.

2. The Department's acceptance of a Tenant Habitability Plan shall be subject to the landlord having no outstanding balances due for rent registration or code enforcement fees.

3. The Department shall provide landlords with written indications of deficiencies which must be addressed whenever a Tenant Habitability Plan is determined to be inadequate. A landlord may submit an amended plan in order to correct identified deficiencies.

4. Landlords and tenants may appeal the Department's determination regarding a Tenant Habitability Plan to a hearing officer. The appeal shall be made in writing, upon appropriate forms provided by the Department, and shall specify the grounds for appeal. The appeal shall be filed within 15 calendar days of the service of the Department's determination, as required by Section 152.04 of this Code and shall be

accompanied by the payment of an administrative fee of $35.00. The requested hearing shall be held within 30 calendar days of the filing of the appeal following the procedures set forth in Section 151.07 A.3. of this Code. The hearing officer shall issue a written decision within ten calendar days of the hearing on the appeal, with a copy of the decision served on the landlord and the tenants by first class mail, postage prepaid, or in person.

D. Notice of Primary Renovation Work. Notice of Primary Renovation Work shall be written in the language in which the original lease was negotiated and shall provide the following information:

1. The estimated start and completion dates of any Primary Renovation Work and Related Work associated with a Tenant Habitability Plan accepted by the Department.

2. A description of the Primary Renovation Work and Related Work to be performed and how it will impact that particular tenant or household.

3. The details of temporary relocation, if necessitated by the Primary Renovation Work, and associated tenant rights under this article.

4. Instructions that tenants with questions should consult the landlord, the Department, or the Department's designee.

5. Notice of a tenant's right to reoccupy the units under the existing terms of tenancy upon completion of Primary Renovation Work, subject to rent adjustments as authorized under this chapter.

6. Notice that the tenant may appeal the Department's acceptance of a Tenant Habitability Plan in cases where the tenant does not agree with the landlord regarding the necessity for the tenant to either be temporarily displaced or remain in place during Primary Renovation Work, provided such request is submitted within 15 days of the tenant's receipt of the Notice of Primary Renovation Work.

SEC. 152.04. NOTICE AND SERVICE REQUIREMENTS.
(Added by Ord. No. 176,544, Eff. 5/2/05.)

After the Department accepts the Tenant Habitability Plan, a landlord shall serve a copy of the Tenant Habitability Plan, Notice of Primary Renovation Work, a summary of the provisions of this article and, if applicable, a permanent relocation agreement form on any tenant affected by the Primary Renovation Work. Service of these items shall be provided in the manner prescribed by Section 1162 of the California Code of Civil Procedure and at least 60 days prior to the date on which the Primary Renovation Work and any Related Work is scheduled to begin.

For purposes of the Mandatory Earthquake Reduction requirements in LAMC Sections 91.9301, *et seq.*, and 91.9501, *et seq.*, and as authorized by Section 152.08 of this article, the Commission shall have the authority by regulation to modify the service and notice requirements. **(Added by Ord. No. 183,893, Eff. 11/22/15.)**

SEC. 152.05. PERMANENT RELOCATION ASSISTANCE.
(Added by Ord. No. 176,544, Eff. 5/2/05.)

A. If the Primary Renovation Work and any Related Work will impact the tenantability of a rental unit for 30 days or more, any tenant affected by the Primary Renovation Work and Related Work shall have the option to voluntarily terminate the tenancy in exchange for permanent relocation assistance pursuant to Section 151.09 G. of this Code and the return of any security deposit that cannot be retained by the landlord under applicable law. If the Primary Renovation Work and Related Work continues for 30 days longer than the projected completion

date set forth in the later of either the Tenant Habitability Plan or any modifications thereto accepted by the Department, the tenant's option to accept permanent relocation assistance shall be renewed. **(Amended by Ord. No. 183,893, Eff. 11/22/15.)**

B. A tenant may request to receive permanent relocation assistance within 15 days of service of the Tenant Habitability Plan. The tenant must inform the landlord of the decision to select permanent relocation by mailing or personally delivering a completed Permanent Relocation Agreement form to the landlord or agents thereof. Thereafter, the landlord shall have 15 days to provide the tenant with relocation assistance in the manner and for the amounts set forth in Section 151.09 G. of this Code.

C. Nothing in this section relieves the landlord from the obligation to provide relocation assistance pursuant to an administrative agency action or any other provision of federal, state or local law. If a tenant is entitled to monetary relocation benefits pursuant thereto, such monetary benefits shall operate as credit against any other monetary benefits required to be paid to the tenant under this section.

D. For purposes of the Mandatory Earthquake Reduction requirements in LAMC Sections 91.9301, *et seq.*, and 91.9501, *et seq.*, and as authorized by Section 152.08 of this article, the Commission shall have the authority by regulation to extend the time provisions by up to the maximum of an additional 180 days. **(Amended by Ord. No. 183,893, Eff. 11/22/15.)**

SEC. 152.06. TEMPORARY RELOCATION AND TEMPORARY REPLACEMENT HOUSING. (Added by Ord. No. 176,544, Eff. 5/2/05.)

A. The landlord shall indicate in its Tenant Habitability Plan whether the temporary relocation of one or more tenant households is necessary. Pursuant to Section 152.03 of this Code, the Department independently may determine whether temporary relocation is necessary in conjunction with its review of the Tenant Habitability Plan. The Department may also require the temporary relocation of a tenant at any time during the project if the Department determines temporary relocation is necessary to ensure the health or safety of the tenant.

B. The temporary relocation of a tenant pursuant to this article shall not constitute the voluntary vacating of that rental unit and shall not terminate the status and rights of a tenant, including the right to reoccupy the tenant's rental unit upon the completion of the Primary Renovation Work and any Related Work.

C. A tenant who is temporarily relocated as a result of Primary Renovation Work shall continue to pay rent in the manner prescribed by any lease provision or accepted in the course of business between the landlord and the tenant.

D. A landlord shall pay for all temporary housing accommodation costs and any costs related to relocating the tenant to temporary housing accommodations, regardless of whether those costs exceed rent paid by the tenant. The landlord shall also pay any costs related to returning the tenant to his/her unit, if applicable. The Commission may adopt guidelines or regulations regarding the payment of moving costs.

E. A landlord may choose to place a tenant's rent and any other required payments in an escrow account. All costs of opening and maintaining the escrow account shall be borne by the landlord. Monies deposited into the escrow account shall be distributed in accordance with guidelines or regulations established by the Commission. The cost of opening an escrow account is not recoverable under Section 151.07 A.1.d. of this Code. **(Amended by Ord. No. 177,103, Eff. 12/18/05.)**

F. A landlord must temporarily relocate a tenant to habitable temporary housing accommodations if the Primary Renovation Work and any Related Work will make the rental unit an untenantable dwelling, as defined in California Civil Code Section 1941.1, outside of the hours of 8:00 am through 5:00 pm, Monday through Friday, or will expose the tenant at any time to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos.

1. **Temporary Replacement Housing Accommodations for 30 or more consecutive days.** If the temporary relocation lasts 30 or more consecutive days, the landlord shall make available comparable housing either within the same building or in another building. For purposes of this section, a replacement unit shall be comparable to the existing unit if both units are comparable in size, number of bedrooms, accessibility, proximity to services and institutions upon which the displaced tenant depends, amenities, including allowance for pets, if necessary, and, if the tenant desires, location within five miles of the rental unit. The landlord and tenant may agree that the tenant will occupy a non-comparable replacement unit provided that the tenant is compensated for any reduction in services.

2. **Temporary Replacement Housing Accommodations for fewer than 30 consecutive days.** If the temporary relocation lasts less than 30 consecutive days, the landlord shall make available temporary housing that, at a minimum, provides habitable replacement accommodations within the same building or rental complex, in a hotel or motel, or in other external rental housing. The Commission may adopt guidelines or regulations regarding temporary housing. If the temporary housing is in a hotel, motel or other external rental housing, it shall be located no greater than two miles from the tenant's rental unit, unless no such accommodation is available, and contain standard amenities such as a telephone.

3. **Per Diem Payment.** A landlord and tenant may mutually agree to allow the landlord to pay the tenant a per diem amount for each day of temporary relocation in lieu of providing temporary replacement housing. The agreement shall be in writing and signed by the landlord and tenant and shall contain the tenant's acknowledgment that he/she received notice of his/her rights under this section and that the tenant understands his/her rights. The landlord shall provide a copy of this agreement to the Department.

G. The landlord shall provide written notice, before the tenant is temporarily displaced, advising the tenant of the right to reoccupy the unit under the existing terms of tenancy once the Primary Renovation Work and any Related Work is completed. Unless the landlord provides the temporary replacement housing, the tenant shall provide the landlord with the address to be used for future notifications by the landlord. When the date on which the unit will be available for reoccupancy is known, or as soon as possible thereafter, the landlord shall provide written notice to the tenant by personal delivery, or registered or certified mail, and shall provide a copy of that notice to the Department. If the tenant was temporarily relocated for over 30 days and has a separate tenancy agreement with a third party housing provider, the landlord shall give the tenant a minimum of 30 days written notice to reoccupy. In all other cases, the landlord shall give the tenant a minimum of seven days written notice to reoccupy, unless the landlord gave the tenant written notice of the date of reoccupancy prior to the start of temporary relocation.

SEC. 152.07. REMEDIES.
(Added by Ord. No. 176,544, Eff. 5/2/05.)

A. A landlord who fails to abide by the terms of an accepted Tenant Habitability Plan shall be denied individual rent adjustments under Section 151.07 A.1.(d) of this Code, absent extenuating circumstances.

B. In any action by a landlord to recover possession of a rental unit, the tenant may raise as an affirmative defense the failure of the landlord to comply with any provisions contained in this article.

C. Any person who willfully or knowingly with the intent to deceive, makes a false statement or representation, or knowingly fails to disclose a material fact in any plan or notice required under this article, or in any declaration, application, hearing or appeal permitted under this article, including oral or written evidence presented in support thereof, shall be guilty of a misdemeanor.

Any person convicted of a misdemeanor under the provisions of this chapter shall be punished by a fine of not more than $1,000.00 or by imprisonment in the County Jail for a period of not more than six months or both.

Each violation of any provision of this chapter and each day during which such violation is committed, or continues, shall constitute a separate offense.

D. Any person who fails to provide relocation assistance pursuant to Section 152.05 of this Code shall be liable in a civil action to the person to whom such assistance is due for damages in the amount of the unpaid relocation assistance, together with reasonable attorney's fees and costs as determined by the court.

E. Any person who breaches any duty or obligation set forth in Section 152.06 of this Code shall be liable in a civil action by any person, organization or entity, for all actual damages, special damages in an amount not to exceed the greater of twice the amount of actual damages or $5,000, and reasonable attorney's fees and costs as determined by the court. Damages of three times the amount of the actual damages may be awarded in a civil action for willful failure to comply with the payment obligations, to provide safe, decent and sanitary temporary replacement housing, or to allow a tenant to reoccupy a rental unit once the primary work is completed.

F. Any agreement, whether written or oral, waiving any of the provisions contained in this article shall be void as contrary to public policy.

G. Nothing in this article shall be construed to deprive a person of due process rights guaranteed by law, including, but not limited to, a right to appeal the Department's determination regarding a Tenant Habitability Plan to a hearing officer.

H. The remedies provided by this article are in addition to any other legal or equitable remedies and are not intended to be exclusive.

SEC. 152.08. AUTHORITY OF COMMISSION TO REGULATE.
(Amended by Ord. No. 183,893, Eff. 11/22/15.)

A. The Commission shall be responsible for carrying out the provisions of this article and shall have the authority to issue orders and promulgate policies, rules and regulations to effectuate the purposes of this article. All such rules and regulations shall be published once in a daily newspaper of general circulation in the City of Los Angeles, and shall take effect upon such publication. The Commission may make such studies and investigations, conduct such hearings, and obtain such information as it deems necessary to promulgate, administer and enforce any regulation, rule or order adopted pursuant to this article.

B. In order to provide sufficient time for owners to comply with the Mandatory Earthquake Hazard Reduction requirements in LAMC Sections 91.9301, *et seq.*, and 91.9501, *et seq.*, the Commission may do the following:

1. Modify the service and notice requirements set forth in Section 152.04 this article; and/or

2. Grant, upon request by owner, an extension of up to 180 days beyond the original project completion date without triggering the permanent relocation assistance requirements set forth at Section 151.09 G. of this Code. Prior to granting an owner's request to extend project completion dates, the Commission shall notify the Department of Building and Safety of the request. If work performed pursuant to Mandatory Earthquake Hazard Reduction Requirements is not completed by the original project completion date or by a subsequent date authorized by RAC, any tenant, subtenant, lessee, sublessee, or other person(s) entitled to use and/or occupy the building or residential unit affected by such work shall have the option to voluntarily terminate the tenancy in exchange for permanent relocation assistance, pursuant to Section 151.09 G., and the return of any security deposit that cannot be retained by the owner under applicable law.

C. Before modifying service and notice requirements and/or granting time extensions under its authority in subparagraph B. of this section, the Commission shall find that the modifications and/or time extensions are necessary to carry out the purpose of the Mandatory Earthquake Hazard Reduction requirements of this Code

LAHD
LOS ANGELES HOUSING DEPARTMENT

RENT

Primary Renovation Application Questionnaire

1. Is construction work involving repairing or replacing major building systems? ◯ Yes ◯ No

2. Was the work done to comply with an order issued by the Department of Building & Safety or, the LA Housing & Community Investment Department? ◯ Yes ◯ No

3. Does this project improve the property by: increasing its useful life, or adding value? ◯ Yes ◯ No

And
Involves either one or both of the following:

a) Replacement or substantial modification of a structural, electrical, plumbing, or mechanical system (that requires a permit under LAMC) ◯ Yes ◯ No

b) Abatement of hazardous materials, such as lead-based paint and asbestos? ◯ Yes ◯ No

4. Did a licensed contractor(s) perform the work? ◯ Yes ◯ No

5. Does the work involved require a permit? ◯ Yes ◯ No

6. Was the Tenant Habitability Plan (THP) approved prior to start of work? ◯ Yes ◯ No
(If you do not have an approved THP on file, please submit Capital Improvement on-line application.)

7. Did you wait 60 days to start the work after THP approval? ◯ Yes ◯ No
(If not, please submit Capital Improvement on-line application.)

8. Have you submitted a Primary Renovation (PR) application within the last 5 years? ◯ Yes ◯ No
(PR Cost Recovery application submission is limited to every 5 years per APN.)

9. PR rent increase is permanent and implemented in two phases. In most cases, a PR proposed rent increase is lower than a Capital Improvement proposed rent increase based on the same amount of per unit cost.

☐ I have read it.

10. Do you want to apply for PR? ◯ Yes ◯ No

For more information please call (213) 928-9063.

CONTINUE

Chapter 13.84
RELOCATION SERVICES AND PAYMENTS FOR RESIDENTIAL TENANT HOUSEHOLDS

Sections:

13.84.010 Purpose.
13.84.020 Definitions.
13.84.025 Notice.
13.84.030 Eligibility for relocation services and assistance.
13.84.040 Owner responsibilities.
13.84.050 Relocation payment and appeals procedures for code enforcement activity.
13.84.060 Relocation payment procedures for voluntary code compliance.
13.84.070 Relocation and other payments.
13.84.080 City's involvement in relocation payments.
13.84.090 Move-back option.
13.84.100 Conflict resolution and appeal procedures for voluntary code compliance.
13.84.110 Private right of action.
13.84.120 Severability.

13.84.010 Purpose.

The purpose of this chapter is to provide relocation services and require property owners to make certain payments to residential tenant households temporarily relocated as a result of code enforcement activities or voluntary code compliance in order to alleviate hardships associated with such relocations; to facilitate the correction of code violations; and to protect the health, safety and welfare of Berkeley residents. (Ord. 7212-NS § 1 (part), 2011)

13.84.020 Definitions.

A. "Code enforcement" or "code enforcement activity" means an activity or activities initiated by the City to require an owner to bring the property into compliance with applicable laws including, but not limited to, actions by the Building Official or Fire Marshal after a fire ordering relocation.

B. "Household" or "tenant household" for purposes of this chapter means one or more individuals entitled to the occupancy of a rental unit or room who share living expenses.

C. "Natural disaster" means any natural event which results in damage to property, such as, but not limited to, an earthquake, flood, or forest fire.

D. "Owner" means a person, persons, corporation, partnership or any other entity possessing ownership of a property individually, jointly, in common or in any other manner or their agent or assignee.

E. "Relocate" or "relocation" means the required vacating of a residential unit or room by a tenant household and the moving temporarily into another unit or room as a result of repairs required to bring the building or a portion thereof which contains a residential unit or room occupied by the tenant household into code compliance whether such repairs are undertaken because of code enforcement or through voluntary code compliance as defined below.

F. "Residential unit" or "unit" means a building or portion of a building designed for, or occupied exclusively by, one or more persons living as a household.

G. "Room" means a room in a hotel or boarding house or a rented room in a private dwelling occupied by a tenant household for at least thirty (30) consecutive days.

H. "Voluntary code compliance" means actions voluntarily initiated by an owner to achieve compliance with applicable laws including, but not limited to, fumigation, as well as to seismically retrofit a building on the inventory of potentially hazardous soft story buildings established under Chapter 19.39 so as to remove it from such inventory under Section 19.39.080.B if such retrofit is required by the City. (Ord. 7456-NS § 1, 2016: Ord. 7212-NS § 1 (part), 2011)

13.84.025 Notice.

Whenever any notice or other communication is required by this chapter to be served on, provided, given or delivered to, or filed with any person, that notice or communication may be communicated by personal delivery, certified mail, first class mail, e-mail, or any other similar method that will provide a written record of the notice or communication. (Ord. 7212-NS § 1 (part), 2011)

13.84.030 Eligibility for relocation services and assistance.

A. A tenant household shall be eligible for relocation assistance and payments pursuant to this chapter if the City determines that the condition of a building or portion thereof is such that a unit or room cannot be safely occupied by that tenant household while the building or portion thereof is being brought into code compliance and if such condition was not primarily or entirely created by the tenant household occupying the unit or room.

B. A tenant household shall not be eligible for relocation assistance and payments pursuant to this chapter if the required relocation of the tenant household is the result of an earthquake or other natural disaster. (Ord. 7212-NS § 1 (part), 2011)

13.84.040 Owner responsibilities.

A. The owner shall be responsible for providing relocation payments directly to the tenant household required to relocate pursuant to this chapter. The owner is also responsible for complying with Section 13.76.130 (rent stabilization and eviction for good cause ordinance).

B. If the owner or the City determines that relocation is necessary, the owner shall provide a written notice of temporary relocation to any affected tenant households thirty (30) days in advance of the required relocation unless the City orders abatement that requires relocation in less than thirty (30) days and, in such case, the owner shall provide a notice within ten (10) days of the City's abatement order. Such notice shall summarize the repairs to be undertaken and the estimated duration of relocation. Any such notice which the owner serves upon a tenant household shall refer to and shall be accompanied by a copy of this chapter and the City's request for relocation payment form. Nothing in this section shall relieve the owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

C. The owner shall notify the tenant household when repairs are completed and permit the tenant household to reoccupy the residential unit or room as per Section 13.84.090. The tenant household shall retain all rights of tenancy that existed prior to relocation, except as set forth in Section 13.84.070.G.2. (Ord. 7212-NS § 1 (part), 2011)

13.84.050 Relocation payment and appeals procedures for code enforcement activity.

A. Whenever a building or portion thereof which contains a residential unit or room is declared in violation of any law, the Building Official or Fire Marshal, as appropriate, shall determine whether the repairs necessary to abate the violation(s) can reasonably be accomplished without relocation of the tenant household in possession of the unit or room. Such determination shall be served in the same manner as the notice of violation. The absence of an express determination that relocation is required shall be deemed a determination that relocation is not required.

B. Any affected tenant household or owner who disputes a determination made by the Building Official or Fire Marshal under subsection A of this section may file a written request for a hearing by the Housing Advisory Commission. Such request for hearing must be filed within ten (10) days of the date of the notice from the Building Official or Fire Marshal.

C. Appeals of determinations by the Building Official or Fire Marshal of the necessity to relocate due to an imminent threat to life and safety shall not delay enforcement of the vacation ordered by the Building Official or Fire Marshal.

D. The determination by the Building Official or Fire Marshal that a tenant household is required to relocate pursuant to this chapter shall not relieve the owner of their obligation to provide a notice of temporary relocation pursuant to Section 13.84.040. Any such notice which the owner serves upon a tenant household shall refer to and shall be accompanied by a copy of this chapter, and the City's request for relocation payment form. Nothing in this

section shall relieve the owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

E. Each tenant household which has been served with a notice of temporary relocation from the owner indicating that relocation is required in accordance with the notice of violation shall complete a request for relocation payment form to calculate the amount of the initial payment to which the household is entitled pursuant to Section 13.84.070. The tenant household shall serve the completed request for relocation payment to the owner within thirty (30) days after receipt of the notice of temporary relocation.

F. Within five business days after receipt of the tenant household's completed request for relocation payment form, the owner shall make the initial relocation payment directly to the tenant household as per Section 13.84.070, or follow the conflict resolution and appeal procedure as specified in Section 13.84.100. (Ord. 7212-NS § 1 (part), 2011)

13.84.060 Relocation payment procedures for voluntary code compliance.

A. Whenever an owner applies for a building permit to bring a residential unit or room into code compliance, the owner shall be required to specify whether repairs will necessitate the tenant household occupying the unit or room to relocate.

B. The City shall provide the owner with a notice containing information about the tenant household's relocation rights pursuant to this chapter, as well as a copy of this chapter and a City contact number where additional information can be obtained.

C. If the owner determines that relocation may be necessary to undertake repairs to bring the property into code compliance or as a result of fumigation, the owner shall serve all affected tenant households with a notice of temporary relocation, a copy of this chapter, and a copy of the City's request for relocation payment form. These documents shall be provided to tenants at least thirty (30) days in advance of the required relocation. Nothing in this section shall relieve the owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

D. If the tenant household disagrees with the owner's determination of the necessity to relocate, the tenant household may follow the conflict resolution and appeals procedure as specified in Section 13.84.100.

E. The Building Official must receive acknowledgment(s) of receipt by the tenant household(s) of the documents required by subsection C of this section before the City will issue the building permits necessary to undertake repairs. Such acknowledgment may be in the form of the tenant household's signature asserting receipt, or other proof substantiating that a notice was delivered to the affected tenant household(s).

F. Each tenant household which has been served with the notice required by subsection C of this section or the Building Official's determination pursuant to Section 13.84.100.A.3 shall complete a request for relocation payment form to calculate the amount of the initial payment to which the household is entitled pursuant to Section 13.84.070. The tenant household shall notify the owner of the amount of payment to which the tenant household is entitled within thirty (30) days of receipt of the notice from the owner.

G. Within ten (10) days after receipt of the tenant household's completed relocation payment form, the owner shall make the initial relocation payment directly to the tenant household as per Section 13.84.070.K or follow the conflict resolution and appeal procedure as specified in Section 13.84.100.

H. The relocation of a tenant household pursuant to this chapter shall not terminate the tenancy of the relocated household. The relocated household shall have the right to reoccupy the unit or room from which it was relocated as soon as the unit or room is ready for reoccupancy, except as set forth in Section 13.84.070.G.2. (Ord. 7212-NS § 1 (part), 2011)

13.84.070 Relocation and other payments.

A. Households to be relocated for twenty-nine (29) consecutive days or less, including households covered under section 13.84.040.B, shall be entitled to the following relocation payments:

1. A per diem payment to compensate for hotel or motel accommodations and meals. Such payment amount shall be established by City Council resolution and be based upon tenant household size.

2. Reimbursement for daily boarding costs for pets lawfully occupying the unit or room from which the tenant household was relocated at the date of relocation if the tenant household's temporary accommodation does not accept pets. The tenant household shall receive reimbursement for reasonable boarding costs. The maximum reimbursement rate shall be established by City Council resolution. The tenant household must provide proof of the actual boarding costs incurred in order to receive reimbursement from the owner. For purposes of this section, "pets" shall exclude any pet that is customarily kept in an enclosure such as a cage, terrarium or aquarium, and the number of pets lawfully occupying a unit or room shall be the number specifically permitted by written agreement.

3. The initial relocation payment shall be due within ten (10) days of the owner's receipt of the tenant household's request for relocation payment. If the period of relocation is less than ten (10) days, the initial relocation payment shall include the per diem payment for the full period. If the period of relocation exceeds ten (10) days, the initial relocation payment shall include either:

(a) A lump sum per diem payment for the full period of relocation; or

(b) The per diem payment for a minimum of ten (10) days, with subsequent payment contingent upon verification of hotel costs incurred by the tenant household. Such payments are due to the tenant household immediately upon owner's receipt of documentation verifying the household's expenses. If the tenant household does not incur hotel costs, it is only entitled to receive a meal allowance for each member of the household during the remaining period of relocation.

B. Households to be relocated for a period of thirty (30) consecutive days or longer shall be entitled to relocation payments that include all of the following:

1. A one-time dislocation allowance to help defray incidental relocation expenses. The amount of the dislocation allowance shall be established by City Council resolution.

2. The household's choice of reimbursement for actual moving and storage expenses or a fixed payment, subject to the following requirements:

(a) If a fixed payment is chosen, no documentation of expenses is necessary. The amount of the fixed payments shall be established by City Council resolution.

(b) Reimbursement for actual documented moving and storage expenses shall include both moving costs to the replacement unit(s) and moving costs back to the original unit. Moving costs shall consist of actual reasonable costs of moving, including transportation of personal property, packing and unpacking, insurance of personal property while in transit, compensation for any damage occurring during moving, storage of personal property, disconnection and reconnection of utility services and any additional reasonable costs associated with the required moving. Payments for a one-way move shall not exceed rates established in the fixed residential moving cost schedule approved by the Federal Highway Administration and published in the federal register on a periodic basis.

3. If the rental costs incurred by the tenant household during the period of relocation exceed the amount of rent being paid on the unit or room to be vacated, the household shall be eligible for a rent differential payment. The rent differential payment shall be equal to the difference between the rent paid on the unit or room to be vacated and the rent paid for a unit or room temporarily leased during the period of relocation, with the following restrictions:

(a) The rent differential payment shall not exceed a ceiling established annually by the City based on the average market rent statistics gathered and published by the rent stabilization program for the prior calendar year.

(b) The ceiling for the rent differential payment shall be based on the bedroom size of the unit or room to be vacated, with the exception of payments for relocation from rooms which shall be calculated on the same basis as payment for relocation from a studio apartment.

(c) The rent differential payment for a tenant household receiving a rental subsidy shall be based on the amount of rent paid by the tenant household for the unit or room leased by the tenant household during the period of relocation. The owner may coordinate with the entity providing the subsidy to assure the continuity of the rental subsidies during the period of relocation.

4. Reimbursement for the documented utility cost(s) that the tenant household incurs in their replacement housing, if the owner had been paying that particular utility cost for the vacated unit or room.

C. The initial relocation payment pursuant to subsection B of this section shall be due within ten (10) days of the owner's receipt of the tenant household's request for relocation payment, and shall include:

1. The dislocation allowance;

2. Either the fixed payment for moving and storage costs if applicable, or payment for moving costs based on a reasonable estimate from a qualified professional mover;

3. The rent differential payment for one month or, if the relocation is anticipated to exceed ninety (90) days, then the initial payment shall include the rent differential payment for the first three-month period.

D. Subsequent payments for rent differential, utilities and storage costs pursuant to subsections B.2.b through B.4 of this section, when applicable, shall be made on a monthly basis thereafter. Such payments shall be made at least seven days in advance of when the tenant household's monthly rental payment is due. Instead of monthly payments the owner may make one lump sum payment for the full amount due for the rent differential payments to the tenant household. If the tenant household qualifies for reimbursement for monthly storage or utilities costs, these payments continue on a monthly basis or upon receipt by the owner of documentation that verifies the household's expenses.

E. Payments pursuant to subsections B.2.b through B.4 of this section, when applicable, shall continue until such time that the unit from which the tenant household was relocated is available for occupancy or the tenant household has notified the owner of their intent to permanently vacate the unit.

F. If the tenant household has not been offered the opportunity to reoccupy the unit from which it relocated within six months from the date of their relocation, the tenant household shall be entitled to receive an additional dislocation allowance payment. The tenant household must provide written request for the additional dislocation payment to the owner which includes confirmation of their intent to reoccupy the unit. Such payment is due within ten (10) days after receipt of the tenant household's request. Acceptance of such payment does not constitute a tenant household's relinquishment of any tenancy rights.

G. 1. In lieu of the per diem payments in subsection A of this section, or rent differential and utility payments in subsections B.3 and B.4 of this section, the owner may offer an alternate rental unit or room to the tenant household that is comparable to the unit or room being vacated and is owned by the owner. The amount of rent paid by the household for such unit or room shall not exceed the rent being paid on the unit or room from which the tenant household relocated. If the tenant household accepts the owner's offer, the tenant household does not relinquish its right to reoccupy the unit or room from which it is being relocated unless the tenant household provides written notice surrendering possession of the unit or room. A tenant household that accepts an alternate unit or room is entitled to receive the dislocation allowance in subsection B.1 of this section and compensation for moving and storage costs if applicable as provided in subsection B.2 of this section.

2. If the tenant household does not timely notify the owner of its intent to reoccupy the unit or room under Section 13.84.090 and seeks to remain in its alternate unit, it thereby surrenders its right to reoccupy the unit or room from which it has relocated and terminates its tenancy of that unit or room, and the rent for the alternate unit or room shall not be limited by this chapter and may be increased to an amount otherwise permissible by Chapter 13.76. Nothing in this section limits the owner's right to evict a tenant household pursuant to Section 13.76.130.A.11.

H. A tenant household that is relocated for thirty (30) days or more shall not be responsible for any rent due on the unit or room from which it was relocated during the period of relocation and failure to pay rent during this period shall not constitute relinquishment of tenancy rights.

I. The owner and tenant household may mutually agree upon temporary housing and relocation payments other than that provided by this chapter. Such agreement shall be in writing and signed by both the owner and tenant household with a copy provided to the City's Housing and Community Services Department.

J. If a tenant household's actual relocation period is shorter than the period for which the owner has paid, the tenant household must repay the overpaid amount to the owner within thirty (30) days of receiving written notice from the owner of the overpayment. If the tenant household has incurred a financial obligation to pay rent, utilities, or storage costs during the remaining period of their relocation, these costs may be deducted from the amount to be repaid to the owner, subject to the provisions of subsection B of this section.

K. All payments to tenant households under this chapter shall be made to those persons in the tenant household from whom the owner has received rental payments during the immediately preceding rental period, in the same proportion in which such payments were made. The owner shall have no liability or other obligation with respect to further division or allocation of such payments among the members of the tenant household. Nothing in this section shall be construed to affect the determination of the actual number of tenants in the tenant household for purposes of Chapter 13.76.

L. The size of a tenant household shall be determined based on the number of individuals entitled to occupy the unit or room at the time a determination of the Building Official is served under Section 13.84.050 or a notice of temporary relocation is served under Section 13.84.060.C.

M. Upon receipt of the full relocation payment under this chapter and a notice of temporary relocation, the tenant household shall relocate within thirty (30) calendar days. Failure to relocate pursuant to such notice may entitle the landlord to issue a notice to vacate and be a basis for good cause eviction pursuant to Section 13.76.130.A.7.a.

N. The City Council shall by resolution adopt a reasonable reimbursement rate for the following based upon surveys of prevailing costs for services, subject to limitations set forth in this chapter and any additional limitations set forth in the resolution:

1. Per diem rates for hotel accommodations and meal allowance pursuant to subsections A.1 and A.3 of this section;

2. Maximum boarding costs for pets pursuant to subsection A.2 of this section;

3. Dislocation allowance pursuant to subsections B.1 and F of this section;

4. Fixed payments for moving and storage pursuant to subsection B.2 of this section. (Ord. 7456-NS § 2, 2016: Ord. 7212-NS § 1 (part), 2011)

13.84.080 City's involvement in relocation payments.

The City may provide payment required by Section 13.84.070 to tenant households in situations where the owner fails or refuses to pay for required relocation costs. The City shall recover from the owner all costs incurred as a result of making such payments. In order for the City to consider such payments, a request must be made by the

tenant household to the City Manager or their designee within twenty (20) days from the owner's failure or refusal to make the required payments as required in Sections 13.84.050.F and 13.84.060.G.

A. Upon receipt of a request from a tenant household the City shall mail a written notice to the owner of the owner's obligation under this chapter to provide relocation assistance and payment and the time when payment is required. The notice shall also specify that failure to make required payments may result in the City making such payments and recovering the costs of doing so from the owner through a special assessment lien on the owner's property that shall include an administrative lien fee.

B. If within ten (10) days of the receipt of the notice provided pursuant to subsection A of this section the owner continues to fail or refuse to make the necessary payments, the City may make the required relocation payment to the household. The City shall then bill the owner for the amount of payment, plus any administrative and other costs it would not have otherwise incurred. If the owner does not pay the City within a thirty (30) day period, the City may recover the costs as a special assessment lien on the owner's property along with an administrative lien fee in accordance with Chapter 1.24. The City Manager or their designee shall notify the owner. (Ord. 7212-NS § 1 (part), 2011)

13.84.090 Move-back option.

A. The relocation of a tenant household pursuant to this chapter shall not terminate the tenancy of the relocated household. The relocated household shall have the right to reoccupy the unit or room from which it was relocated as soon as the unit or room is ready for reoccupancy, and the tenant household shall retain all rights of tenancy that existed prior to the displacement.

B. If a household wishes to avail itself of this option, it must inform the owner of its current address during the period of relocation.

C. For tenant households displaced for thirty (30) consecutive days or more, owners shall notify the tenant household at least thirty (30) days in advance of the availability of the unit or room. Within ten (10) days of receipt of the notice of availability, a tenant household must notify the owner if it wishes to reoccupy the unit or room. The owner must hold the unit or room vacant at no cost to the tenant household for thirty (30) days from the date the tenant household's written notice of its intent to reoccupy the unit or room is received.

D. For households displaced for twenty-nine (29) consecutive days or less and receiving a per diem payment, owners shall notify the household at least one day in advance of the availability of the unit or room. The household shall be entitled to receive a per diem payment for up to twenty-four (24) hours after receiving such notice that the unit or room is ready for occupancy. Within ten (10) days of receipt of the notice of availability from the owner, the household must notify the owner of its intent to reoccupy the unit or room.

E. A unit or room shall be deemed to be permanently surrendered and the tenancy terminated when the tenant household provides notice in writing to the owner that it does not intend to reoccupy the unit or room from which it was relocated or does not notify the owner of its intent to reoccupy the unit or room. If the owner has not made relocation payments as required by this chapter and the unit or room becomes permanently vacated, then it shall be presumed that the surrender of the right of possession of the unit or room was involuntary unless the owner

has received a written notice from the tenant household permanently surrendering its right to their unit or room. (Ord. 7212-NS § 1 (part), 2011)

13.84.100 Conflict resolution and appeal procedures for voluntary code compliance.

A. Appeals under this chapter related to voluntary code compliance shall be filed as set forth below. Appeal procedures related to code enforcement activity are addressed in Section 13.84.050.

1. If the tenant household disputes the owner's determination of the necessity for relocation, or either party disputes the amount of relocation payments or other terms of the relocation, the City may refer the parties to a conflict resolution or mediation service provided through the Rent Stabilization Board or any other appropriate entity upon request by both parties for such referral in lieu of an appeal to the Building Official per subsection A.3 of this section. The purpose of such referral shall be the negotiation of a mutually acceptable agreement pertaining to the terms of the relocation. If no agreement is reached, then either party may follow the appeals procedure as set forth in this section. Nothing in this chapter shall preclude the parties from meeting on their own at any time, with or without a mediator, in an attempt to resolve their disagreements.

2. If the owner disagrees with the tenant household's claim for relocation payments, and such disagreement cannot be resolved through conflict resolution or mediation, then the owner may file a written request for a hearing by the Housing Advisory Commission as to the amount of the claim, or their responsibility for relocation assistance pursuant to this chapter. Such request must be filed within five business days of the conclusion of mediation or within ten (10) days of the owner's receipt of the tenant household's claim of relocation payments as set forth in Section 13.84.050.E or 13.84.060.F, whichever comes later.

3. If the tenant household disagrees with the owner as to the necessity to relocate, and such disagreement cannot be resolved through conflict resolution or mediation, the tenant household may request in writing that the Building Official make a determination. Such request must be filed within five business days of the conclusion of mediation, or within ten (10) days of the tenant household's receipt of the relocation notice in Section 13.84.060.C, whichever comes later. The Building Official shall determine whether relocation is necessary and the owner shall serve all affected tenant households with a copy of the Building Official's determination. This decision shall be final.

B. All hearings conducted before the Housing Advisory Commission shall be scheduled for the next available meeting unless a postponement is agreed upon by all parties. The Commission may convene a special meeting if delay of a hearing until the next regularly scheduled meeting would create a hardship. The owner and all affected tenant households shall be notified of the time and place of the hearing at least ten (10) days before the date of hearing. The Commission shall render its decision on any such appeal within ten (10) days after the hearing on the appeal is closed. The Commission's decision shall be final.

C. Nothing in this chapter shall in any way preclude or limit any aggrieved party from seeking judicial review after such person has exhausted the administrative remedies provided by this chapter. However, it shall be conclusively

presumed that a litigant has not exhausted their administrative remedies as to any issue which is not raised in the administrative proceedings authorized herein. (Ord. 7212-NS § 1 (part), 2011)

13.84.110 Private right of action.

Any tenant that believes that the provisions of this chapter have been violated shall have the right to file an action for injunctive relief and/or damages. Treble damages may be awarded for willful failure to comply with the payment obligations established by this chapter and for actual damages incurred by a household as a result of the owner's willful failure to offer the relocated household the opportunity to reoccupy the unit from which it relocated. In any action brought under this chapter, the court may award reasonable attorney fees to any prevailing party. (Ord. 7212-NS § 1 (part), 2011)

13.84.120 Severability.

If any provision of this chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the chapter shall not be invalidated. (Ord. 7212-NS § 1 (part), 2011)

The Berkeley Municipal Code is current through Ordinance 7830-NS, passed July 26, 2022.

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: www.berkeleyca.gov
Code Publishing Company

BERKELEY CITY COUNCILMEMBER
TERRY TAPLIN
DISTRICT 2

CONSENT CALENDAR
Feb. 22, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Amending BMC Chapter 13.84 to Expand Relocation Assistance and Conflict Resolution for Tenants

RECOMMENDATION
Adopt a first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.84 enacting the following changes to the City's Relocation Ordinance:

1. Section 13.84.010 – Delete language referring to "Relocation Services".

2. Section 13.84.020 – Create definition of Emergency Relocation to establish process and expectation for owner to provide relocation money for emergency events.

3. Section 13.84.030 – 1) Change title to clarify that tenants are entitled to payments when Relocation applies, rather than "Services or Assistance". 2) Clarify the type of determination notices that parties would receive from City officials.

4. Section 13.84.040 – Create different procedures for "Planned Relocation" and "Emergency Relocation". Move "Owner Responsibilities" content to other sections.

5. Section 13.84.050 – 1) Change title to clarify that it is about procedure and not payments. 2) Add Notice and Order to "Determination Notice". 3) Move Section B and C to Appeals Section.

6. Section 13.84.060 – 1) Change title to clarify Relocation Prompted by owner. 2) Include language to indicate that Relocation can also be requested by owner when there is no building permit application. 3) Clarify in Section E that the "Owner must provide" proof of notice.

7. Section 13.84.070.A – 1) Include Moving and Storage to Short term Relocation entitlements if applicable to the situation. 2) Section 13.84.070.A.3 regarding a tenant's ability to pay costs up front. 3) 13.84.070.A.4.b – meal allowances. 4) 13.84.070.B.2.b – reimbursement for moving and storage costs changed to pay up front. 5) 13.84.070.B.3 – Changing how Rent Differential is calculated 6) Section 13.84.070.B.4 – Consider specifying different utility costs, such as disconnection and reconnection. 7) 13.84.070.N1 – Consider meals Per Diem rates for what is appropriate for the region. 8) Add Section to speak to replacement unit reservation costs and potential cancellation costs if move back notice is given earlier than expected.

8. Section 13.84.080 – Remove.

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981- ● TDD: (510) 981-6903 ● Fax: (510) 981-
E-Mail:

9. Section 13.84.100 1) Change Title 2) Change process for receiving notification that Relocation is or is not required. 3) 13.84.100.A.4 Change HAC to Hearing Officer. 3) Section 13.84.100.A.5 - Change appeal timeline from 5 to 10 days. 4) Section 13.84.100.B – Change Language to mirror HAC Process outlined in 19.44

FINANCIAL IMPLICATIONS
Staff time.

CURRENT SITUATION AND ITS EFFECTS
Updating the City of Berkeley's Relocation Ordinance is a Strategic Plan Priority Project, advancing our goal to create housing support services for our most vulnerable community members.

The City of Berkeley's Relocation Ordinance (BMC Chapter 13.84) has so far been enforced primarily through voluntary code compliance by property owners. Relocation benefit requirements triggered by code enforcement at the determination of a Building Official and/or Fire Marshall can and should be more robust, with strong disincentives and penalties against "constructive eviction" or intimidation of tenants via substandard habitability.

California's Housing Crisis Act of 2019 (Senate Bills 330 [2019] and Senate Bill 8 [2021]) grants lower-income tenants relocation benefits and right of first refusal on new affordable units if new housing development were to displace residents of protected units, even temporarily, by demolition. This has provided an impetus for the City of Berkeley to update its Demolition Ordinance and Relocation Ordinance to strengthen tenant protections and avoid possible state pre-emption, although the need to strengthen the Relocation Ordinance has long preceded new state laws with respect to demolition. In particular, Section 8 tenants facing eviction by neglect, due to landlords who opt for abatement of payments rather than maintenance and repair when dwelling units fail a code enforcement inspection, have been a regular concern for the District 2 council office.

BACKGROUND
In its September 2018 meeting, the City of Berkeley's Housing Advisory Commission recommended the following changes to the Relocation Ordinance:

1. Updating the cost of pet boarding and motel costs more frequently, without the need for Council action.

2. Annual reports to the Housing Advisory Commission on number of tenants requiring relocation payments.

3. Enforcing relocation payments via tax lien on property owner.

4. Funding for Berkeley Rent Board to enforce Relocation Ordinance.

Following consultation with stakeholders, staff in the Department of Health, Housing and Community Services (HHCS) and the Berkeley Rent Board added the following recommendations:

1. Considerations for tenants with disabilities or high sensitivities to environmental conditions.

2. Considerations for hazardous or environmental but not structural conditions in building/unit; assessment of state licensed 3rd party reports and medical doctor assessments by City of Berkeley Health Officer or designee.

3. Stronger evaluation of substandard conditions from Building Official which would require relocation when there is:

    a. Lack of bathroom/toilette facilities for more than 24 hours

    b. Lack of water for more than 24 hours

    c. Lack of heating for more than 72 hours

In 2021, the Berkeley City Council and Berkeley Rent Board's 4x4 Committee discussed various possible amendments to the Demolition and Relocation Ordinances with Planning Department staff.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
None.

CONTACT PERSON
Councilmember Terry Taplin Council District 2 510-981-7120

Attachments:
1: Ordinance

Berkeley Municipal Code Chapter 13.84

RELOCATION SERVICES AND PAYMENTS FOR RESIDENTIAL TENANT HOUSEHOLDS

Sections:

Section 13.84.010 Purpose
Section 13.84.020 Definitions
Section 13.84.025 Notice
Section 13.84.030 Eligibility for Relocation ~~services and assistance~~Payments From Owner
Section 13.84.040 ~~Owner responsibilities~~
Section 13.84.050 Relocation ~~payment and appeals~~ Pprocedures for Code Enforcement Activity and Emergency Situations
Section 13.84.060 Relocation ~~payment p~~Procedures for Voluntary Code Compliance
Section 13.84.070 Relocation and other payments
Section 13.84.080 ~~City's involvement in Relocation payments~~
Section 13.84.090 Move-back option
Section 13.84.100 ~~Conflict Resolution and~~ Appeal Procedures and Conflict Resolution ~~for Voluntary Code Compliance~~
Section 13.84.110 Private right of action
Section 13.84.120 Severability

Section 13.84.010 Purpose.

The purpose of this Chapter is to ~~provide Relocation services and~~ require property Owners to make certain payments to residential Tenant Households temporarily Relocated as a result of Code Enforcement Activities or Voluntary Code Compliance in order to alleviate hardships associated with such Relocations; to facilitate the correction of code violations; and to protect the health, safety and welfare of Berkeley residents.

Section 13.84.020 Definitions

A. "Code Enforcement" or "Code Enforcement Activity" means an activity or activities initiated by the City to require an Owner to bring the property into compliance with applicable laws including, but not limited to, actions by the Building Official or Fire Marshall after a fire ordering Relocation.
B. "Emergency Relocation" for purposes of this Chapter means an unexpected event, such as a fire, or other conditions, not including a natural disaster, not created by the Tenant Household that have rendered the "Residential Unit" or "Room" "substandard" and uninhabitable as determined by the Building Official or Fire Marshal and require immediate relocation.
C. "Household" or "Tenant Household" for purposes of this Chapter means one or more individuals entitled to the occupancy of a rental unit or room who share living expenses.

D. “Natural Disaster” means any event or force of nature that is not caused by human action or inaction which results in death, injuries and/or damage to property, such as an earthquake, flood, or forest fire.
E. "Owner" means a person, persons, corporation, partnership or any other entity possessing ownership of a property individually, jointly, in common or in any other manner or his or her agent or assignee.
F. "Relocate" or “Relocation” means the required vacating of a Residential Unit or Room by a Tenant Household and the moving temporarily into another Unit or Room as a result of repairs required to bring the building or a portion thereof which contains a Residential Unit or Room occupied by the Tenant Household into code compliance whether such repairs are undertaken because of Code Enforcement or through Voluntary Code Compliance as defined below.
G. "Residential unit" or "Unit" means a building or portion of a building designed for, or occupied exclusively by, one or more persons living as a Household.
H. "Room" means a room in a hotel or boarding house or a rented room in a private dwelling occupied by a Tenant Household for at least thirty (30) consecutive days.
I. “Substandard” means the Building Official or Fire Marshal has deemed that the residential unit or room is not in compliance with California Health and Safety Code (H&SC), Section 17920.3 and may exist to the extent that it endangers the health and safety of its occupants or the public and therefore requires Relocation of the Tenant Household.
J. "Voluntary Code Compliance" means actions voluntarily initiated by an Owner to achieve compliance with applicable laws including, but not limited to, fumigation, as well as to seismically retrofit a building on the Inventory of Potentially Hazardous Soft Story Buildings established under Chapter 19.39 so as to remove it from such inventory under Section 19.39.080.B if such retrofit is required by the City.

Section 13.84.025 Notice

Whenever any notice or other communication is required by this Chapter to be served on, provided, given or delivered to, or filed with, any person, that notice or communication may be communicated by personal delivery, certified mail, first class mail, e-mail, or any other similar method that will provide a written record of the notice or communication.

Section 13.84.030 Eligibility for Relocation ~~services and assistance~~Payments

A. A Tenant Household shall be eligible for Relocation ~~assistance and~~ assistance and/or payments pursuant to this Chapter if the City determines that the condition of a building or portion thereof is such that a Unit or Room cannot be safely occupied by that Tenant Household while the building or portion thereof is being brought into code compliance and if such condition was not primarily or entirely created by the Tenant Household occupying the Unit or Room.

B. Determination by the City will be in the form of a Notice and Order ~~from the Building Official~~ or an Imminent Hazard or Unsafe Building Notice from the Fire Marshall or Building Official, including Yellow or Red Tags of property or units.: ~~1) Building Official~~

Notice and Order of Violation OR 2) Fire Marshall notice or copy of notice posted on the property…(in the case of fire?)

C. A Tenant Household shall not be eligible for Relocation assistance and payments pursuant to this Chapter if the required Relocation of the Tenant Household is the result of an earthquake or other Natural Disaster.

Section 13.84.040 Owner responsibilities

A. The Owner shall be responsible for providing Relocation payments directly to the Tenant Household required to Relocate pursuant to of this Chapter. The Owner is also responsible for complying with the Berkeley Municipal Code Section 13.76.130 (Rent Stabilization and Eviction for Good Cause Ordinance).

B. Planned Relocation: If the Owner or the City determines that Relocation is necessary due to planned voluntary code compliance work, the Owner shall provide a written Notice of Temporary Relocation to any affected Tenant Households at least 30 days in advance of the required Relocation unless the City orders abatement that requires Relocation in less than 30 days and, in such case, the Owner shall provide a Notice within 10 days of the City's abatement order. Such notice shall summarize the repairs to be undertaken and the estimated duration of Relocation. Any such notice which the Owner serves upon a Tenant Household shall refer to and shall be accompanied by a copy of this Chapter and the City's Request for Relocation Payment form. Nothing in this Section shall relieve the Owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.Emergency Relocation:

C. The Owner shall notify the Tenant Household when repairs are completed and permit the Tenant Household to reoccupy the Residential Unit or Room as per Section 13.84.090. The Tenant Household shall retain all rights of tenancy that existed prior to Relocation, except as set forth in Section 13.84.070.G.2.

Section 13.84.050 Relocation payment and appeals Pprocedures for Code Enforcement Activity including Emergency Relocation Situations

A. Whenever a building or portion thereof which contains a Residential Unit or Room is declared in violation of any law, the Building Official or Fire Marshal, as appropriate, shall determine whether the conditions of the Unit or Room meet the criteria of "Substandard" as defined by California Health and Safety Code (H&SC), Section 17920.3, and exist to the extent that it endangers the health and safety of its occupants or the public and/or if the repairs necessary to abate the violation(s) cannot reasonably be reasonably accomplished without Relocation of the Tenant Household in possession of the Unit or Room. Such determination shall be served in the same manner as thein the form of a as a "Notice and Order"of Violation. The absence of an express determination that Relocation is required as part of the Notice and Order shall be deemed a determination that Relocation is not required.

Commented [1]: The last revision included changes to the ordinance to address procedures for fires or other immediate relocation under Code Enforcement Action, so I'm not sure this is necessary.

Commented [2R2]: Need to be more specific as to what "immediate" means, I think. As currently written, 10 days may be too long to wait in an emergency situation. But would the Owner be required to pay the tenant before receiving their written request for relocation payments as described in Section 070? Just need to make sure the procedure spelled out in that section is revised to be consistent with the intent here.

Commented [3R2]: Perhaps within 3 days. This is generally the amount of Time Red Cross will provide assistance.

Commented [4R2]: Included 72 Hours to timeline.

B. The Owner shall be responsible for providing Relocation payments directly to the Tenant Household required to relocate pursuant to Section 13.84.060 and 13.84.070 of this Chapter. The Owner is also responsible for complying with the Berkeley Municipal Code Section 13.76.130 (Rent Stabilization and Eviction for Good Cause Ordinance).

C. Planned Relocation: If the Owner determines that Relocation is necessary due to planned Voluntary Code Compliance work, the Owner shall provide a written Notice of Temporary Relocation to any affected Tenant Households at least 30 days in advance of the required Relocation Such notice shall summarize the repairs to be undertaken and the estimated duration of Relocation. Any such notice which the Owner serves upon a Tenant Household shall refer to and shall be accompanied by a copy of this Chapter and the City's Request for Relocation Payment form. Nothing in this Section shall relieve the Owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

D. Emergency Relocation: In the case of an "Emergency Relocation" where the Building Official or Fire Marshall determines that the "Residential Unit" or "Room" is unsafe and should not be occupied, the Owner is required to initiate short term Relocation to the Tenant Household within 72 hours from the official determination that the unit or room is uninhabitable. If the displacement of the tenant or household lasts for more than 29 days, the parties may adjust to Long-Term Relocation Payments or seek to find alternative arrangements that are acceptable for both parties.

E. The Owner shall notify the Tenant Household when repairs are completed and permit the Tenant Household to reoccupy the Residential Unit or Room as per Section 13.84.090. The Tenant Household shall retain all rights of tenancy that existed prior to Relocation, except as set forth in Section 13.84.070.G.2.

F. ~~Any affected Tenant Household or Owner who disputes a determination made by the Building Official or Fire Marshal under subsection A of this section, may file a written request for a hearing by the Housing Advisory Commission. Such request for hearing must be filed within ten (10) days of the date of the Notice from the Building Official or Fire Marshall.~~

G. ~~Appeals of determinations by the Building Official or Fire Marshall of the necessity to Relocate due to an imminent threat to life and safety shall not delay enforcement of the vacation ordered by the Building Official or Fire Marshall.~~

H. The determination by the Building Official or Fire Marshal that a Tenant Household is required to Relocate pursuant to this Chapter shall not relieve the Owner of his/her obligation to provide a Notice of Temporary Relocation pursuant to Section 13.84.0540. Any such Notice which the Owner serves upon a Tenant Household shall refer to and shall be accompanied by a copy of this Chapter, and the City's Request for Relocation Payment form. Nothing in this Section shall relieve the Owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

I. Each Tenant Household which has been served with a Notice of Temporary Relocation from the Owner indicating that Relocation is required in accordance with the Notice of Violation shall complete a Request for Relocation Payment form to calculate the amount of the initial payment to which the Household is entitled pursuant to the Berkeley Municipal Code Section 13.84.070. The Tenant Household shall serve the completed

Request for Relocation Payment to the Owner within 30 days after receipt of the Notice of Temporary Relocation.

J. Within five (5) business days after receipt of the Tenant Household's completed Request for Relocation Payment form, the Owner shall make the initial Relocation payment directly to the Tenant Household as per Section 13.84.070, or follow the conflict resolution and appeal procedure as specified in Section 13.84.100.

Section 13.84.060 Relocation ~~payment~~ Pprocedures for Voluntary Code Compliance

A. Whenever an Owner applies for a building permit to bring a Residential Unit or Room into code compliance, the Owner shall be required to specify whether repairs will necessitate the Tenant Household occupying the Unit or Room to Relocate.

B. The City shall provide the Owner with a notice containing information about the Tenant Household's Relocation rights pursuant to this Chapter, as well as a copy of this Chapter and a City contact number where additional information can be obtained.

C. If the Owner determines that Relocation ~~may be~~ is necessary to undertake repairs to bring the property into code compliance or as a result of fumigation, the Owner shall serve all affected Tenant Households with a Notice of Temporary Relocation, a copy of this Chapter, and a copy of the City's Request for Relocation Payment form. These documents shall be provided to Tenants at least thirty (30) days in advance of the required Relocation. Nothing in this Section shall relieve the Owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

D. If the Tenant Household disagrees with the Owner's determination of the necessity to Relocate, the Tenant Household may follow the conflict resolution and appeals procedure as specified in Section 13.84.100.

E. The Owner must provide to the Building Official ~~must receive~~ acknowledgment(s) of receipt by the Tenant Household(s) of the documents required by subsection C of this Section before the City will issue the building permits necessary to undertake repairs. Such acknowledgment may be in the form of the Tenant Household's signature asserting receipt, or other proof substantiating that a Notice was delivered to the affected Tenant Household(s).

F. Each Tenant Household which has been served with the Notice required by subdivision C or the Building Official's determination pursuant to Section 13.84.100.A.3 shall complete a Request for Relocation Payment form to calculate the amount of the initial payment to which the Household is entitled pursuant to the Berkeley Municipal Code Section 13.84.070. The Tenant Household shall notify the Owner of the amount of payment to which the Tenant Household is entitled within 30 days of receipt of the Notice from the Owner.

G. Within ten (10) days after receipt of the Tenant Household's completed Relocation Payment form, the Owner shall make the initial Relocation payment directly to the Tenant Household as per Section 13.84.070.C.5 or follow the conflict resolution and appeal procedure as specified in Section 13.84.100.

H. The Relocation of a Tenant Household pursuant to this Chapter shall not terminate the tenancy of the Relocated Household. The Relocated Household shall have the right to reoccupy the Unit or Room from which it was relocated as soon as the Unit or Room is ready for re-occupancy, except as set forth in Section 13.84.070.G.2.

Section 13.84.070 Relocation and other payments

A. Households to be relocated for twenty-nine (29) consecutive days or less shall be entitled to the following Relocation payments:

1. A per diem payment to compensate for hotel or motel accommodations and meals. Such payment amount shall be established by City Council Resolution and be based upon Tenant Household size.

2. Reimbursement for daily boarding costs for pets lawfully occupying the Unit or Room from which the Tenant Household was Relocated at the date of Relocation if the Tenant Household's temporary accommodation does not accept pets. The Tenant Household shall receive reimbursement for reasonable boarding costs. The maximum reimbursement rate shall be established by City Council Resolution. The Tenant Household must provide proof of the actual boarding costs incurred in order to receive reimbursement from the Owner. For purposes of this Section "pets" shall exclude any pet that is customarily kept in an enclosure such as a cage, terrarium or aquarium, and the number of pets lawfully occupying a Unit or Room shall be the number specifically permitted by written agreement.

3. Reimbursement for actual documented moving and storage expenses shall include both moving costs to the replacement unit(s) and moving costs back to the original Unit. Moving costs shall consist of actual reasonable costs of moving, including transportation of personal property, packing and unpacking, insurance of personal property while in transit, storage of personal property, and any additional reasonable costs associated with the required moving. Payments for a one-way move shall not exceed rates established in the Fixed Residential Moving Cost Schedule approved by the Federal Highway Administration and published in the Federal Register on a periodic basis.

4. The initial relocation payment shall be due ~~within ten days of~~upon the Owner's receipt of the Tenant Household's Request for Relocation Payment and shall include all projected expenses related to relocation as authorized by this chapter. If the period of Relocation is less than 10 days, the initial Relocation payment shall include the per diem payment for the full period. If the period of Relocation exceeds 10 days, the initial Relocation payment shall include either:

a. A lump sum per diem payment for the full period of Relocation, or

b. The per diem payment for a minimum of 10 days, with subsequent payment contingent upon verification of hotel costs and other eligible costs incurred by the Tenant Household. Such payments are due to the Tenant Household immediately upon Owner's receipt of documentation verifying the Household's expenses. ~~If the~~ Tenant Household's ~~does not incur hotel costs, it is only~~ that obtain replacement housing without cooking facilities are entitled to receive a meal allowance for each member of the Household during the remaining period of Relocation.

B. Households to be relocated for a period of thirty (30) consecutive days or longer shall be entitled to Relocation payments that include all of the following:

1. A one-time dislocation allowance to help defray incidental Relocation expenses. The amount of the dislocation allowance shall be established by City Council Resolution.

2. The Household's choice of reimbursement for actual moving and storage expenses or a fixed payment, subject to the following requirements:

a. If a fixed payment is chosen, no documentation of expenses is necessary. The amount of the fixed payments shall be established by City Council Resolution.

b. Reimbursement for actual documented moving and storage expenses shall include both moving costs to the replacement unit(s) and moving costs back to the original Unit. Moving costs shall consist of actual reasonable costs of moving, including transportation of personal property, packing and unpacking, insurance of personal property while in transit, compensation for any damage occurring during moving, storage of personal property, disconnection and reconnection of utility services and any additional reasonable costs associated with the required moving. Payments for a one-way move shall not exceed rates established in the Fixed Residential Moving Cost Schedule approved by the Federal Highway Administration and published in the Federal Register on a periodic basis.

3. If the rental costs incurred by the Tenant Household during the period of Relocation exceed the amount of rent being paid on the Unit or Room to be vacated, the Household shall be eligible for a rent differential payment. The rent differential payment shall be equal to the difference between the rent paid on the Unit or Room to be vacated and the rent paid for a Unit or Room temporarily leased during the period of Relocation, with the following restrictions:

a. The rent differential payment shall not exceed a ceiling established annually by the City based on the average market rent statistics gathered and published by the Rent Stabilization Program for the prior calendar year.

b. The ceiling for the rent differential payment shall be based on the bedroom size of the Unit or Room to be vacated, with the exception of payments for Relocation from Rooms which shall be calculated on the same basis as payment for Relocation from a studio apartment.

c. The rent differential payment for a Tenant Household receiving a rental subsidy shall be based on the amount of rent paid by the Tenant Household for the Unit or Room leased by the Tenant Household during the period of Relocation. The Owner may coordinate with the entity providing the subsidy to assure the continuity of the rental subsidies during the period of Relocation.

4. Reimbursement for the documented utility cost(s) that the Tenant Household incurs in their replacement housing, if the Owner had been paying that particular utility cost for the vacated Unit or Room. Costs for disconnecting and reconnecting utilities as part of the construction work are the Owner's responsibility even if the utility accounts are in the Tenant Household's name.

C. The initial Relocation payment pursuant to Subsection 13.84.070.B shall be due within ten days of the Owner's receipt of the Tenant Household's Request for Relocation Payment, and shall include:

1. The dislocation allowance;

2. Either the fixed payment for moving and storage costs if applicable, or payment for moving costs based on a reasonable estimate from a qualified professional mover;

3. The rent differential payment for one month, or, if the Relocation is anticipated to exceed ninety days, then the initial payment shall include the rent differential payment for the first three month period.

D. Subsequent payments for rent differential, utilities and storage costs pursuant to subdivisions B.2.b through B.4, when applicable, shall be made on a monthly basis thereafter. Such payments shall be made at least 7 (seven) days in advance of when the Tenant Household's monthly rental payment is due. Instead of monthly payments the Owner may make one lump sum payment for the full amount due for the rent differential payments to the Tenant Household. If the Tenant Household qualifies for reimbursement for monthly storage or utilities costs, these payments continue on a monthly basis or upon receipt by the Owner of documentation that verifies the Household's expenses.

E. Payments pursuant to subdivisions B.2.b through B.4, when applicable, shall continue until such time that the Unit from which the Tenant Household was relocated is available for occupancy or the Tenant Household has notified the Owner of their intent to permanently vacate the Unit.

F. If the Tenant Household has not been offered the opportunity to reoccupy the Unit from which it relocated within six (6) months from the date of their Relocation, the Tenant Household shall be entitled to receive an additional dislocation-allowance payment. The Tenant Household must provide written request for the additional dislocation payment to the Owner which includes confirmation of their intent to reoccupy the Unit. Such payment is due within ten (10) days after receipt of the Tenant Household's request. Acceptance of such payment does not constitute a Tenant Household's relinquishment of any tenancy rights.

G. ~~1.~~ In lieu of the per diem payments in subdivision A of this Section, or rent differential and utility payments in subsections B.3 and B.4 of this Section, the Owner may offer an alternate rental Unit or Room to the Tenant Household that is comparable to the Unit or Room being vacated and is owned by the Owner.

1. The amount of rent paid by the Household for such Unit or Room shall not exceed the rent being paid on the Unit or Room from which the Tenant Household Relocated.
2. If the Tenant Household accepts the Owner's offer, the Tenant Household does not relinquish its right to re-occupy the Unit or Room from which it is being Relocated unless the Tenant Household provides written notice surrendering possession of the Unit or Room.
3. A Tenant Household that accepts an alternate Unit or Room is entitled to receive the dislocation allowance in subdivision B.1 of this Section, and compensation for moving and storage costs if applicable as provided in subdivision B.2 of this Section.
4. If the Tenant Household does not timely notify the Owner of its intent to reoccupy the Unit or Room under Section 13.84.090 and seeks to remain in its alternate unit, it thereby surrenders its right to reoccupy the Unit or Room from which it has relocated and terminates its tenancy of that Unit or Room, and the rent for the alternate Unit or Room shall not be limited by this Chapter and may be increased to an amount otherwise

permissible by Chapter 13.76. Nothing in this Section limits the Owner's right to evict a Tenant Household pursuant to Section 13.76.130.A.11.

H. A Tenant Household that is Relocated for thirty (30) days or more shall not be responsible for any rent due on the Unit or Room from which it was Relocated during the period of Relocation and failure to pay rent during this period shall not constitute relinquishment of tenancy rights.

I. The Owner and Tenant Household may mutually agree upon temporary housing and Relocation payments other than that provided by this Chapter. Such agreement shall be in writing and signed by both the Owner and Tenant Household with a copy provided to the City's Housing and Community Services Department.

J. If a Tenant Household's actual Relocation period is shorter than the period for which the Owner has paid, the Tenant Household must repay the overpaid amount to the Owner within thirty (30) days of receiving written notice from the Owner of the overpayment. If the Tenant Household has incurred a financial obligation to pay rent, utilities, or storage costs during the remaining period of their Relocation, these costs may be deducted from the amount to be repaid to the Owner, subject to the provisions of subdivision B of this Section.

K. All payments to Tenant Households under this Chapter shall be made to those persons in the Tenant Household from whom the Owner has received rental payments during the immediately preceding rental period, in the same proportion in which such payments were made. The Owner shall have no liability or other obligation with respect to further division or allocation of such payments among the members of the Tenant Household. Nothing in this Section shall be construed to affect the determination of the actual number of Tenants in the Tenant Household for purposes of Chapter 13.76.

L. The size of a Tenant Household shall be determined based on the number of individuals entitled to occupy the Unit or Room at the time a determination of the building official is served under Section 13.84.050 or a Notice of Temporary Relocation is served under Section 13.84.060.C.

M. Upon receipt of the full relocation payment under this Chapter and a Notice of Temporary Relocation, the tenant household shall relocate within 30 calendar days. Failure to relocate pursuant to such notice may entitle the landlord to issue a notice to vacate and be a basis for good cause eviction pursuant to Section 13.76.130.A.7a.

N. The City Council shall by resolution adopt a reasonable reimbursement rate for the following based upon surveys of prevailing costs for services, subject to limitations set forth in this Chapter and any additional limitations set forth in the Resolution:

1. Per diem rates for hotel accommodations and meal allowance pursuant to subdivisions A.1 and A.3 of this Section;
2. Maximum boarding costs for pets pursuant to subdivision A.2 of this Section;
3. Dislocation allowance pursuant to subdivision B.1 and F of this Section;
4. Fixed payments for moving and storage pursuant to subdivision B.2 of this Section.

~~Section 13.84.080 City's involvement in Relocation payments~~

A. ~~The City may provide payment required by Section 13.84.070 to Tenant Households in situations where the Owner fails or refuses to pay for required Relocation costs. The City shall recover from the Owner all costs incurred as a result of making such payments. In order for the City to consider such payments, a request must be made by~~

~~the Tenant Household to the City Manager or his or her designee within twenty (20) days from the Owner's failure or refusal to make the required payments as required in Sections 13.84.050.F and 13.84.060.G.~~

1. ~~Upon receipt of a request from a Tenant Household the City shall mail a written notice to the Owner of the Owner's obligation under this Chapter to provide Relocation assistance and payment and the time when payment is required. The notice shall also specify that failure to make required payments may result in the City making such payments and recovering the costs of doing so from the Owner through a special assessment lien on the Owner's property that shall include an administrative lien fee.~~

2. ~~If within ten (10) days of the receipt of the notice provided pursuant to subdivision A.1 of this Section, the Owner continues to fail or refuse to make the necessary payments, the City may make the required Relocation payment to the Household. The City shall then bill the Owner for the amount of payment, plus any administrative and other costs it would not have otherwise incurred. If the Owner does not pay the City within a thirty (30) day period, the City may recover the costs as a special assessment lien on the Owner's property along with an administrative lien fee in accordance with Berkeley Municipal Code Chapter 1.24. The City Manager or his or her designee shall notify the Owner.~~

Section 13.84.090 Move-back option

A. The Relocation of a Tenant Household pursuant to this Chapter shall not terminate the tenancy of the Relocated Household. The Relocated Household shall have the right to reoccupy the Unit or Room from which it was relocated as soon as the Unit or Room is ready for reoccupancy, and the Tenant Household shall retain all rights of tenancy that existed prior to the displacement.

B. If a Household wishes to avail itself of this option, it must inform the Owner of its current address during the period of Relocation.

C. For Tenant Households displaced for thirty consecutive days or more, Owners shall notify the Tenant Household at least thirty (30) days in advance of the availability of the Unit or Room. Within ten (10) days of receipt of the notice of availability, a Tenant Household must notify the Owner if it wishes to reoccupy the Unit or Room. The Owner must hold the Unit or Room vacant at no cost to the Tenant Household for thirty (30) days from the date of the Tenant Household's written notice of its intent to reoccupy the Unit or Room is received.

D. For Households displaced for twenty-nine consecutive days or less and receiving a per diem payment, Owners shall notify the Household at least one day in advance of the availability of the Unit or Room. The Household shall be entitled to receive a per diem payment for up to twenty-four hours after receiving such notice that the Unit or Room is ready for occupancy. Within ten (10) days of receipt of the notice of availability from the Owner, the Household must notify the Owner of its intent to reoccupy the Unit or Room. A Tenant Household shall be entitled to reimbursement for non-refundable costs associated with securing replacement housing based on the owner's initial estimate of the duration of displacement.

E. A Unit or Room shall be deemed to be permanently surrendered and the tenancy terminated, when the Tenant Household provides notice in writing to the Owner that it does

not intend to reoccupy the Unit or Room from which it was relocated or does not notify the Owner of its intent to reoccupy the Unit or Room. If the Owner has not made Relocation payments as required by this Chapter and the Unit or Room becomes permanently vacated, then it shall be presumed that the surrender of the right of possession of the Unit or Room was involuntary unless the Owner has received a written notice from the Tenant Household permanently surrendering its right to their Unit or Room.

Section 13.84.100 ~~Conflict Resolution and~~ Appeal Procedures and Conflict Resolution ~~for Voluntary Code Compliance~~

A. Appeals under this Chapter ~~related to Voluntary Code Compliance s~~shall be filed as set forth below. ~~Appeal procedures related to Code Enforcement Activity are addressed in Section 13.84.050.~~

1. Appeals Related to Code Enforcement Activity.
   a. Any affected Tenant Household or Owner who disputes a determination made by the Building Official or Fire Marshal that relocation is either required or not required under this chapter under subsection A of this section, may file a written request for a hearing by the City Hearing Officer in accordance with Berkeley Municipal Code Section 19.44 only after attempting to resolve the issue through conflict resolution through the Rent Stabilization Board or any other appropriate entity. Such request for hearing must be filed within ten (10) days of the date of the Notice from the Building Official or Fire Marshall, or ten (10) days after conflict resolution attempts have been exhausted.
   b. Appeals of determinations by the Building Official or Fire Marshall of the necessity to relocate due to an imminent threat to life and safety shall not delay enforcement of the order to vacate the premises by the Building Official or Fire Marshall.
2. Appeals Related to Voluntary Code Compliance
3. If ~~the Tenant Household disputes the Owner's determination of the necessity for Relocation, or~~ either party disputes the amount of Relocation payments or other terms of the Relocation, before submitting an appeal, the parties must ~~the City may refer the parties to~~obtain ~~a~~ conflict resolution or mediation services provided through the Rent Stabilization Board or any other appropriate entity ~~upon request by both parties for such referral in lieu of an appeal to the Building Official per subsection A.3 of this Section~~. The purpose of such referral shall be the negotiation of a mutually acceptable agreement pertaining to the terms of the Relocation. If no agreement is reached, then either party may follow the appeals procedure as set forth in this Section. Nothing in this Chapter shall preclude the parties from meeting on their own at any time, with or without a mediator, in an attempt to resolve their disagreements.
4. If the Owner disagrees with the Tenant Household's claim for Relocation payments, and such disagreement cannot be resolved through conflict resolution or mediation, then the Owner may file a written request for a hearing by the City Hearing Officer~~Housing Advisory Commission~~ as to the amount of the claim, or his or her responsibility for Relocation assistance pursuant to this Chapter. Such a request must be filed within ~~five~~ ten (~~5~~10) business days of the conclusion of mediation ~~or within ten~~

Commented [5]: Get input from Rent Board Staff.

Commented [6R6]: FYI, Matt Siegel and Jay K. were part of the committee that developed the recommendations.

Commented [7R6]: Make this section for all appeals. Can we make conflict resolution required BEFORE an appeal can be entertained?

~~(10) days of the Owner's receipt of the Tenant Household's claim of Relocation payments as set forth in Sections 13.84.050.E or 13.84.060.F, whichever comes later~~.

5. If the Tenant Household disagrees with the Owner as to the necessity to Relocate, and such disagreement cannot be resolved through conflict resolution or mediation, the Tenant Household may request in writing that the Building Official make a determination. Such request must be filed within ~~five~~ ten (~~5~~10) business days of the conclusion of mediation, ~~or within ten (10) days of the Tenant Household's receipt of the Relocation notice in Section 13.84.060.C, whichever comes later~~. The Building Official shall determine whether Relocation is necessary and the Owner shall serve all affected Tenant Households with a copy of the Building Official's determination. This decision shall be final.

B. All hearings conducted before the City Hearing Officer~~Housing Advisory Commission~~ shall follow the procedures outlined in BMC Section 19.44 and be scheduled for the next available meeting unless a postponement is agreed upon by all parties. The Commission may convene a special meeting if delay of a hearing until the next regularly scheduled meeting would create a hardship. The Owner and all affected Tenant Households shall be notified of the time and place of the hearing at least ten (10) days before the date of hearing. The Commission shall render its decision on any such appeal within ten (10) days after the hearing on the appeal is closed. The Commission's decision related to payments shall be final. The City Hearing Officer's determination related to the Tenant's Household need to relocate shall be sent to the Building Official or Fire Marshall for consideration and the Building Official or fire Marshall shall make the final decision if Relocation is required.

C. Nothing in this Chapter shall in any way preclude or limit any aggrieved party from seeking judicial review after such person has exhausted the administrative remedies provided by this Chapter. However, it shall be conclusively presumed that a litigant has not exhausted his/her administrative remedies as to any issue which is not raised in the administrative proceedings authorized herein.

Section 13.84.110 Private right of action

Any Tenant that believes that the provisions of this Chapter have been violated shall have the right to file an action for injunctive relief and/or damages. Treble damages may be awarded for willful failure to comply with the payment obligations established by this Chapter and for actual damages incurred by a Household as a result of the Owner's willful failure to offer the Relocated Household the opportunity to reoccupy the Unit from which it relocated. In any action brought under this Chapter, the court may award reasonable attorney fees to any prevailing party.

Section 13.84.120 Severability

If any provision of this Chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the Chapter shall not be invalidated.

Susan Wengraf
Councilmember District 6

ACTION CALENDAR
November 29, 2022

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Harrison and Councilmember Wengraf

Subject: Amendments to BMC Chapter 13.110 COVID-19 EMERGENCY RESPONSE ORDINANCE

RECOMMENDATION

Adopt the first reading of an ordinance to approve the proposed amendments to BMC Chapter 13.110 COVID EMERGENCY RESPONSE ORDINANCE.

FINANCIAL IMPLICATIONS

None

BACKGROUND

The Governor has announced that California's State of Emergency will end on Feb 28, 2023. However, it is not clear at this time if Berkeley's Local State of Emergency will be lifted at the same time and whether or not the prohibition on evictions will be extended.

The City Council passed the eviction moratorium to protect public health during the height of the pandemic. Some tenants continue to suffer COVID-related income loss. However, the Council has heard testimony from a few smaller landlords that have suffered the unfortunate unintended consequences of a few renters in Berkeley who do not have or continue to have COVID-related income losses taking advantage of the situation created by the City's ordinance by not paying rent or refusing to move out. This includes legitimate requests for Owner-Move-In evictions and circumstances where a person is not a bona fide tenant, lodger or sub-tenant.

These proposed narrow amendments to BMC Chapter 13.110 clarify loopholes and address very specific circumstances where evictions would now be permitted. Eviction notices served prior to the effective date of this Ordinance remain invalid. Landlords would be required to issue a new notice for owner move-in or a new notice for nonpayment of rent that comes due after February 1, 2023. The amendments would continue to maintain strong tenant protections outside of these narrow exceptions.

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7160 ● TDD: (510) 981-6903 ● Fax: (510) 981-7166
E-Mail: swengraf@cityofberkeley.info

The proposed amendments

- Change “resident” to “tenant” to clarify scope of ordinance and avoid application to situations in which there exists no agreement for the payment of rent (13.110.020.A)

- Tenants may be evicted for non-payment of rent if they fail to pay rent beginning February 1, 2023 and cannot demonstrate a Covered Reason for Delayed Payment (13.110.020.A (evictions), 13.110.020.B (eviction notices), 13.110.050.A (applicability))

- Tenants may be evicted for owner move-in (13.110.020.A (evictions), 13.110.020.B (60-day eviction notices allowed after effective date), 13.110.050.A (applicability))

- Tenants are required to provide notice to the landlord of the existence of a Covered Reason for Delayed Payment before January 15, 2023 (13.110.040.C), consistent with provisions in Santa Monica.

- Tenant’s defense is not waived by failure to provide notice of the Covered Reason for Delayed Payment (13.110.040.C, already in effect)

State law fixes/outdated language

- Repayment period for rent accrued beginning February 1, 2021 is fixed to July 31, 2023 per state law, or such later date as the State Legislature may adopt. (13.110.040.B.2.; Gov. Code 1179.05(a)(2)(B).

- Section 13.110.020.C (rent increases in commercial tenancies) has expired by operation of its original wording, which said that it would only last as long as Executive Order N-28-20 remains in effect.

ENVIRONMENTAL SUSTAINABILITY
No impact

CONTACT PERSON

Councilmember Harrison	Council District 4	510-981-7140
Councilmember Wengraf	Council District 6	510-981-7160

Attachment:
1: Ordinance Amending BMC Chapter 13.110, The COVID-19 Emergency Response Ordinance, with tracked changes

ORDINANCE NO. X,XXX--N.S.
ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE, THE COVID-19 EMERGENCY RESPONSE ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:
Section 1. The Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

Chapter 13.110
COVID-19 EMERGENCY RESPONSE ORDINANCE

Sections:

13.110.010 Findings and Purpose
13.110.020 Prohibited Conduct
13.110.030 Definitions
13.110.040 Collection of Back Rent and Late Fees
13.110.050 Application
13. 110.060 Implementing Regulations
13.110.070 Waiver
13.110.080 Remedies
13.110.090 Severability
13.110.100 Liberal Construction

13.110.010 Findings and Purposes

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV2." And the disease it causes has been named "coronavirus disease 2019," abbreviated
COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022, the council ratified an extension of the local emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.
On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel.

On March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.
Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.
The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.
On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.
During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.
At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council passed the eviction moratorium to protect public health during the height of the pandemic. Some tenants continue to suffer COVID-related income loss. However, the Council has heard testimony from a few landlords that have suffered the unfortunate unintended consequences of a few renters in Berkeley who do not have or continue to have COVID-related income losses taking advantage of the situation created by the City's ordinance by not paying rent or refusing to move out. This includes legitimate requests for Owner-Move-In evictions and circumstances where a person is not a bona fide tenant, lodger or sub-tenant.

These proposed narrow amendments to BMC Chapter 13.110 clarify loopholes and address very specific circumstances where evictions would now be permitted. The amendments would continue to maintain strong tenant protections outside of these narrow exceptions.

~~The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed~~

~~or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.~~
~~Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.~~
~~On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.~~
Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

13.110.020 Prohibited Conduct

A. During the Covered Period, no Landlord or Lender shall evict or attempt to evict a ~~Resident~~ Tenant of real property, or otherwise require a Tenant to vacate, unless necessary to stop an imminent threat to the health and safety of other occupants, or for purposes of a lawful owner move-in eviction under Section 13.76.130.A.9, or~~.~~ ~~For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID19 illness or exposure to COVID-19, whether actual or suspected~~on the basis of non-payment of rent after February 1, 2023 for which the Tenant cannot demonstrate a Covered Reason for Delayed Payment, as defined below.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the Covered Period, except that after the effective date of this Ordinance, a~~n~~ Landlord may serve a lawful notice pursuant to Section 13.76.130.A.9, and/or after February 1, 2023, a Landlord may serve a notice based on the lawful grounds for eviction in Subsection 13.110.020.A, above, in which case a tenant may establish a complete defense to eviction for nonpayment of rent by proving the existence of a Covered Reason for Delayed Payment, as defined below.

~~C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local emergency declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.~~

~~D.~~C. For the duration of the Covered Period, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days 'notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic.

13.110.030 Definitions

A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

B. "Covered Reason for Delayed Payment" means:

(1) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was

caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

C. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

D. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.

E. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

F. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

H. "Resident" means a Tenant, Homeowner, or their household.

I. "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property.

13.110.040 Collection of Back Rent and Late Fees

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek ~~after expiration of the local State of Emergency~~as set forth below in subsection 13.110.040.B. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. ~~The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the Covered Period course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.~~

B.

1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

2. For rent accrued beginning February 1, 2021, Tenants shall have until ~~twenty-four (24) months after the conclusion of the Covered~~ ~~April 30~~July 31, 2023, or such later date as the State Legislature may adopt~~-~~ to pay rent that was delayed by a Covered Reason for Delayed Payment, or~~-~~, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

3. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent. However, Tenants who assert the existence of a Covered Reason for Delayed Payment after January 1, 2023 must notify the Landlord no later than January 15, 2023. The failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections 1161(2) *et seq.* does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant explicitly authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

13.110.050 Application

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period. Unlawful detainer actions based on notices served after February 1, 2023, shall be subject to the affirmative defense set forth in Section 13.110.020.A., above, if applicable, where the Tenant can establish the existence and applicability of such Covered Reason for Delayed Payment. It does not apply to commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation), a landlord may seek rent accrued during the Covered Period as set forth in Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued during the Covered Period and prior to February 1, 2023. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time between March 17, 2020 and January 31, 2023, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant.

C. A Landlord or Lender shall not retaliate against a Resident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities reducing services or amenities, refusing to make or delaying repairs to which the Resident would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on nonpayment of rent between March 17, 2020 and January 31, 2023 as allowed under this ordinance.

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

13.110.060 Implementing Regulations

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter.

13.110.070 Waiver.

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

13.110.080 Remedies

A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate.

1. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.

2. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.

3. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.

4. In addition, this Chapter grants a complete defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this Chapter.

B. The protections provided by this ordinance shall be available to all Residents, regardless of any agreement wherein a Resident waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

C. ~~A.~~ Violations of Section 13.110.020(C) - (Commercial rent restrictions).

1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to $1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.

D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

13.110.090 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

13.110.100 Liberal Construction

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Section 2. Effective Date

This ordinance shall go into effect thirty days from the time of its final passage.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.~~.~~

~~At a regular meeting of the Council of the City of Berkeley held on September 13, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:~~

~~Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.~~

~~Noes: None. Absent:~~

~~None.~~

Kate Harrison
Councilmember District 4

ACTION CALENDAR
July 28, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Kate Harrison

Subject: Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

RECOMMENDATION

Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.

BACKGROUND

Berkeley has had regulations on short term rentals (STRs) since 2017, allowing STRs in most residential and commercial zones, as long as the host pays the transient occupancy tax and the unit being rented fits particular criteria (no Below Market Rate unit may be a short term rental, no unit may be a short term rental if it has had a No Fault Eviction in the past five years, etc). The City of Santa Monica also has an ordinance regulating STRs that places the regulatory burden on the *host platform* (i.e., AirBnB or other corporate host platforms) rather than the individual renting out their unit. Santa Monica placed four obligations on the host platform: collecting and remitting transient occupancy taxes, regularly disclosing listings and booking information to the City, refraining from booking properties not licensed by the City, and refraining from collecting fees for ancillary services.[1] The Ninth Circuit Court of Appeals upheld the legality in the case of *Homeaway.com v. Santa Monica*, thus confirming the rights of Cities to regulate short term rental host platforms.

The proposed amendments update the City of Berkeley's STR regulations to more closely align with Santa Monica's ordinance, as well as other amendments intended to ensure that the short term rentals in Berkeley serve the needs of the City. The primary five changes are as follows:

1) Regulatory burden shifted to the Host Platform

We clarify the definition of a hosting platform in 23C.22.030.H (page 2) as a marketplace that derives revenue from maintaining said short term rental marketplace. Regulating the host platform consolidates regulation and ensures that the transient

[1] *Homeaway.com v Santa Monica.* United State Court of Appeals for the Ninth Circuit. No. 18-55367.

occupancy tax owned to the City gets paid. Recommended changes to 23C.22.050.H and I (page 5) state that if a hosting platform is utilized to book a short term rental, both it and the individual host are legally responsible and are jointly liable for remitting the transient occupancy tax. New section 23C.22.050.I (pages 5-6) also outlines new duties of the hosting platform, including a regular disclosure of short term rental listings in the City as well as their address, length of stay, and listed prices. In addition, the hosting platform is responsible for ensuring that all short term rentals are appropriately licensed with a Zoning Certificate and adds the requirements that STRs must list the Zoning Certificate on any STR advertisements. The new regulations also include a safe harbor clause, making clear that hosting platforms that disclose listings, regularly remit the transient occupancy tax, and ensure the listing has a Zoning Certificate will be presumed to be in compliance with the chapter.

2) Hosts can have only one residence

Individual people have the right to rent out their homes on a short term basis, but in a housing crisis, it is in the best interest of the City to ensure that no one has extra units for STRs when they could house someone long term instead. To that end, 23C.22.030.F and 23C.22.030.I (pages 2-3) clarify that hosts may not have more than one principle place of residency, which may include accessory buildings or ADUs.

3) Short term rentals limited to single ADUs, single Accessory Buildings or Golden Duplexes not rented for the past ten years

The current ordinance limits use of Accessory Buildings or Accessory Dwelling Units to those that have not been rented for ten years. Additions to Section 23C.22.020.D (page 1) expand that prohibition to include more than one Accessory Building or ADU on a property and prohibits short term rentals in Golden Duplexes if those units have been rented in the last ten years. Unpermitted use of these units would be investigated by the Rent Stabilization Board under Section 23C.22.060.I (page 7).

4) Closing 14/30 day loophole

Under current law, any rental over 14 days is not a short term rental and thus does not require paying a transient occupancy tax. Any rental that is shorter than 30 days is not a long term rental and thus rent control and other rental protections are awarded to the tenant. As it now stands there are instances of regularly renting a unit for a period of time between 14 days and fewer than 30 days, thus circumventing standard regulations. 23C.22.030.N (page 3) and 23C.22.040 (page 4) close this loophole by disallowing rentals between 14 and 30 days, and stating that no Zoning Certificate or advertisement for a short term rental may be permitted for rentals longer than 14 days.

5) Remedies

New language under 23C.22.060E and 23C.22.060.J (page 7) clarify that in the case of a private right of action the prevailing party is entitled to recover reasonable costs and attorney's fees, thus making private right of action more financially feasible. The new

language also gives the City the right to issue administrative subpoenas to determine whether short term rentals are in compliance with the chapter. Both of these edits are intended to encourage enforcement and compliance.

Finally, the ordinance clarifies the definitions of the terms Accessory Building, Accessory Dwelling Unit, and the Transient Occupancy Tax and defines a Golden Duplex and other clarifying language.

CONTACT PERSON
Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS
Ordinance

100Chapter 23C.22
Short-Term Rentals

23C.22.010 Purposes

The purposes of the Short-Term Rentals related regulations contained in this Chapter are:

A. To prevent long-term rental units from being replaced with Short-Term Rentals and protect affordable housing units from conversion.

B. To preserve and protect neighborhood character and livability from nuisances that are often associated with Short-Term Rentals.

C. To generate City revenue to share City infrastructure cost and other public expenditures by operation of Short-Term Rentals under established standards.

D. To provide alternative forms of lodging. (Ord. 7521-NS § 1 (part), 2017)

23C.22.020 Applicability

A. Short-Term Rentals shall be allowed in residential uses in the following zoning districts: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.

B. Short-Term Rentals shall be prohibited in below market rate (BMR) units. BMR units for Short-Term Rental purposes refer to Dwelling Units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income-qualified.

C. A property containing a Dwelling Unit protected by a No-Fault Eviction cannot operate Short-Term Rentals for five years from eviction unless it is a single-family home that has been vacated for purposes of Owner Occupancy in compliance with the Rent Stabilization Ordinance.

D. Short-Term Rentals are only allowed in a single, Accessory Building and in single existing Accessory Dwelling Units (ADUs), or a Golden Duplex unless such ADUs are or have within the last 10 (ten) years preceding the effective date of this ordinance been used for long term rentals, as defined by the requirements of the Rent Stabilization Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date this Ordinance first became effective. (Ord. 7521-NS § 1 (part), 2017)

23C.22.030 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

A. Accessory Building: A detached building containing habitable space, excluding a kitchen, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

B. Accessory Dwelling Unit: A secondary dwelling unit that is located on a lot which is occupied by one legally established Single-Family Dwelling that conforms to the standards of Section 23C.24. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the Single-Family Dwelling: 1) exterior access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes an efficiency unit and a manufactured home, as defined in the Health and Safety Code.

C. "Adjacent Properties" mean the Dwelling Units abutting and confronting, as well as above and below, a Dwelling Unit within which a Short-Term Rental is located.

D. "Dwelling Unit" means a building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.

E. "Golden Duplex" means an owner-occupied duplex that is exempt from rent control and eviction protection, so long as it was occupied by the owner on December 31, 1979 and is currently occupied by the owner.

F.. "Host" means any Owner and is used interchangeably in this Title with Owner Host. An Owner Host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers his or her Host Residence, or a portion thereof, as a Short-Term Rental. For purposes of offering a Short-Term Rental, an Owner Host may not have more than one "Host Residence" in the City of Berkeley, excluding an Accessory Building or an Accessory Dwelling Unit on the same residential real property. A Tenant Host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their Host Residence, or portion thereof, as a Short-Term Rental.

G. "Host Present" or "Host Presence" means the Host is living in the Host Residence during the Short-Term Rental period. In the case of a parcel comprised of a Single Family Dwelling and one or more authorized Accessory Dwelling Units and/or Accessory Buildings, the Host is considered Present if he or she is present in any Dwelling Unit on such property during the Short Term Rental period.

H. "Hosting Platform" means a business or person that provides a marketplace through which an Owner Host may offer a Dwelling Unit for Short-Term Rentals. A Hosting Platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a Dwelling Unit to be advertised through a website provided by the Hosting Platform and provides a means for potential Short-Term Rental Transients to arrange and pay for Short-Term Rentals, and from which operator of the Hosting Platform derives revenue, including booking fees or advertising revenues, from providing or maintaining the marketplace.

I.. "Host Residence" means a Host's principal place of residence as defined by whether the Host carries on basic living activities at the place of residence, and whether the place of residence is the Host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency. A Host may have only one place of principal residency in the City, and if that principal place of residency contains more than one dwelling unit, the principal place of residency shall be only one such dwelling unit.

J. "Host Responsibilities" means the requirements that a "Host" is obligated to comply with as set forth in this Ordinance.

K. "Local Contact" means a person designated by the Host who shall be available during the term of any Short-Term Rental for the purpose of (i) responding within sixty minutes to complaints regarding the condition or operation of the Dwelling Unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and (ii) taking appropriate remedial action on behalf of the Host, up to and including termination of the Short Term Rental, if allowed by and pursuant to the Short Term Rental agreement, to resolve such complaints.

L. "No Fault Eviction" means an eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Berkeley Municipal Code.

M. "Short-Term Rental" or "STR" means the use of any Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portions thereof for dwelling, sleeping or lodging purposes by Short-Term Rental Transients. Short-Term Rental shall be an accessory use to a residential use and be considered neither a Tourist Hotel nor a Residential Hotel for purposes of this Title.

N. Short Term Rentals are allowed for 14 or fewer consecutive days. Any rental for more than 14 consecutive days is not permitted as a Short Term Rental, and any rental for more than 14 consecutive days and less than 30 consecutive days is not permitted in the City of Berkeley.

O. "Short-Term Rental Transient" or "STR Transient" means any person who rents a Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portion thereof, for 14 or fewer consecutive days.

P. "Transient Occupancy Tax" or "TOT" means local transient tax as set forth in Berkeley Municipal Code Section 7.36. The tax is paid by the Short-Term Rental Transient at the time payment is made for the Short-Term Rental. The TOT is then remitted to the City.

23C.22.040 Permit And License Required

Short Term Rentals are permitted only in the Host Residence. A Zoning Certificate and a Business License for a Short-Term Rental shall be required for each Host to operate a Short-Term Rental. A Host must provide the Uniform Resource Locator (URL) — specifically, the website address — for any and all advertisements for the STR, if applicable, on the Zoning Certificate application.

No Zoning Certificate may be issued to allow for a Short-Term Rental of more than 14 consecutive days, and no advertisement for a Short Term Rental of more than 14 consecutive days is allowed.

23C.22.050 Operating Standards and Requirements

A Short-Term Rental is allowed only if it conforms to each of the operating standards and requirements set forth in this Section, and the Host complies with all Host Responsibilities set forth in this Ordinance.

A. Proof of Host Residency.

1. An Owner-Host of a Short-Term Rental must provide documentation of Owner Host and Host Residence status and, if applicable, Host Presence, as defined above.

2. A Tenant-Host must provide documentation of lessee status, Host Residence and Host Presence, if applicable, as defined in subdivisions C, E, and B of Section 23C.22.030. In addition, a Tenant-Host must present written authorization allowing for a Short-Term Rental in the Host Residence from the building owner or authorized agent of the owner.

B. STR Duration and Required Residency Timeframes

1. When the Host is Present, the unit, or a portion thereof, may be rented as a Short-Term Rental for an unlimited number of days during the calendar year.

2. When the Host is not Present, the number of days that the unit can be used for Short-Term Rental purposes shall be limited to 90 days per calendar year.

C. Number of Occupants. The maximum number of Short-Term Rental Transients allowed for a Short-Term Rental unit shall be as provided for in the Berkeley Housing Code (BMC Chapter 19.40).

D. Notification.

(i) Initial, one-time notification of the establishment of a Short-Term Rental by Zoning Certificate and Business license, shall be provided to the residents of all Adjacent Properties. Notification shall include Host and Local Contact information. Additional notification shall be required within a week of updated Host or Local Contact information.

(ii) In any advertisement for the STR, a Host must include the Zoning Certificate number.

E. Enforcement Fee. For the initial enforcement period, while enforcement costs are being determined, the Host shall pay an additional enforcement fee in an amount equal to 2% of the rents charged by that Host, not to exceed the cost of the regulatory program established by this Chapter over time. Such fees may be paid by the Hosting Platform on behalf of the Host. After the initial enforcement period, the Council may revise the enforcement fee by resolution.

F. Liability Insurance. Liability insurance is required of the Host, or Hosting Platform on behalf of the Host, in the amount of at least $1,000,000.

G. Documents Provided to STR Transients. Electronic or paper copies of the Community Noise Ordinance and Smoke-Free Multi-Unit Housing Ordinance must be provided to STR Transients upon booking and upon arrival.

H. Transient Occupancy Tax. ("TOT"). The TOT shall be collected on all Short-Term Rentals. The Host is responsible for collecting and remitting the TOT, in coordination with any Hosting Platform, if utilized, to the City. If a Hosting Platform collects payment for rentals, then both it and the Host shall have legal responsibility for collection and remittance of the TOT.

I. Housing Platform Responsibilities.

(i) Subject to applicable laws, A Hosting Platform shall disclose to the City on a regular basis each rental listing located in the City, the names of the person or persons responsible for each such listing, the address of each such listing, the length of stay for each such listing, and the price paid for each booking transaction.

(ii) A Hosting Platform shall not complete any booking transaction for any STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform receives a fee the booking transaction.

(iii) A Hosting Platform shall not collect or receive a fee for a STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform would otherwise be entitled to receive a fee for the booking transaction.

(iv) Safe Harbor: A Hosting Platform operating exclusively on the internet, which operates in compliance with subsections (i), (Ii) and (iii) above, shall be presumed to be in compliance with this Chapter.

J. Housing Code Compliance. Any building or portion thereof used for Short-Term Rentals shall comply with the requirements of the Berkeley Housing Code (BMC Chapter 19.40).

K. Payment of Additional Taxes: The Host shall pay all City taxes and fees owed, in addition to the TOT, if applicable, in a timely manner. 100

L. The Host shall be responsible for listing on any rental ad the Zoning Certificate number. The Host shall also provide both the Business License number, if required pursuant to Chapter 9.04, and Zoning Certificate for the STR to the City and/or a vendor hired by the City to administer this Chapter, upon request.

23C.22.060 Remedies

A. Compliance with Second-Response Ordinance. The Host shall comply with the Second Response Ordinance (BMC Chapter 13.48). The Host shall be prohibited from operating Short-Term Rentals for one year upon issuance of a third violation affidavit.

B. Violation of any provision of this Chapter is punishable as set forth in Chapters 1.20 and 1.28.

C. Violation of any provision of this Chapter is hereby declared to be a public nuisance subject to abatement under Chapters 1.24, 1.26 and 23B.64.

D. In any enforcement action by the City, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of

attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

E. Any resident of the City may bring a private action for injunctive or other relief to prevent or remedy a public nuisance as defined in this Chapter, or to prevent or remedy any other violation of this Chapter. No action may be brought under this subdivision unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute. The prevailing party in any such action shall be entitled to recover reasonable costs and attorney's fees.

F. Any occurrence at a Short-Term Rental unit that constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions, constitutes a public nuisance.

G. It shall be a public nuisance for any STR Transient of a Short-Term Rental unit where an event is taking place to refuse access to, or interfere with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.

H. Notwithstanding any provision of Chapter 13.48 to the contrary, a public nuisance as defined in this Section shall be subject to remedies set forth in Section 23C.22.060. (Ord. 7521-NS § 1 (part), 2017)

I. A violation of this Chapter by a Host Owner who offers or rents a rent controlled unit, multiple ADU's, multiple Accessory Buildings, or a Golden Duplex, may be reported to the Berkeley Rent Stabilization Board for investigation by the Board. Upon report of a violation to the Rent Stabilization Board, the Board is required to provide a written report of the investigation within 30 days. Where a violation is found, the Rent Board will immediately provide the written report supporting its finding of a violation to the City Attorney's office for remedial action by the City.

J. The City may issue and serve administrative subpoenas as necessary to obtain specific information regarding Short-Term Rentals located in the City, including but not limited to, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay, to determine whether the STR and related listing complies with this Chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than 30 days

from the date of service. A person or entity that has been served with an administrative subpoena may seek judicial review during that 30 day period.