



Jesse Arreguin, Mayor

Leah Simon-Weisberg, Chair, Rent Stabilization Board

## Memo

January 5, 2022

**To:** 4x4 Joint Task Force Committee on Housing: Rent Board/City Council

**From:** Mayor Jesse Arreguin and Chair Leah Simon-Weisberg

**Subject:** Recommendation to Revise Berkeley B.M.C. Chapter 13.84 (“Relocation Ordinance”) to better protect tenants during construction due to necessary repairs and new construction of ADUs and other additional housing units.

### INTRODUCTION

There has been a long standing gap in protections for tenants occupying units that need repairs, who live in properties destroyed by fires, or live in buildings where other units are being repaired or newly constructed. New state ADU laws which require ministerial approval have also created construction impacts when units are added to existing tenant-occupied properties. Additionally future zoning changes allowing for lot-splits or the addition of units on parcels will result in more construction in neighborhoods. The 4-bedroom ADU built on Harper Street last spring epitomizes the coming new generation of unintended consequences from new state housing laws and the needed protections for tenants living at existing properties slated for construction and addition. <https://www.berkeleyside.org/2021/04/09/berkeley-adu-harper-street-state-law>

Initially passed in 1986, and amended in subsequent years since, Berkeley Municipal Code (B.M.C.) Chapter 13.84 codifies the City’s Relocation Ordinance, the primary vehicle through which tenants receive various benefits when displaced from their home due to either mandated or voluntary code-compliance repairs at the property which necessitate that the tenant temporarily vacate their home.

While the Ordinance underwent substantial revision in 2011, a number of concerns regarding its applicability, administration and enforcement still remain. Administered by various staff in the City’s Housing Department with substantial assistance from Rent Board staff, many landlords and tenants have voiced frustration over several components of the Ordinance.

From a tenant perspective there have been complaints regarding unsafe and disruptive practices during repairs, a rigid review process which often results in a tenant being compelled to remain

in the premises while major repair work is done to their unit and/or building and a lack on the part of the City to enforce the Ordinance in such areas as compelling owners to make actual payments to tenants when legally obligated.

From a property owner perspective there has been frustration about a lack of clear administrative procedures and guidelines as well as difficulties encountered when a dispute arises between landlord and tenant about the need or desire to have the tenant relocate.

On February 24, 2021 , Rent Board Chair Simon-Weisberg provided a PowerPoint presentation to this committee about the City of Los Angeles' Tenant Habitability Program ("THP"). This program, codified in Article 2, Chapter 152.00 et seq. of the Los Angeles Rent Stabilization Ordinance, was created to facilitate the process wherein property owners are able to move forward with substantial repairs and renovations and at the same time mitigate the impacts such work often has on sitting tenants. The THP provides mechanisms and procedures that either allow a tenant to remain in the unit while such work is undertaken or, in the alternative, provide the tenant temporary housing while such work is being done.

We have reviewed the Los Angeles Tenant Habitability Program and find there is much that it offers. The program offers landlords and tenants clear directives and guidance from the onset of any proposed construction work and just as importantly empowers the City to review and adjudicate proposals from the property owner when such work is being contemplated.

Thus, this report recommends that the 4x4 Committee recommend to the City Council, in concept, that the City move towards a model that reflects that of the Los Angeles THP.

### **BERKELEY RELOCATION ORDINANCE (B.M.C. 13.84)**

Initially passed in 1986 and amended several times since, the City's Relocation Ordinance is codified as B.M.C. Chapter 13.84. 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]).<sup>1</sup>

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.

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<sup>1</sup> 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 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.

## **1. Eligibility**

### **a. 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).

### **b. 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.<sup>2</sup>

## **2. Property Owner Responsibilities**

### **a. 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 be increased by 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 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

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<sup>2</sup> 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.

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.

**b. 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 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, many 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.<sup>3</sup>

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**

**a. 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

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<sup>3</sup> 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.)

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 a 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).

#### **b. 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.<sup>4</sup>

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

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<sup>4</sup> 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.

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. City Involvement in Relocation Payments**

##### **a. 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).

##### **b. Practice:**

In practice this has 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 believe that, at a minimum, this should change and the City should 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 the section below, we will review the Los Angeles Tenant Habitability Program ("THP").

#### **TENANT HABITABILITY PROGRAM (Los Angeles Rent Stabilization Ordinance/ Art. 2, Section 152.00 et seq.)**

In 2005 the City of Los Angeles amended its rent control ordinance and passed the Tenant Habitability Program (“THP”). The program is codified as Section 152 et seq. of Article 2 of the Rent Ordinance. Its purpose is to facilitate landlord investment in substantial renovation work without subjecting tenants to untenable housing conditions during such work or forced displacement. The program requires owners to ensure that tenants either remain in their unit safely during such renovation/work or are temporarily relocated (Sec. 152.01).

### **1. What triggers the THP?**

At the onset, it should be made clear that the THP works opposite to that of Berkeley’s Relocation Ordinance. While the City’s Relocation Ordinance is mostly self-enforcing and triggered by the voluntary act or claim by the owner of the need for relocation, Los Angeles’s THP is the opposite.

Under the THP, no landlord may undertake what is called “Primary Renovation Work” without first obtaining all required permits and part of the permitting process is the submission of a Tenant Habitability Plan which must garner city approval (Sec. 152.03A).

Primary Renovation Work is defined as involving the replacement or substantial modification of major building systems and presumes such work as substantial plumbing, electrical, heating, foundation work and/or abatement of hazardous materials (Sec. 152.01).

Under the THP an owner must submit a Tenant Habitability Plan and provide advance notice to the tenant of the work contemplated as well as the plan itself. At a minimum, the Habitability Plan must identify the property owner as well as any contractor or sub-contractor hired to do the work; must identify all affected tenants including their rent and must describe the scope of work as well as the estimated cost of the work and time for completion. In addition, the Habitability Plan must identify and discuss the impact the work will have on each unit with attention given to noise, utility interruption, accessibility and exposure to hazardous materials. The plan must also lay out mitigation measures that will be adopted to ensure that tenants are not required to occupy an untenable unit outside normal business hours. Finally, the Habitability Plan must identify and discuss measures to be taken to protect tenant property (Sec. 152.03B).

### **2. City Approval Required**

Under this law the City reviews and either approves or denies the landlord’s permits depending on a satisfactory Habitability Plan. The City has five days from receipt of the plan and parties have fifteen days to challenge the City’s determination (Sec. 152.03C).<sup>5</sup> Since the THP lies within the City’s rent control ordinance, challenges are heard by Rent Board examiners.

### **3. Notice Requirements**

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<sup>5</sup> One condition of acceptance of the permits is the requirement that the owner have no outstanding balance with the Rent Board or any code enforcement fees (Sec. 152.03C2)

As mentioned above, when submitting permits for approval the owner must serve the tenant with the Habitability Plan as well as a Notice of Primary Renovation Work. This notice must inform the tenant of the projected start and end date of the work, a description of the work to be done, details of temporary relocation if required and notice of tenants' right to re-occupy the unit as well as the right to appeal the City's determination.

#### **4. Relocation**

Under this section, a tenant always has the option of permanently vacating their unit in exchange for permanent relocation assistance if the work lasts thirty days or longer. Permanent relocation fees are set by the City and are currently in line with Berkeley's Ellis Bill relocation fees.

Under the Habitability Plan the tenant is obligated to still pay rent on their unit but the owner shall pay for all temporary housing including all costs related to storage and/or moving (Sec. 152.06C, D). Relocation is mandated if the unit is untenable outside of normal working hours.

Another component of the plan is the requirement that the owner offer the tenant any comparable vacant unit that s/he owns. Space is provided in the THP to consider differences in amenities such as size, bedrooms, etc... (Sec. 152.06F).

Similar to Berkeley's Relocation Ordinance, if the work takes less than thirty days the owner shall arrange temporary housing either in the same building or other housing such as a hotel/motel. If the housing is not in a unit owned by the landlord it can not be greater than two miles from the tenant's unit. Finally, in lieu of the owner paying for temporary housing, the parties can agree to a per diem amount for each day of temporary relocation (Sec. 152.06F).

#### **Overview**

The Los Angeles THP balances the desire of landlords to substantially renovate their properties with the City's policy of ensuring safe housing for its tenants and the need for tenants to be adequately protected and compensated when such work creates conditions that make their unit untenable.

The THP has clear, concise protocols for noticing requirements, appeals procedures as well as succinctly laying out landlord and tenant rights and responsibilities.

#### **CONCLUSION**

While the City's Relocation Ordinance has many components that are desirable, the primary method of how it is triggered along with some crucial components that we feel need amending, give us reason to believe the City should move forward with a model more closely based on the Los Angeles THP.

The Relocation Ordinance currently is in need of the following:

- Increased per diem amounts
- Adjustment for rent differential payments
- Stronger mandate for City payment of benefits when owner fails to pay
- Expanded elements for a tenant to relocate

Primarily and of most import however is what we see as a fatal flaw in the ordinance; the inability of a tenant to access it and seek a determination when a landlord fails to claim the need for such relocation. As discussed above, this blind spot has been the cause of great confusion and hardship for tenants over the years.

In contrast, the Los Angeles THP removes the subjective nature of whether relocation is needed by compelling the owner to provide a detailed plan that contemplates possible relocation as well as on-site tenant protections if relocation is not required. A crucial part of the THP is, of course, the requirement that the City be the arbiter of whether work permits are to be granted.

A comparison of the City's Relocation Ordinance with the THP of Los Angeles reveals a need in Berkeley for, at a minimum, a move towards the Los Angeles model wherein an owner must preliminarily provide detailed plans to the City and seek approval prior to permits being granted. We also see the need however for any new model to incorporate some of the concerns raised previously about the threshold that a tenant needs to meet in order to trigger relocation. Thus, we recommend that this committee approve a motion to recommend that the City immediately start the process to either amend B.M.C. 13.84 and/or pass new legislation in line with the Los Angeles THP.

Attachments:

1. B.M.C. Chapter 13.84 (Berkeley Relocation Ordinance)
2. Section 152.00 (Los Angeles Tenant Habitability Program)
3. Los Angeles THP Primary Renovation Application Questionnaire

## 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.

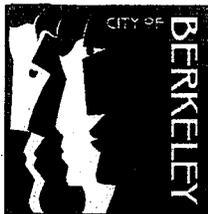
C. Nothing in this chapter shall in any way preclude or limit any aggrieved party from seeking judicial review after such person has exhausted the administrative remedies provided by this chapter. However, it shall be conclusively presumed that a litigant has not exhausted their administrative remedies 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)



Health, Housing & Community  
Services Department

### REQUEST FOR RELOCATION PAYMENT:

For Temporary Relocations That Are 29 Days or Less

Head of Household: \_\_\_\_\_ Date: \_\_\_\_\_

Unit Address: \_\_\_\_\_ Total Number Occupants: \_\_\_\_\_

#### A. Names for Additional Household Members:

- 1. \_\_\_\_\_ 3. \_\_\_\_\_
- 2. \_\_\_\_\_ 4. \_\_\_\_\_

#### B. Number of pets authorized by Landlord (per written agreement): \_\_\_\_\_

Type of pets: \_\_\_\_\_

#### RELOCATION PAYMENT CALCULATION

[Number of days: \_\_\_\_\_] x [Per diem:\$ \_\_\_\_\_] = Relocation Payment: \$ \_\_\_\_\_

##### Please note:

- If period of relocation is 10 days or less, Tenant Household is due this full amount.
- If period of relocation is more than 10 days, Owner may either provide full amount, or provide an initial payment for the amount of the per diem for 10 days, with the balance to be paid upon household providing documentation of hotel costs incurred.

#### Per Diem Rates

Household size	Amount	Household size	Amount
One person	\$120 per day	Three Person	\$166 per day
Two Person	\$135 per day	For each additional person, add \$15/day.	

#### Boarding Costs for Pets:

You may qualify for reimbursement for boarding costs for pets included in Part B above, primarily cats or dogs, if you are unable to keep them with you in your temporary housing. The ordinance sets a ceiling of \$20 per day for a cat, and \$50 per day for a dog, and you must provide receipts before receiving payment from the property owner. [Refer to BMC 13.84.070 (A) (2).]

Will you be requesting payment for boarding costs for pets?

Not applicable  Yes: estimated amount to be requested: \$ \_\_\_\_\_

**City of Berkeley**  
**REQUEST FOR RELOCATION PAYMENT FROM PROPERTY OWNER**  
*For Temporary Relocations Lasting 30 Days or Longer*

Tenant Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 Unit Address: \_\_\_\_\_ Bedroom Size: \_\_\_\_\_  
 Estimated date of Move-Out: \_\_\_\_\_ Estimated period of relocation: \_\_\_\_\_

**INITIAL RELOCATION PAYMENT CALCULATION**

Relocation Payment	Calculation	Amount
1. <b>Dislocation Allowance</b> (fixed payment)	\$400	\$400
2. <b>Moving Costs</b> , if applicable: Either the fixed payment of \$300, or reimbursement of actual costs. If requesting reimbursement, include estimate from a licensed moving company (and not to exceed rates set by Federal Highway Administration).	Include either: <input type="checkbox"/> Fixed payment: <u>\$ 300</u> OR: <input type="checkbox"/> Estimate of actual cost \$ _____	\$ _____
3. <b>Storage Costs</b> , if applicable: Either the fixed payment of \$200 without receipts, or reimbursement of actual expenses with receipts. If requesting reimbursement, include estimate of cost provided by storage facility.	Include either: \$0 if not applicable or: <input type="checkbox"/> Fixed payment: <u>\$ 200</u> OR: <input type="checkbox"/> Actual cost per month: \$ _____	\$ _____
4. <b>Rent Differential Payment:</b> If the monthly rent for your replacement housing is higher than your current rent, then you qualify for a rent differential payment that covers the difference, up to a ceiling based on the Rent Ceiling chart below for the bedroom size of your unit.  <i>To calculate the payment, take the lesser of the rent for your replacement housing and the maximum rent from the chart below based on the bedroom size of your unit, and subtract your current rent. This amount will be your monthly rent differential payment.</i>	(A) Current rent: \$ _____ (B) New rent: \$ _____ (C) Maximum rent (from table below): \$ _____  <b>Monthly Rent Differential Payment:</b> \$ _____  Note: If period of relocation exceeds 90 days, the initial rent differential payment is for the first 90 days: monthly amount x 3 = \$ _____	\$ _____

**Maximum Rent Levels for Replacement Units for 2021-2022**

Studio: \$1,911
1 BR: \$2,183
2 BR: \$3,065
3 BR: \$3,946

**INITIAL RELOCATION PAYMENT:**

[Includes: 1) Dislocation Allowance, 2) Moving Costs, 3) fixed payment or one month storage cost, 4) Rent Differential for first month or for initial 90 days.]

\$ \_\_\_\_\_

Tenant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Information: Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

## 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 untenable, 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 untenable housing conditions during such renovation work or forced permanent displacement. The tenant habitability program requires landlords to mitigate such temporary untenable 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 untenable 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 untenable 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.





## 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