



Office of the Mayor

REVISED AGENDA MATERIAL

Meeting Date: November 15, 2020

Item Number: #24

Item Description: Referral to City Manager: Tenant Habitability Plan and Amendments to Relocation Ordinance

Submitted by: Mayor Jesse Arreguin

The item has been revised to be a referral to both the City Manager (for practical, implementation ramifications, policy recommendations, etc.) and City Attorney (for drafting) in light of Section 113 of the Charter, which provides that the City Attorney shall draft proposed City ordinances and amendments thereto.



Office of the Mayor

ACTION CALENDAR
November 15, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

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 its 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, 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.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. City Involvement in Relocation Payments

***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, plumbing 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

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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