



Jesse Arreguin
Mayor

Leah Simon -Weisberg
Chair
Berkeley Rent
Stabilization

TENANT HABITABILITY PLAN

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

Land Use Committee, May 1, 2023



What problem are we trying to fix?

There has been a rise in complaints from tenants experiencing unsafe and disruptive practices during repairs and construction of ADUs;

Tenants remain long term in rentals because of vacancy decontrol and so repairs while a unit is occupied is more common;

It is very difficult to address unsafe construction practices in the middle of the construction.



Harper Street

Berkeley

What we have?

Strong tenant protections from evictions;

Right to return when the tenant temporarily moves out during the repairs;

Protections against exploitive capital improvement rental increases;

Right to access to available units;

Protections about temporary move out to similar available units;

What is missing?

PROCESS

An overlay that protects the tenants that **do not move out** and ;

And requirement that the **landlord plan ahead** to properly manage the potential dangers and disturbances;

Also, allows tenant to chose to move permanently with relocation.



History

Los Angeles like Oakland had a just cause for eviction which allowed a landlord to evict when doing “primary renovation.” After a 4 year moratorium, the city updated the ordinance to only allow for temporary relocation and more protective construction plans. This became known as the Tenant Habitability Plan.

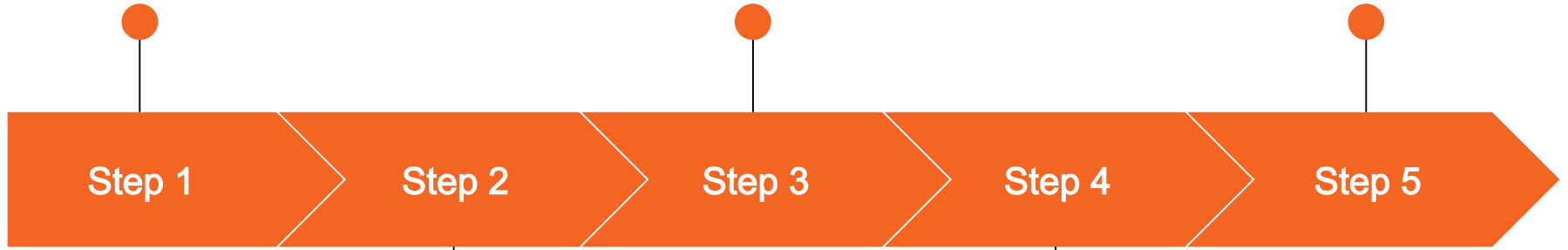
- **Ended primary renovation evictions**
Had become large loophole raving rent controlled units
- **Addressed abusive and dangerous construction while allowing needed repairs**

Tenant Habitability Plan

Provide THP to
permitting agency

Landlord may apply for
permit

Construction begins!



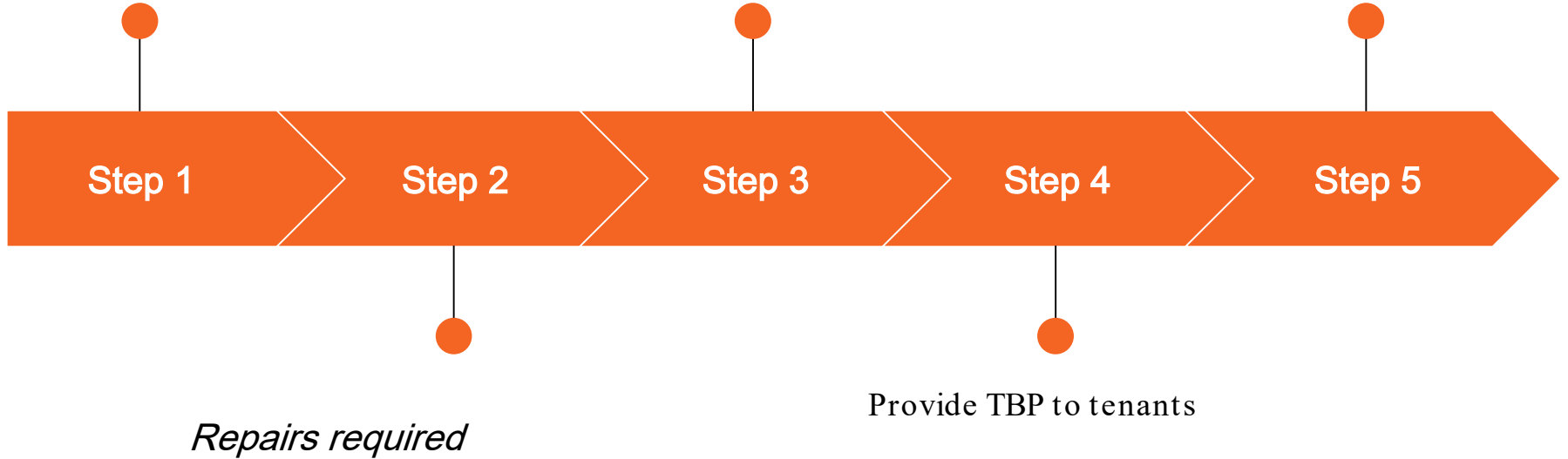
5 days for agency to
approve or deny based
on objective standards

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

Code inspection
(Complaint or proactive)

*Landlord required to fill
out form confirming can
be done safely or not*

Repairs begin



Tenant Habitability Plan City of Berkeley Proposal

What is the purpose of Tenant Habitability Plan:

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

Context and consideration:

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

- 1. Planned Repair by
landlord**
 - 2. Planned Construction by
landlord**
 - 3. Requested Repairs by
tenant**
 - 4. Emergency Repairs**
 - 5. Tenant complains about
unsafe or nuisance
construction**
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Notification of Tenant Habitability Plan

- It notifies the tenant as to when the work will start and end,
 - what type of work will be done,
 - how the work will affect you, the details of temporary relocation, if necessary,
 - and a summary of the Tenant Habitability Plan.
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When does a landlord need to fill out a tenant habitability plan?

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

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

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

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

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

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

Work that could trigger THP

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1. Any work requiring a permit;
 2. Substantial repair and mediation: seismic retrofits, elevator repairs, and when hazardous materials such as lead paint or asbestos are being remediated
 3. **Berkeley Code Sections Referenced:** Berkeley Code sections that could be referenced: Title 19 – Buildings and Construction.
 - Berkeley Building Code BMC Chapter 19.29
 - Berkeley Residential Code BMC Chapter 19.30
 - Berkeley Electrical Code BMC Chapter 19.32
 - Berkeley Mechanical Code BMC Chapter 19.34
 - Berkeley Plumbing Code BMC Chapter 19.36
 - BMC Chapter 19.38: Seismic Hazard Mitigation Program for Unreinforced Masonry Buildings
 - BMC Chapter 19.39: Potentially Hazardous Buildings Containing Soft, Weak, or Open Front Stories
 - BMC Chapter 19.50: Elevators-
buildings with ten or more units and two or more stories
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Menu

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

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

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

Who will administer the program?

Berkeley Departments that might have a role :

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