



Housing Advisory Commission

HOUSING ADVISORY COMMISSION

AGENDA

Regular Meeting
Thursday, October 6, 2022
7:00 pm

Mike Uberti, Secretary
HAC@cityofberkeley.info

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the Housing Advisory Commission will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device use: <https://us06web.zoom.us/j/88099349925> . If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial US: 1-669-900-6833 and Enter Meeting 880 9934 9925. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Housing Advisory Commission by 5:00 p.m. the day before the meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

All agenda items are for discussion and possible action.

Public comment policy: Members of the public may speak on any items on the Agenda and items not on the Agenda during the initial Public Comment period. Members of the public may also comment on any item listed on the agenda as the item is taken up. Members of the public may not speak more than once on any given item. The Chair may limit public comments to 3 minutes or less.

1. **Roll Call**
2. **Agenda Approval**
3. **Public Comment**
4. **Approval of the September 1, 2022 Regular Meeting Minutes (Attachment 1)**

5. **Discussion and Possible Action to Recommend Amendments to the City of Berkeley Housing Code** – Housing Code Subcommittee (Attachment 2-4)
6. **Discussion and Possible Action to Adopt a Tenant Habitability Plan Ordinance** – Housing Code Subcommittee (Attachments 4-5)
7. **Discussion and Possible Action on Preferences for Affordable Housing** (Attachment 6)
8. **Discussion and Possible Action to Fund a Study to Document the City of Berkeley’s History of Discriminatory Actions** (Attachment 6)
9. **Discussion and Possible Action to Adopt an Ordinance to Remove Credit Checks and Eviction History from Applications for Housing** (Attachment 6)
10. **Update on Council Items (Future Dates Subject to Change)**
 - a. Harriet Tubman Terrace Tenant Support (10/11/22)
11. **Announcements/Information Items**
 - a. 1685 Solano Ave. Small Sites Program (SSP) Grand Opening
12. **Future Items**
13. **Adjourn**

Attachments

1. Draft September 1, 2022 Regular Meeting Minutes
2. Alex Roshal and Jenny McNulty, Planning & Building, Re-enactment of Berkeley Housing Code
3. Ordinance to Repeal and Re-enact the Berkeley Housing Code
4. Draft September 13, 2022 Housing Code Subcommittee Minutes
5. Leah Simon-Weisberg, HAC, Draft Tenant Habitability Plan Ordinance
6. Mike Uberti, HHCS, Re-Voting on Preference Policy Recommendations for Brown Act and Staff Efficiency

Communications to Berkeley boards, commissions or committees are public record and will become part of the City’s electronic records, which are accessible through the City’s website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact

information to be made public, you may deliver communications via U.S. Postal Service or in person to the Secretary of the commission. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary for further information.

Written communications addressed to the Housing Advisory Commission and submitted to the Commission Secretary will be distributed to the Commission prior to the meeting. This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.

COMMUNICATION ACCESS INFORMATION:



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



HOUSING ADVISORY COMMISSION
Thursday, September 1, 2022

Housing Advisory Commission

Time: 7:03 pm
Held via Video and
Teleconference

Secretary – Mike Uberti
HAC@cityofberkeley.info

DRAFT MINUTES

1. Roll Call

Present: Nico Calavita, Sara Fain, Xavier Johnson, Libby Lee-Egan, Mari Mendonca, Debbie Potter, Alexandria Rodriguez, Ainsley Sanidad, and Leah Simon-Weisberg.

Absent: None.

Commissioners in attendance: 9 of 9

Staff Present: Anna Cash, David Lopez, Jenny McNulty, Alex Roshal, and Mike Uberti.

Members of the public in attendance: 8

Public Speakers: 7

2. Agenda Approval

Action: M/S/C (Potter/Fain) to approve the agenda.

Vote: Ayes: Calavita, Fain, Johnson, Lee-Egan, Mendonca, Potter, Rodriguez, Sanidad, and Simon-Weisberg. Noes: None. Abstain: None. Absent: None.

3. Public Comment

There were zero speakers during public comment.

4. Approval of the July 7, 2022 Special Meeting Minutes

Action: M/S/C (Rodriguez/Potter) to accept the July 7, 2022 Special Meeting Minutes.

Vote: Ayes: Fain, Johnson, Lee-Egan, Mendonca, Potter, Rodriguez, Sanidad, and Simon-Weisberg. Noes: None. Abstain: None. Absent: Calavita (unexcused).

5. Discussion and Possible Action to Recommend Amendments to the City of Berkeley Housing Code

Public Comment: 2 speakers

Action: M/S/C (Potter/Mendonca) to recommend that the HAC establish an ad hoc subcommittee to examine whether a Habitability Plan can be incorporated as part of the reenactment of the Housing Code, with a term of 45 days. This subcommittee will be composed of Commissioners Simon-Weisberg, Johnson, and Potter. The subcommittee will meet with Planning Staff to determine whether the Habitability Plan can be incorporated as part of the reenactment of the Housing Code.

Vote: Ayes: Calavita, Johnson, Lee-Egan, Mendonca, Potter, Rodriguez, Sanidad, and Simon-Weisberg. Noes: Fain. Abstain: None. Absent: None.

6. Receive Update and Discussion and Possible Action on Harriet Tubman Terrace Investigation

Public Comment: 5 speakers

7. Update on Council Items (Future Dates Subject to Change)

8. Announcements/Information Items

9. Future Items

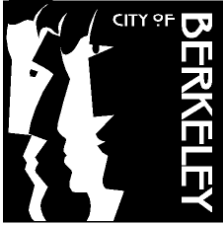
10. Adjourn

Action: M/S/C (Rodriguez/ Fain) to adjourn the meeting at 10:47 pm.

Vote: Ayes: Fain, Johnson, Lee-Egan, Mendonca, Potter, Sanidad, and Simon-Weisberg. Noes: None. Abstain: None. Absent: Calavita (unexcused).

Approved:

_____, Mike Uberti, Secretary



Planning and Development Department
Building and Safety Division

Aug 24, 2022

To: Honorable Members of the Housing Advisory Commission

From: Alex Roshal, Chief Building Official, Manager of Building and Safety Division
Jenny McNulty, Resilient Buildings Program Manager

Subject: Re-enactment of Berkeley Housing Code

The Planning Department's Building and Safety Division has drafted an ordinance to consolidate and update housing regulations in the Berkeley Municipal Code (BMC), by repealing BMC Chapter 12.48 (Residential Rental Housing Safety Program) and repealing and re-enacting BMC Chapter 19.40 (Berkeley Housing Code), moving BMC Chapter 12.48 into the Berkeley Housing Code and including additional content to reflect code updates and local operations. We would appreciate the opportunity to review the proposed ordinance with the HAC prior to bringing it to City Council on November 3rd.

CURRENT SITUATION AND ITS EFFECTS

The purpose of the Berkeley Housing Code is to safeguard, remedy and prevent the decay and deterioration of residential buildings and property by providing minimum standards for housing and property maintenance, for the protection of life, health, welfare, and the safety of the general public and the occupants and owners of such buildings. The Berkeley Housing Code is scoped and defined as BMC Chapter 19.40 and applicable provisions of the currently adopted editions of the California Building Code, California Existing Building Code, California Electrical Code, California Mechanical Code, California Plumbing Code and the State Housing Law and applicable regulatory ordinances enacted by the City and listed in Title 19 of the Berkeley Municipal Code. The Rental Housing Safety Program enforces the Housing Code provisions in rental housing by identifying housing violations when responding to tenant complaints and conducting proactive housing inspections.

This ordinance restructures and updates BMC Chapter 19.40 (Berkeley Housing Code), retaining the existing content, editing for clarity and including additional sections. Since the Rental Housing Safety Program (RHSP) is under the jurisdiction of the Building Official, RHSP provisions contained in BMC 12.48 were moved out of Title 12 Health and Safety into Title 19 Buildings and Construction, to BMC 19.40.080. A table "Explanation of Changes to the Housing Code," provided as Attachment 1, identifies how the Housing Code has been restructured, describes new content, and provides the rationale for the proposed changes. This

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report highlights the most significant changes. The re-enactment of the Berkeley Housing Code is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

The re-enacted Berkeley Housing Code is reflective of the state housing law provisions in Title 25 of the California Code of Regulations (CCR) as well as the applicable provisions in the Health and Safety Code for buildings used for human habitation. The current Berkeley Housing Code and CCR Title 25 reference multiple chapters from the 1997 Uniform Housing Code. Despite being a part of state housing law in California, the 1997 Uniform Housing Code is not easily found and is out of publication. Property owners have complained they cannot find it. Instead of referencing an inaccessible document, the amended Berkeley Housing Code reproduces all relevant sections out of the 1997 Uniform Housing Code with some minor modifications to make it easier for the end user. In addition, the complete definition of substandard housing from Health and Safety Code Section 17920.3 has been incorporated into the Berkeley Housing Code, due to its importance. These additions make the Housing Code more transparent and readable for property owners and tenants and easier for housing inspectors to use. It provides for straight referencing directly out of the Housing Code, thereby reducing instances where a violation references another code.

New Sections 103.6 and 103.7 of Scope and Applicability are intended to allow the Building Official to use the most flexible provisions if there are conflicts between codes, and to use the “least restrictive” standards when dealing with unpermitted dwelling units, including standards in effect at the time of construction, current code standards, or “reasonable alternatives to the requirements of prior code editions.”

The Housing Code has been updated to reflect changes in the California Building Code, which is revised every three years and over time has become more flexible than the existing Housing Code. For example, requirements for new construction for natural light and ventilation and ceiling heights have become less stringent by providing certain exemptions and alternatives not currently found in the existing Housing Code. Major changes were made to the California Building Code, Residential Code and Energy Code in 2008 when the state adopted International Codes. The re-enacted Housing Code recognizes different requirements for residential units built or remodeled after 2008, so there is no conflict between the Building Code and the Housing Code.

Provisions about smoke alarms and carbon monoxide alarms from the California Building Code have also been incorporated into the Berkeley Housing Code 19.40.070, since inspectors frequently note violations related to fire detection systems. This will allow inspectors to directly reference the Housing Code for these violations.

The re-enacted Housing Code reflects operations and codifies Berkeley’s approach to code enforcement, which emphasizes education, voluntary compliance and a gradual enforcement approach. The only enforcement mechanism currently in the Housing Code is a Notice and Order, which is a punitive measure which obligates the City to take action if substandard conditions are not abated by the owner in a timely manner, such as seeking a court appointed receiver. Section 1002 Notice of Violation has been added, to reflect the first step in the code enforcement process. If substandard conditions have been observed, the City first issues a Notice of Violation with a list of Housing Code violations, the actions required to remedy the

violations and the time frame to correct. After following this process, if the problem has not been corrected or if conditions deteriorate to endanger the life and safety of the occupants, the City may issue a Notice and Order to escalate enforcement efforts. If the observed substandard conditions cause an immediate hazard, the City issues a Notice and Order from the outset. Unless there is an immediate hazard, a Notice of Violation precedes issuance of a Notice and Order and the City resorts to code enforcement proceedings only after efforts to secure voluntary compliance have failed.

Section 19.40.140 adopts more specific lien and special assessment procedures to strengthen their enforceability and specifies these apply to administrative citations as well as inspection fees.

BACKGROUND

The Berkeley Housing Code has not been updated since 2003, with the exception of establishing the exterior elevated elements inspection certification requirement in 2015 and repealing the certification of gas heating equipment in 2011 after the state passed a law requiring all owners to install carbon monoxide detection devices.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The hot water requirement in the Housing Code has been updated from 120°F to 110°F to be consistent with the state housing law provisions in Title 25 of the California Code of Regulations. The comfort space heating requirement has been updated from 70°F to 68°F to reflect the State Energy Code. These lower temperatures allow for energy conservation.

RATIONALE FOR RECOMMENDATION

The Berkeley Housing Code needs updating. The current code in BMC Chapter 19.40 adopts the 1997 Uniform Housing Code by reference without incorporating the relevant content. The newly revised Chapter 19.40 is better organized and incorporates all relevant sections of the Uniform Housing Code with local modifications and is based on California Code of Regulations Title 25 State Housing Law and Regulations and Health and Safety Code Regulation of Buildings Used for Human Habitation. The description of and rationale for the significant changes to the Housing Code are included in Attachment 1: Explanation of Changes to the Housing Code.

The State of California added Section 17973 to the Health and Safety Code, effective January 1, 2019 and Section 5551 to the California Civil Code, effective January 1, 2020, which established statewide inspection requirements for exterior elevated elements. These requirements are based on Berkeley's E3 inspection requirements enacted in 2015, but with a few modifications, including different timeframes. The Housing Code is being amended to align with state law, with the timeframe of the inspection cycle adjusted to every six years for rental properties and every nine years for condominiums.

Attachments:

- 1: Explanation of Changes to the Housing Code
- 2: Proposed ordinance repealing BMC 12.48 and repealing and re-enacting BMC 19.40

Explanation of Changes to the Berkeley Housing Code

New Code Section in 19.40	Title	Prior BMC or Uniform Housing Code (UHC) Section or New Content	Description of / Rationale for Change
19.40.010	General Provisions		
101	Title	19.40.010	
102	Purpose	New section based on Uniform Housing Code Section 102	Clarifies purpose of the Berkeley Housing Code.
103	Scope and Applicability	New section based on Uniform Housing Code Section 103 with staff clarifications	Clarifies applicability and identifies how the Berkeley Housing Code supplements other BMC sections. Incorporates language from Uniform Housing Code.
104	Authority	19.40.020 Section 201.1	
105	Rights of Entry	19.40.020 Section 201.2	
106	Responsibilities defined	19.40.020 Section 201.3	
107	Owner or representative to live on premises	19.40.100 Section 1701	
108	Violations	19.40.020 Section 204	
109	Housing Advisory and Appeals Board	19.40.020 Section 203	
19.40.020	Definitions	12.48.030, Uniform Housing Code Section 401 with added definitions	Definitions expanded to be more complete and coordinated with the Building Code and Health & Safety Code.
19.40.030	Space and Occupancy Standards	New section based on Uniform Housing Code Chapter 5 with staff clarifications. Subsection 304.3D is a local amendment from the Berkeley Mechanical	Space and Occupancy Standards from the 1997 Uniform Housing Code, which is out of publication, have been incorporated into this Chapter. Starting in 2008, the Building and Mechanical Codes allowed habitable spaces to use artificial lighting and outdoor air mechanical ventilation in lieu of window

New Code Section in 19.40	Title	Prior BMC or Uniform Housing Code (UHC) Section or New Content	Description of / Rationale for Change
		Code. Provisions on artificial lighting in Section 304.2 were incorporated from the Building Code.	<p>openings for natural light and ventilation. This is not reflected in the currently adopted 1997 UHC. Since different requirements apply to habitable spaces constructed or altered after 2008, this section reconciles the difference between the Housing Code and Building Code and incorporates alternative ventilation requirements for those buildings constructed or altered after 2008.</p> <p>The Berkeley Mechanical Code has a local amendment mandating that residential kitchen ranges or cooktops be provided with a vented hood. This amendment has been incorporated into the Housing Code Subsection 304.3 D for transparency and to make the information more accessible to inspectors and the public.</p> <p>Section 606 added clarifying how interior surfaces of residential buildings are to be maintained.</p>
19.40.040	Structural Requirements		
401, 402, 403	Structural Requirements	Uniform Housing Code Section 601	Incorporated into the BMC since the 1997 Uniform Housing Code is out of publication.
404	Structural Maintenance	19.40.035 and 12.48.055	Exterior Elevated Elements (E3) inspection requirements updated to be consistent with Health & Safety Code, with a 6-year inspection cycle for rental units and a 9-

New Code Section in 19.40	Title	Prior BMC or Uniform Housing Code (UHC) Section or New Content	Description of / Rationale for Change
			year cycle for condos. The state did not include structural pest control operators in the list of licensed professionals authorized to perform inspections, so they have been removed from the list of licensed professionals who can perform the inspections in Berkeley.
19.40.050	Mechanical and Electrical Requirements		
501	Heating	19.40.040 Section 701.1	Revised temperature that heating systems in habitable spaces need to be able to maintain from 70°F to 68°F to reflect changes in the Building Code and Energy Code. Added a requirement that water provided to plumbing fixtures shall be supplied at a temperature of not less than 110°F as specified in the CCR Title 25 State Housing Law.
502	Electrical Equipment	Uniform Housing Code Section 701.2	Incorporated into the BMC since the 1997 Uniform Housing Code is out of publication.
503	Ventilation	Uniform Housing Code Section 701.3	Incorporated into the BMC since the 1997 Uniform Housing Code is out of publication.
19.40.060	Exits	New section based on Uniform Housing Code Chapter 8 with staff clarifications	Incorporated into the BMC since the 1997 Uniform Housing Code is out of publication. Clarification added regarding minimum net clear openings and requirement that egress windows not be obstructed. Clarification added that replacement windows shall be as required for new installations to be consistent with the Building Code. Added

New Code Section in 19.40	Title	Prior BMC or Uniform Housing Code (UHC) Section or New Content	Description of / Rationale for Change
			window security bar regulations from the California Building Code and Health and Safety Code 17958.3.
19.40.070	Fire Protection	New based on Uniform Housing Code Section 901, Building Code Chapter 9 and Health and Safety Code 17926	Incorporated into the BMC since the 1997 Uniform Housing Code is out of publication. Also, for reference purposes, this section incorporates smoke alarm and carbon monoxide alarm provisions from the Building Code Chapter 9 and Health and Safety Code 17926.
19.40.080	Inspections (Rental Housing Safety Program)	12.48	Since the Rental Housing Safety Program (RHSP) is under the jurisdiction of the Building Official, RHSP provisions contained in BMC 12.48 were moved to BMC 19.40.080.
801	Findings	12.48.010	
802	Purpose	12.48.020	
803	Residential rental housing safety certification	12.48.050	Added the option of emailing the checklist, in addition to mailing or personal delivery. Deleted the three-year exemption from inspection for units which have had an inspection and received a certificate of compliance. Currently, the RHSP conducts a comprehensive inspection when responding to a tenant complaint. In the future, the RHSP may modify this practice to limit reactive inspections to the tenant's concerns and inspect all units on a cyclical basis, without having to check if there has been an inspection in the unit in the last

New Code Section in 19.40	Title	Prior BMC or Uniform Housing Code (UHC) Section or New Content	Description of / Rationale for Change
			three years. Removing this from the Code will allow flexibility.
804	Unlawful alteration of premises by tenant/occupant	12.48.060	
805	Periodic inspection of rental dwelling unit	12.48.070	
806	Reactive/Complaint Inspections	New	19.40.070 incorporates current BMC 12.48 of the Rental Housing Safety Program, Berkeley's proactive inspection program. Section 806 has been added to address that housing inspections also occur due to complaints. The subsequent code sections describe procedures for both proactive and reactive inspections.
807	Certificate of Compliance issued when	12.48.070	Removed that the certificate of compliance will be valid for three years, for the reason explained above for section 803.
808	Correction of violations required	12.48.080	
809	Violations	12.48.100	
810	Penalties	12.48.110	
19.40.090	Substandard Housing		
901	Substandard housing - Defined	19.40.020 Section 202 with added definition from Health and Safety Code	For reference purposes, this section incorporates the entire list of substandard conditions from the California Health and Safety Code 17920.3.
902	Substandard building - Nuisance	19.40.020 Section 202	
19.40.100	Orders of the Building Official	19.40.060	
1001	Commencement of proceedings	19.40.060 Section 1101 (a)	

New Code Section in 19.40	Title	Prior BMC or Uniform Housing Code (UHC) Section or New Content	Description of / Rationale for Change
1002	Notice of violation	New	Added to reflect current procedures. Berkeley begins with a Notice of Violation to encourage voluntary compliance before progressing to a Notice and Order, unless substandard conditions are severe.
1003.1	Notice and order	19.40.060 Section 1101 (b)	
1003.2	Service of notice and order	19.40.060 Section 1101 (c)	
1003.3	Method of service	19.40.060 Section 1101 (d)	
1003.4	Proof of service	19.40.060 Section 1101 (e)	
1003.5	Appeals	19.40.060 Section 1101 (f)	
1004	Repair, vacation and demolition	19.40.060 Section 1102	
1005	Notice to vacate	19.40.060 Section 1103	
1005.1	Posting	19.40.060 Section 1103 (a)	
1005.2	Compliance	19.40.060 Section 1103 (b)	
1006	Recordation of notice and order	19.40.060 Section 1104	
1007	Post-Disaster Safety Assessment	New	Provides inspection procedures post-disaster.
19.40.110	Enforcement of Orders	19.40.070	
19.40.120	Performance of Repair or Demolition	19.40.080	
19.40.130	Recovery of Cost of Repair or Demolition	19.40.090	
19.40.140	Recovery of Costs for Housing Code Enforcement and Administration	19.40.110 and 12.48.090	

New Code Section in 19.40	Title	Prior BMC or Uniform Housing Code (UHC) Section or New Content	Description of / Rationale for Change
1401.1	Establishment of Fees	19.40.110 Section 1801 (a) and 12.48.090 A	
1401.2	Recovery of delinquent Rental Housing Safety Program fees and administrative citations	19.40.110 Section 1801 (b)	
1401.3	Appeals	12.48.120	
1401.4	Lien or special assessment procedures	New and 12.48.090 B	Adopts more specific lien and special assessment procedures to strengthen their enforceability and specifies that these apply to administrative citations as well as inspection and annual fees.
1401.5	Failure to comply	19.40.110 Section 1801 (c)	

Deletions from 19.40	
19.40.030	Deleted outdated language in BMC 19.40.030 including outdated code references.
Previously Adopted Section of 1997 Uniform Housing Code that is no longer included	
Chapter 3	Permits and Inspections (covered under administrative provisions of BMC 19.28 Berkeley Building Code and BMC 19.40.080 Housing Inspections)

Internal

ORDINANCE NO. -N.S.

REPEALING BMC 12.48 AND REPEALING AND RE-ENACTING BMC 19.40

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code 12.48 is repealed.

Section 2. That Berkeley Municipal Code 19.40 is repealed and re-enacted, effective January 1, 2023 as follows:

**Chapter 19.40
Berkeley Housing Code**

- 19.40.010 Scope and Administration**
- 19.40.020 Definitions**
- 19.40.030 Space and Occupancy Standards**
- 19.40.040 Structural Requirements**
- 19.40.050 Mechanical and Electrical Requirements**
- 19.40.060 Exits**
- 19.40.070 Fire Protection**
- 19.40.080 Housing Inspections**
- 19.40.090 Substandard Housing**
- 19.40.100 Notices of the Building Official**
- 19.40.110 Enforcement of Orders**
- 19.40.120 Performance of Repair or Demolition**
- 19.40.130 Recovery of Cost of Repair or Demolition**
- 19.40.140 Recovery of Costs for Housing Code Enforcement and Administration**

19.40.010 Scope and Administration

101 – Title

This chapter shall be known as the “Berkeley Housing Code” and may be cited in this Chapter as “this Code”.

The following provisions of the Uniform Housing Code (UHC), 1997 Edition have been incorporated into this Code subject to the local modifications thereto which are set forth below: 1997 UHC Chapters 1 and 4-9, except Section 701.1

In administering the substantive provisions of this Code, the City shall be guided by the regulations issued by the California Department of Housing and Community Development in Title 25 of the California Code of Regulations, Division 1, Chapter 1, Subchapter 1 State Housing Law and Regulations, as well as applicable provisions of the California Health and Safety Code, Division 13, Part 1.5 Regulation of Buildings Used for Human Habitation, Sections 17910 to 17998.3, and other housing related Codes adopted by the State of California.

102 – Purpose

The purpose of this Code is to safeguard, remedy and prevent the decay and deterioration of residential buildings and property as defined herein by providing minimum housing and property maintenance standards for the protection of life, health, welfare, and the safety of the general public and the occupants and owners of such buildings within the City of Berkeley.

103 – Scope and Applicability

1. The provisions of the Housing Code shall apply to all buildings or portions thereof used, or designed or intended to be used, for human habitation. This Chapter is not an exclusive regulation of housing within the City of Berkeley. It shall supplement, be accumulative with, and be in addition to any applicable regulatory ordinances enacted by the City and listed in Title 19 of the Berkeley Municipal Code and any applicable State or Federal laws enacted by the State or Federal government or any other legal entity that may have jurisdiction.

2. Existing buildings and all portions thereof may have their existing use or occupancy continued, provided the building or portion thereof met the code requirements in effect at the time of construction, addition or alteration, and such continued use is not dangerous to life and is not substandard.

3. Existing buildings and all portions thereof shall be maintained in a safe and sanitary condition. All devices, components or safeguards, which are required by this Code,

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shall be maintained in conformance with the Code edition under which installed, unless otherwise required by the Berkeley Building Code or other adopted ordinance or state law applied retroactively.

4. Existing buildings which are altered or enlarged shall be made to conform to this Code insofar as the new work is concerned, and in accordance with the adopted edition of the California Building Standards Code.

5. Any references to the provisions of former code editions shall be construed to apply to the corresponding provisions contained within the currently adopted edition of the California Building Standards Code.

6. Notwithstanding anything set forth or provided for in this chapter, if there is a conflict or discrepancy between the provisions of this Code, the State Housing Law, or the California Building Standards Code the building official is authorized to apply building standards which provide for the most flexibility to maintain continuity of housing, provided a substandard condition is not created or continued.

7. When a building permit record for a residential unit does not exist, the building official is authorized to make a determination of when the residential unit was constructed and then apply the building standards in effect when the residential unit was determined to be constructed or the current building standards, whichever is the least restrictive, provided the building does not become or continue to be a substandard or unsafe building. The Building Official is authorized to accept reasonable alternatives to the requirements of the prior or current code editions when dealing with unpermitted dwelling units.

104 – Authority

The City Manager is hereby authorized and directed to designate City departments and employees to administer and enforce all of the provisions of this code. City personnel designated to enforce this Code shall have the powers of a law enforcement officer.

The Building Official shall have the power to render interpretations of this Code and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of this code.

105 – Right of Entry

When it is necessary to make an inspection to enforce the provisions of this Code, or when the Building Official has reasonable cause to believe there exists in a building or upon a premises a condition which is contrary to or in violation of this Code, which makes the building or premises unsafe, dangerous or hazardous, the Building Official

may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this Code, provided that such building or premises be occupied, that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the Building Official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the Building Official shall have recourse to the remedies provided by law to secure entry.

106 – Responsibilities Defined

Owners remain liable for violations of duties imposed by this Code even though an obligation is also imposed on the occupants of the building, and even if the owner has, by agreement, imposed on the occupant the duty of furnishing required equipment or of complying with this Code.

The owner or the owner's designated agent shall be responsible for maintaining buildings and structures and parts thereof in a safe and sanitary condition. To determine compliance with this subsection, the building may be re-inspected.

Owners, in addition to being responsible for maintaining buildings in a sound structural condition, shall be responsible for keeping that part of the building or premises which the owner occupies or controls in a clean, sanitary and safe condition, including the shared or public areas in a building containing two or more dwelling units.

Owners shall, when required by this Code, the Health Ordinance or the Health Officer, furnish and maintain such approved sanitary facilities as required, and shall furnish and maintain approved devices, equipment or facilities for the prevention of insect and rodent infestation, and when infestation has taken place, shall be responsible for the extermination of any insects, rodents or other pests when such extermination is not specifically made the responsibility of the occupant by law or ruling.

Occupants of a dwelling unit, in addition to being responsible for keeping in a clean, sanitary and safe condition that part of the dwelling or dwelling unit or premises which they occupy and control, shall dispose of their rubbish, garbage and other organic waste in a manner required by the Health Ordinance and approved by the Health Officer.

Occupants shall, when required by this Code, the Health Ordinance or the Health Officer, furnish and maintain approved devices, equipment or facilities necessary to keep their premises safe and sanitary.

107 – Owner or Representative to Reside on Premises

1. The owner of every apartment house in which there are 16 or more apartments, and every hotel in which there are 12 or more guest rooms, shall either reside on the premises or ensure that a manager resides upon the premises.
2. Only one caretaker is required under this section for all structures under one ownership and on one contiguous parcel of land.
3. If the owner does not reside upon the premises of any apartment house in which there are more than four but less than 16 apartments, a notice stating his/her name and address, or the name and address of his/her agent in charge of the apartment house, shall be posted in a conspicuous place on the premises. (Ord. 6730-NS § 3 (part), 2003)

108 – Violations

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this Code. Violations of this Code may be charged as infractions or misdemeanors, at the discretion of the enforcing officer. Charging violations of this Code as public offenses does not in any way limit any other remedies that might be available. (Ord. 6475-NS § 3, 1999)

109 – Housing Advisory and Appeals Board

109.1 General. The Housing Advisory Commission (“Commission”) as defined in this Code and Chapter 19.44 of the Berkeley Municipal Code shall serve as the “Board of Appeals” and “Housing Advisory and Appeals Board” referred to in this Code. The Commission shall hear and decide appeals of orders, decisions or determinations made by the Building Official under this Code.

109.2 Limitations of Authority. The Housing Advisory and Appeals Board shall have no authority relative to interpretation of the administrative provisions of this Code nor shall the Board be empowered to waive requirements of this Code.

19.40.020 Definitions

201 – General

201.1 Terms Defined in Other Codes. Where terms are not defined in this Code and are defined in the California Building Code, California Existing Building Code, California Electrical Code, California Mechanical Code, California Plumbing Code or California Fire Code, such terms shall have the meanings ascribed to them in those codes.

201.2 Terms Not Defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinary accepted meanings such as the context applies. Webster's Third New California Dictionary of the English Language, Unabridged, shall be considered as providing ordinary accepted meanings.

202 – Definitions

Unless otherwise expressly stated, the following words and terms shall, for the purpose of this Code, have the meanings shown in the section.

Alteration is any construction or renovation to an existing building other than repair or addition. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, and replacement of existing components.

Apartment is a dwelling unit as defined in this Code.

Apartment House is any building or portion thereof which contains three or more dwelling units and, which is rented, leased, let or hired out to be occupied for consideration, or which is occupied, as the home of three or more individuals, families or living groups, living independently of each other and doing their own cooking in said building.

Berkeley Housing Code is this Chapter and applicable provisions of the currently adopted editions of the California Building Code, California Existing Building Code, California Residential Code, California Electrical Code, California Mechanical Code, California Plumbing Code and the State Housing Law, and applicable regulatory ordinances enacted by the City and listed in Title 19 of the Berkeley Municipal Code.

Building Code is the California Building Code contained in Part 2, Title 24, California Code of Regulations, as adopted in Chapter 19.28 of the Berkeley Municipal Code.

City means the City of Berkeley.

Complaint means notification by any person of a violation or a suspected violation of Berkeley Housing Code.

Congregate Residence is any building or portion thereof that contains facilities for living, sleeping and sanitation, as required by this code, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house but does not include jails, hospitals, nursing homes, hotels or lodging houses.

Dwelling is a building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes, and includes any garages or other accessory buildings belonging thereto.

Dwelling Unit is a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Efficiency Dwelling Unit is a dwelling unit containing only one habitable room and constructed in accordance with Health and Safety Code Section 17958.1 or the California Building Code Section 1207.4.

Electrical Code is the California Electrical Code, contained in Part 3, Title 24, California Code of Regulations as adopted in Chapter 19.30 of the Berkeley Municipal Code.

Enforcement means diligent effort to secure compliance, including review of plans and permit applications, response to complaints, citation of violations, and other legal process. Except as otherwise provided in this Code, “enforcement” includes inspections of existing buildings, subject to this Code, on which no complaint or permit application has been filed, in an effort to secure code compliance as to these existing buildings.

Fire Code is the California Fire Code contained in Part 9, Title 24, California Code of Regulations, as adopted in Chapter 19.48 of the Berkeley Municipal Code.

Hot Water is water supplied to plumbing fixtures at a temperature of not less than 110°F.

Hotel is any building containing six or more rooms, which are used, intended or designed to be used, rented or hired out to be occupied for sleeping purposes by guests.

Landlord means an owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

Lodging House is any building or portion thereof, containing not more than five guest rooms where rent is paid in money, goods, labor or otherwise.

Manager means the person who has charge of any premises and is responsible for its maintenance, upkeep and cleaning.

Mechanical Code is the California Mechanical Code, contained in Part 4, Title 24, California Code of Regulations as adopted in Chapter 19.32 of the Berkeley Municipal Code.

Mold means microscopic organisms or fungi that can grow in damp conditions in the interior of a building.

Nuisance. The following shall be defined as nuisances:

Internal

1. Any public nuisance known at common law or in equity jurisprudence.
2. Any attractive nuisance that may prove detrimental to children whether in a building, on the premises of a building or on an unoccupied lot. This includes any abandoned wells, shafts, basements or excavations; abandoned refrigerators and motor vehicles; any structurally unsound fences or structures; or any lumber, trash, fences, debris or vegetation that may prove a hazard for inquisitive minors.
3. Whatever is dangerous to human life or is detrimental to health, as determined by the health officer.
4. Overcrowding a room with occupants.
5. Insufficient ventilation or illumination.
6. Inadequate or unsanitary sewage or plumbing facilities.
7. Uncleanliness, as determined by the health officer.
8. Whatever renders air, food or drink unwholesome or detrimental to the health of human beings, as determined by the health officer.
9. Fire hazard.
10. Substandard building.

Occupant is any individual living, sleeping, cooking, or eating in or having possession of a dwelling unit or portion thereof.

Plumbing Code is the California Plumbing Code, contained in Part 5, Title 24, California Code of Regulations as adopted in Chapter 19.34 of the Berkeley Municipal Code.

Rent means the consideration, including any deposit, bonus, benefit or gratuity, demanded or received for or in connection with the use or occupancy of rental unit and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the terms of the rental agreement. (Ord. 6761-NS § 1 (part), 2003: Ord. 6651-NS § 1, 2001)

Rental Unit is any dwelling or sleeping unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy located in the City, together with all services connected with the use or occupancy of such property such as common areas held out for use by the tenant.

Repair is renewal of any part or component of an existing building for the purpose of its maintenance or to correct damage.

Safety Assessment is a visual, non-destructive examination of a building or structure for the purpose of determining the condition for continued occupancy following a natural or human-caused disaster event.

Sleeping Unit is a single unit that provides rooms or spaces for one or more persons, includes permanent provisions for sleeping and can include provisions for living, eating and sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

State Housing Law is the state law regulating residential occupancies. It consists of

- Health and Safety Code: Division 13, Part 1.5 Regulation of Buildings Used for Human Habitation, Sections 17910 to 17998.3.
- California Code of Regulations: Title 25, Division 1, Chapter 1, Subchapter 1 State Housing Law and Regulations.

Substandard Building means any building or portion thereof used for habitation that substantially endangers the life, limb, health, property, safety or welfare of the public or its occupants due to one or more violations of Health & Safety Code Section 17920.3 or its successor.

Tenant means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

Voluntary Code Compliance means, for the purpose of this Code, actions voluntarily initiated by an owner to achieve compliance with applicable laws including, but not limited to, fumigation, mold abatement, lead abatement, seismically retrofitting, as well as abatement work performed in response to a Notice of Violation under Sections 808 and 1002 of this Code. Work performed for the purpose of improvements is not considered voluntary code compliance.

19.40.030 Space and Occupancy Standards

301 – Location of Buildings on Property

All buildings shall be located with respect to property lines and to other buildings on the same property as required by the Building Code.

302 – Yards and Courts

302.1 Scope. This section shall apply to yards and courts having required window openings therein.

302.2 Yards. Every yard shall not be less than 3 feet in width for one- and two-story buildings. For buildings more than two stories in height, the minimum width of the yard shall be increased at the rate of 1 foot for each additional story. Where yards completely surround the building, the required width may be reduced by 1 foot. For buildings exceeding 14 stories in height, the required width of yard shall be computed on the basis of 14 stories.

303.3 Courts. Every court shall not be less than 3 feet in width. Courts having windows opening on opposite sides shall not be less than 6 feet in width. Courts bounded on three or more sides by the walls of the building shall not be less than 10 feet in length unless bounded on one end by a public way or yard. For buildings more than two stories in height, the court shall be increased 1 foot in width and 2 feet in length for each additional story. For buildings exceeding 14 stories in height, the required dimensions shall be computed on the basis of 14 stories.

Adequate access shall be provided to the bottom of all courts for cleaning purposes. Every court more than two stories in height shall be provided with a horizontal air intake at the bottom not less than 10 square feet (0.93 m²) in area and leading to the exterior of the building unless abutting a yard or public way. The construction of the air intake shall be as required for the court walls of the building, but in no case shall be less than one-hour fire-resistive.

303 – Room Dimensions

303.1 Ceiling Heights

- A. Habitable spaces shall have a ceiling height of not less than 7 feet 6 inches except as otherwise permitted in this section. Kitchens, halls, bathrooms and toilet compartments may have a ceiling height of not less than 7 feet measured to the lowest projection from the ceiling. Where exposed beam ceiling members are spaced at less than 48 inches on center, ceiling height shall be measured to the bottom of these members. Where exposed beam ceiling members are spaced at 48 inches or more on center, ceiling height shall be measured to the bottom of the deck supported by these members provided that the bottom of the members is not less than 7 feet above the floor.

Exceptions - In one- and two-family dwellings only:

- (a) habitable spaces shall have a ceiling height of not less than 7 feet
- (b) bathrooms, toilet compartments and laundry rooms shall have a ceiling height of not less than 6 feet 8 inches

Internal

- (c) beams, girders, ducts or other obstructions in basements containing habitable space shall be permitted to project to within 6 feet 4 inches of the finished floor
- B. If any room in a building has a sloping ceiling, the prescribed ceiling height for the room is required in only one-half the area thereof. No portion of the room measuring less than 5 feet from the finished floor to the finished ceiling shall be included in any computation of the minimum area thereof.
- C. If any habitable room has a furred ceiling, the prescribed ceiling height is required in two-thirds the area thereof, but in no case shall the height of the furred ceiling be less than 7 feet.

303.2. Floor Area. Dwelling units and congregate residences shall have at least one room which shall have not less than 120 square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than 70 square feet. Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two.

Exceptions:

1. Efficiency units: Nothing in this section shall prohibit the use of an efficiency living unit within an apartment house meeting the following requirements:
 - a. The unit shall have a living room of not less than 220 square feet of superficial floor area. An additional 100 square feet of superficial floor area shall be provided for each occupant of such unit in excess of two.
 - b. The unit shall be provided with a separate closet.
 - c. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches in front. Light and ventilation conforming to this Code shall be provided.
 - d. The unit shall be provided with a separate bathroom containing a water closet, lavatory, and bathtub or shower.
2. In one- and two-family dwellings only, habitable rooms shall have a floor area of not less than 70 square feet.

303.2 Width. No habitable room other than a kitchen shall be less than 7 feet in any dimension. Each water closet stool shall be located in a clear space not less than 30

inches in width, and a clear space in front of the water closet stool of not less than 24 inches shall be provided.

304 – Light and Ventilation

304.1 General. For the purpose of determining the light or ventilation required by this section, any room may be considered as a portion of an adjoining room when one half of the area of the common wall is open and unobstructed and provides an opening of not less than one tenth of the floor area of the interior room or 25 square feet, whichever is greater.

Exterior openings for natural light or ventilation required by this section shall open directly onto a public way or a yard or court located on the same lot as the building.

Exceptions:

1. Required windows may open into a roofed porch where the porch:
 - 1.1 Abuts a public way, yard or court;
 - 1.2 Has a ceiling height of not less than 7 feet; and
 - 1.3 Has a longer side at least 65 percent open and unobstructed.
2. Skylights.

304.2 Light. Habitable spaces shall be provided with natural light by means of exterior glazed openings with an area not less than one tenth of the floor area of such rooms with a minimum of 10 square feet or shall be provided with artificial light.

Habitable spaces constructed, converted, or altered after January 1, 2008, are permitted to have the minimum net glazed area of not less than 8 percent of the floor area of the room served.

When artificial lighting is provided, it shall be capable to provide an average illumination of 10 footcandles (107 lux) over the area of the room at a height of 30 inches above the floor level.

304.3 Ventilation.

- A. Habitable spaces shall be provided with natural ventilation by means of operable exterior openings with an area of not less than 1/20 of the floor area of such rooms with a minimum of 5 square feet.

Internal

Habitable spaces constructed, converted, or altered after January 1, 2008, are permitted to have the minimum openable area of the openings to the outdoors of not less than 4 percent of the floor area being ventilated.

In lieu of required exterior openings for natural ventilation, a mechanical ventilating system may be provided. Such system shall be capable of providing two air changes per hour. Habitable spaces constructed, converted, or altered after January 1, 2008, are permitted to provide a mechanical ventilation Outdoor Air Rate (Q_{tot}) calculated in accordance with the following:

Outdoor Air Rate (Q_{tot}) equals 3% of the floor area plus 7.5 cfm for each occupant assumed to be equal to the number of bedrooms plus 1.

$$Q_{tot} = 0.03A_{floor} + 7.5 (N_{br} + 1)$$

Where:

Q_{tot} = Total required ventilation outdoor air rate (cfm)

A_{floor} = Floor Area (ft²)

N_{br} = Number of bedrooms

- B.** Bathrooms, water closet compartments, laundry rooms and similar rooms shall be provided with natural ventilation by means of openable exterior openings with an area not less than 1/20th of the floor area of such rooms with a minimum of 1-½ square feet. In lieu of required exterior openings for natural ventilation in bathrooms containing a bathtub, shower or combination thereof; laundry rooms; and similar rooms, a mechanical ventilation system connected directly to the outside capable of providing five air changes per hour shall be provided. The point of discharge of exhaust air shall be at least 3 feet from any opening into the building. Bathrooms that contain only a water closet, lavatory or combination thereof, and similar rooms, may be ventilated with an approved mechanical recirculating fan or similar device designed to remove odors from the air.

Bathrooms, water closet compartments, laundry rooms and similar spaces constructed, converted, or altered after January 1, 2008 are permitted to be mechanically ventilated at an exhaust rate not less than 50 cubic feet per minute for intermittent operation and 20 cubic feet per minute for continuous operation.

- C.** Kitchens constructed, converted, or altered after January 1, 2008 are permitted to be intermittently mechanically ventilated at an exhaust rate not less than 100 cubic feet per minute for range hoods or 300 cubic feet per minute for mechanical exhaust fans including downdraft appliances. Enclosed kitchens are permitted to be provided with continuous mechanical ventilation at an exhaust rate not less than 5 air changes per hour based on kitchen volume.

- D.** Each kitchen range or cooktop shall be provided with a vented hood ducted to terminate outside the building, with a minimum air flow of 100 cubic feet per minute.

Exception: A vented range hood shall not be required in dwelling unit kitchens equipped with a local mechanical exhaust system installed in accordance with ASHRAE 62.2 and Subsection 304.3.C above.

304.4 Hallways. All public and common hallways, corridors, stairs and other exitways shall be adequately lighted and illuminated at all times in accordance with Chapter 10 of the Building Code.

305 – Sanitation

A. Dwelling Units, Lodging Houses and Congregate Residences

Dwelling units, lodging houses and congregate residences shall be provided with a bathroom equipped with facilities consisting of a water closet, lavatory, and either a bathtub or shower.

B. Hotels

Where private water closets, lavatories and baths are not provided, there shall be provided on each floor, for each sex, at least one water closet and lavatory and one bath, accessible from a public hallway. Additional water closets, lavatories and baths shall be provided on each floor for each sex at the rate of one for every additional ten guests or fractional number thereof in excess of ten. As an equivalent alternative, adequate genderless facilities may be provided.

C. Kitchen

Each dwelling unit shall be provided with a kitchen. Every kitchen shall be provided with a kitchen sink. A wooden sink or sink of similarly absorbent material shall not be permitted.

D. Fixtures

All plumbing fixtures shall:

1. Be connected to a sanitary sewer or an approved private sewage disposal system;
2. Be connected to an approved system of water supply and provided with hot and cold running water necessary for its normal operation; and

3. Be of an approved glazed earthenware type or of a similarly nonabsorbent material.
4. All piping and plumbing fixtures shall be installed and maintained in working order, and shall be kept free from obstructions, leaks and defects.

E. Water Closet Compartments

Walls and floors of water closet compartments in common use and public areas, shall be finished in accordance with applicable provisions of the Building Code.

F. Room Separations

Every water closet, bathtub or shower required by this Code shall be installed in a room, which will afford privacy to the occupant.

G. Installation and Maintenance

All sanitary facilities shall be installed and maintained in a safe and sanitary condition and in accordance with applicable requirements of the Plumbing Code and other applicable laws.

306 – Building Interior

306.1 Interior Surfaces – Interior surfaces, including wall, floor and ceiling surfaces, windows and doors, shall be maintained in good, clean and sanitary condition. Any interior finishes that have a fire-resistance rated classification must maintain their fire rating and when repairs or replacement are performed, shall be repaired or replaced with similar or compatible materials of the same fire-resistance rating.

306.2 Interior Doors. Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers or tracks. Any hardware that provides privacy must be maintained in operational condition.

19.40.040 Structural Requirements

401 – General

Buildings or structures may be of any type of construction permitted by the Building Code. Roofs, floors, walls, foundations, and all other structural components of buildings shall be capable of resisting any and all forces and loads to which they may be subjected. All structural elements shall be proportioned and joined in accordance with the stress limitations and design criteria as specified in the appropriate sections

of the building code. Buildings of every permitted type of construction shall comply with the applicable requirements of the Building Code.

402 – Protection from Weather and Dampness

Every building shall be weather-protected so as to provide shelter for the occupants against the elements and to exclude dampness.

403 – Protection of Materials

All wood shall be protected against termite damage and decay as provided in the Building Code.

404 – Structural Maintenance

- A.** Pursuant to the requirements of Health and Safety Code Section 17973 (inspection deadlines in subsection (d) notwithstanding) projecting exterior elevated wood and metal decks, balconies, landings, stairway systems, guardrails, handrails, or any parts thereof in weather-exposed areas of Group R-1 and R-2 Occupancies, as defined in the most recent edition of the California Building Code, shall be inspected within six months of adoption of this section, and every six years thereafter, by a licensed general contractor, licensed architect, or licensed engineer, verifying that the elements are in general safe condition, adequate working order, and do not exhibit signs of deterioration, decay, corrosion or similar damage that could pose a safety concern and there is no evidence of active water intrusion in concealed spaces of the inspected elements. The inspection schedule set forth above shall apply retroactively to the original enactment of the City's Exterior Elevated Elements inspection program on July 14, 2015; cyclical inspections shall be completed by March 31, 2022 and every six years thereafter.

- B.** Pursuant to the requirements of Code of Civil Procedure Section 5551, projecting exterior elevated wood and metal decks, balconies, landings, stairway systems, guardrails, handrails, or any parts thereof in weather-exposed areas of condominium projects containing 3 or more dwelling units shall be inspected by January 1, 2025, and then at least once every nine years. The inspection shall be conducted by a licensed structural engineer or architect of a random and statistically significant sample of exterior elevated elements for which the association has maintenance or repair responsibility.

Property owners shall provide proof of compliance with this section by submitting an affidavit form provided by the City. The affidavit shall be signed by the responsible inspecting party and submitted to the Housing Code Enforcement Office. For the purpose of this section, elevated "weather-exposed areas" mean those areas which are not interior building areas, extend beyond exterior walls and are located more than six feet above adjacent grade. Newly constructed residential buildings shall be exempt for a

period of six years following issuance of the Certificate of Occupancy for such buildings. (Ord. 7462-NS § 1, 2016: Ord. 7434-NS § 1, 2015: Ord. 7431-NS § 2, 2015)

19.40.050 Mechanical and Electrical Requirements

501 – Heating

Habitable spaces shall be provided with heating facilities capable of maintaining a room temperature of 68° F at a point three feet above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe working condition and in accordance with Chapter 12 of the Building Code, the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type. Hot water provided to plumbing fixtures shall be supplied at a temperature of not less than 110 °F.

502 – Electrical Equipment

All electrical equipment, wiring and appliances shall be installed and maintained in a safe manner in accordance with all applicable laws. All electrical equipment shall be of an approved type. Every habitable room shall contain at least two electrical convenience outlets or one convenience outlet and one electric light fixture. Every water closet compartment, bathroom, laundry room, furnace room and public hallway shall contain at least one electric light fixture. All electrical equipment, wiring and appliances shall be installed and maintained in a safe manner in accordance with the Electrical Code and all applicable laws.

503 – Ventilation

Ventilation for rooms and areas and for fuel-burning appliances shall be provided as required in the Mechanical Code and in this Code. Where mechanical ventilation is provided in lieu of the natural ventilation required by Section 304.3 of this Code, such mechanical ventilating systems shall be maintained in operational condition during the occupancy of any building or portion thereof.

19.40.060 Exits

601 – Requirements Designated

All buildings or portions thereof shall be provided with exits, exitways and appurtenances as required by Chapter 10 of the Building Code or the Codes in effect at the time of construction, alteration or conversion.

- A. Dwelling units or guestrooms shall have access directly to the outside or to a common or public corridor.

Internal

- B. Every sleeping room below the fourth story shall have at least one operable window or exterior door approved for emergency escape or rescue. Such windows shall be operable from the inside to provide a full clear opening without the use of separate tools.
- C. All escape or rescue windows from sleeping rooms shall have the required minimum net clear openings and finished sill heights. Escape or rescue windows shall not be obstructed from the outside of the building.
- D. The installation of replacement glazing, or replacement windows shall be as required for new installations, when practical.
- E. Security bars, grills, screens and covers placed over sleeping room windows or bedroom exterior doors, which provide the required emergency escape or rescue, shall comply with the Building Code and shall be openable or removable from within the room without the use of a key, tool, special knowledge or effort. Any release mechanism shall be readily accessible and operable at all times. Window bars, grills, screens and covers shall not reduce the net clear opening of the emergency escape and rescue opening.
- F. Means of egress including but not limited to stairs, ramps, walking surfaces, shall be maintained in safe working condition, shall not be obstructed in any manner and shall remain free of any material, matter or defect where its presence would obstruct or render the means of egress hazardous.
- G. All handrails and guards shall be firmly fastened and capable of supporting code specified loads and shall be maintained in safe working condition.

19.40.070 Fire Protection

701 – General

All buildings or portions thereof shall be provided with the degree of fire-resistive construction as required by the Building Code for the appropriate occupancy, type of construction and location on property, and shall be provided with the appropriate fire-extinguishing systems or equipment required by Chapter 9 of the Building Code.

702 – Smoke Alarms

Smoke Alarms shall be installed per the manufacturer's installation instructions in all residential occupancies and at the required locations as prescribed in the Building Code:

1. In each room used for sleeping purposes.

2. Outside each separate sleeping area in the immediate vicinity of the sleeping room.
3. On each story within a dwelling unit, including basements and habitable attic spaces. In units with split levels without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice provided that the lower level is less than one full story below the upper level.

703 – Carbon Monoxide Alarms

Carbon Monoxide Alarms are required in all dwelling and sleeping units where one of the following exist:

1. The unit contains a fuel-fired appliance or fireplace.
2. The unit has an attached garage with an opening that communicates with the unit.

Carbon Monoxide Alarms shall be installed per manufacturer's installation instructions and at the required locations as prescribed in the Building Code:

1. Outside of each separate sleeping area in the immediate vicinity of the sleeping rooms.
2. On every occupiable level of a dwelling unit including basements and habitable attic spaces.
3. Inside each sleeping room where a fuel-burning appliance is located within the sleeping room or its attached bathroom.

Combination Alarms – Combination carbon monoxide/smoke alarms shall be an acceptable alternative to carbon monoxide alarms and smoke alarms.

19.40.080 Housing Inspections (Rental Housing Safety Program)

801 – Findings

- A. Berkeley has an aging rental housing stock where the majority of rental units are over 50 years old and, thus, are more likely to violate housing safety codes and endanger the health and safety of occupants and others.
- B. There is a crisis in Berkeley's rental housing market reflected in a reduced vacancy rate which increases the likelihood that tenants may not complain about unsafe conditions for fear of losing their homes.
- C. An Association of Students of the University of California (ASUC) survey conducted in 2000 indicated that many student tenants are unaware of their housing rights.
- D. A community economics survey conducted in 1998 revealed that approximately 75% of Berkeley tenants indicated their buildings were in need of repairs.

Internal

- C. Berkeley has a large number of tenants who are immigrants or who have special needs which makes it more difficult for them to be aware of and enforce their rights to safe accommodations.
- D. There have been several tragic deaths that may have been avoided had there been a regular residential rental inspection program, an exterior elevated elements inspection program, and a safety education program.
- E. An inspection made by a property owner in order to submit a certification pursuant to Subsection 803A is a necessary service pursuant to California Civil Code Section 1954(b) where the tenant/occupant has refused entry to a City inspector acting pursuant to this chapter. (Ord. 6651-NS § 1, 2001)

802 – Purpose

The purpose of the Rental Housing Safety Program (RHSP) is to increase the number of rental units in the City that meet housing safety standards established by the City in order to ensure the occupants' health and safety. (Ord. 6651-NS § 1, 2001)

803 – Residential Rental Housing Safety Certification—City Inspection in lieu of Self-Certifications—Exemptions

- A. All owners of residential real property containing rental units and not otherwise exempt pursuant to Subsection 803.C shall annually certify that their rental unit(s) meet housing safety standards established by the City or seek an inspection by the City pursuant to Subsection 803.B. Self-certification shall be made in the manner set forth below:
 - 1. Owners shall inspect each rental unit owned using the Rental Housing Safety Program Certification Checklist form required by the City.
 - 2. Owners shall provide a copy of the completed Rental Housing Safety Program Certification Checklist to each tenant whose rental unit has been inspected. If the owner is unable to certify compliance with all applicable provisions of the checklist, including by reason of refusal of entry by the tenant, in addition to providing the completed form to the tenant, the owner shall submit a copy of the completed checklist to the City by email, mail or personal delivery. Owners shall provide the copy of the checklist to the tenant and, if applicable, a copy to the City within five days of completing the inspection and no later than July 1st of each year beginning with July 1, 2004.
 - 3. Any tenant may request that the City verify the accuracy of the representations made by the owner in the checklist. Further, all checklists submitted to the City shall be considered public information.

Internal

- B.** An owner or tenant may request that their residential rental unit(s) be inspected by the City to ascertain compliance with the housing safety standards. If the City is unable to conduct such inspection, the owner is nonetheless required to complete a checklist pursuant to Subsection 803.A. Such inspection may also determine compliance with all other applicable requirements relating to building safety.
- C.** Newly constructed residential rental units shall be exempt from the requirements of Section 803 for a period of five years following issuance of the Certificate of Occupancy for such units.
- D.** For those units where the City has determined that the tenant has refused entry to the owner to conduct the inspection necessary for completing the checklist, the City may seek a warrant for entry pursuant to California Code of Civil Procedure Sections 1822.51 and 1822.52 (Ord. 7406-NS § 1, 2015: Ord. 6761-NS § 1 (part), 2003: Ord. 6730-NS § 2 (part), 2003: ORD. 6651-NS § 1, 2001)

804 – Unlawful Alteration of Premises by Tenant/Occupant

It shall be a violation of this chapter for any tenant/occupant to modify, damage, destroy or otherwise alter their premises in a manner which renders the premises in a condition which the City has determined violates applicable laws enforced by the City to such an extent as to endanger the safety of the public or the occupants thereof and the tenant/occupant has failed to correct the violation after receiving written notice and being given a reasonable opportunity to do so. (Ord. 6651-NS § 1, 2001)

805 – Proactive Inspection of Rental Units

The City Manager or their designee may periodically inspect every residential rental unit in any real property in the City provided that no residential rental unit shall be subject to a Rental Housing Safety Program inspection on more than a triennial basis where such unit complies with Subsection 803.A, unless an inspection is required in response to a request for service or the City reasonably believes that the property may be in violation of applicable laws or ordinances. Nothing contained herein affects the ability of the Berkeley Fire Department to conduct annual inspections pursuant to Berkeley Municipal Code Chapter 19.48. Entry for inspection shall be as a result of either consent or execution of a warrant secured pursuant to California Code of Civil Procedure Sections 1822.51 and 1822.52.

806 – Reactive / Complaint Inspections

The City Manager or their designee may inspect those portions of residential rental properties, buildings, units or structures in response to a complaint. Any residential

rental unit shall be inspected for code violations whenever information from the following sources indicates that a pertinent code violation may exist therein:

- A. Complaint from a tenant that a code violation may exist;
- B. Direct referrals for inspection from other City officials with code enforcement responsibilities or from officials of a federal, state, or local agency, or from officials with a public or private utility; or
- C. Reports that the exterior condition of a residential real property containing rental housing reflects the existence of code violations.

807 – Certificate of Compliance Issued When

If, upon the periodic inspection by the City of a residential rental unit within any real property, no violations of applicable laws or ordinances are determined to exist, a Certificate of Compliance shall be issued. Said certificate shall be given to the owner, manager (if requested) and affected resident(s) and shall state that the determination may be subject to an informal review by the Building Official if any affected party seeks such review within ten (10) days of the date of issuance of the Certificate of Compliance. (Ord. 7406-NS § 2, 2015: Ord. 6730-NS § 2 (part), 2003: Ord. 6651- NS § 1, 2001)

808 – Correction of Violations Required

- A. Whenever any inspection results in a determination that a rental unit is in violation of applicable laws or ordinances, the inspector shall promptly give the owner, manager (if any) and affected resident(s) written Notice of Violation as set forth on Section 1002 of this Code. Said notice shall specify a reasonable time to correct the violation, and shall state that the determination may be subject to an informal review by the Building Official if any affected party seeks such review within ten (10) days of the date of issuance of the Notice of Violation.
- B. If the violation is corrected within the time specified, the owner, manager (if any) and resident(s) shall be so notified in writing, and a Certificate of Compliance shall be issued.
- C. If the violations have not been corrected, enforcement, including reinspections, will continue until all violations are corrected.

809 – Violations

Any person who fails to comply with any provisions of Section 19.40.080 after receiving written Notice of Violation(s) and being given a reasonable opportunity to correct such violation(s) shall be deemed to be in violation of the Chapter and shall be subject to

criminal sanctions and civil remedies pursuant to Subsection 810. (Ord. 6651-NS § 1, 2001)

810 – Penalties

- A.** Any person violating any provision or failing to comply with any of the requirements of Section 19.40.080 shall be deemed guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code.
- B.** The City Attorney may bring a civil action to seek redress for a violation(s) under Section 19.40.080 on behalf of the City. In any such action, the City shall recover civil penalties in an amount not to exceed \$500 for each violation and any other relief the court deems proper.

In any civil action filed pursuant to this subsection where the violation of Section 19.40.080 is declared to be a public nuisance, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

- C.** Any tenant may bring a civil action to establish that the owner of the property from which the tenant rents a dwelling unit has failed to provide the tenant with a copy of the Rental Housing Safety Program Certification Checklist or submit a copy of the Checklist to the City pursuant to Subsection 803.A.2. Such action may not be maintained where the City Attorney has commenced or is prosecuting an action against such violation. In any such action, the tenant shall recover civil penalties in an amount not to exceed \$500 for each violation.

In any action brought under this subsection, the court shall award reasonable attorneys' fees to any prevailing plaintiff. Any aggrieved person who initiates a civil action under this subsection shall file a copy of his or her complaint against the property owner and a copy of the court's decision with the City. (Ord. 7406-NS § 4, 2015; Ord. 6761-NS § 1 (part), 2003; Ord. 6651-NS § 1, 2001)

19.40.090 Substandard Housing

901 – Substandard Housing – Defined

Pursuant to Health and Safety Code Section 17920.3, any building or portion thereof including any dwelling unit, guestroom or suite of rooms, or the premises on which the

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same is located, in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building:

(a) Inadequate sanitation shall include, but not be limited to, the following:

- (1)** Lack of, or improper water closet, lavatory, or bathtub or shower in a dwelling unit.
- (2)** Lack of, or improper water closets, lavatories, and bathtubs or showers per number of guests in a hotel.
- (3)** Lack of, or improper kitchen sink.
- (4)** Lack of hot and cold running water to plumbing fixtures in a hotel.
- (5)** Lack of hot and cold running water to plumbing fixtures in a dwelling unit.
- (6)** Lack of adequate heating.
- (7)** Lack of, or improper operation of required ventilating equipment.
- (8)** Lack of minimum amounts of natural light and ventilation required by this code.
- (9)** Room and space dimensions less than required by this code.
- (10)** Lack of required electrical lighting.
- (11)** Dampness of habitable rooms.
- (12)** Infestation of insects, vermin, or rodents as determined by a health officer or, if an agreement does not exist with an agency that has a health officer, the infestation can be determined by a code enforcement officer, as defined in Section 829.5 of the Penal Code, upon successful completion of a course of study in the appropriate subject matter as determined by the local jurisdiction.
- (13)** Visible mold growth, as determined by a health officer or a code enforcement officer, as defined in Section 829.5 of the Penal Code, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their properly functioning and intended use.
- (14)** General dilapidation or improper maintenance.
- (15)** Lack of connection to required sewage disposal system.
- (16)** Lack of adequate garbage and rubbish storage and removal facilities, as determined by a health officer or, if an agreement does not exist with an agency that has a health officer, the lack of adequate garbage and rubbish removal facilities can be determined by a code enforcement officer as defined in Section 829.5 of the Penal Code.

(b) Structural hazards shall include, but not be limited to, the following:

- (1)** Deteriorated or inadequate foundations.
- (2)** Defective or deteriorated flooring or floor supports.

- (3)** Flooring or floor supports of insufficient size to carry imposed loads with safety
 - (4)** Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration.
 - (5)** Members of walls, partitions, or other vertical supports that are of insufficient size to carry imposed loads with safety.
 - (6)** Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.
 - (7)** Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety.
 - (8)** Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration.
 - (9)** Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety.
- (c)** Any nuisance.
- (d)** All wiring, except that which conformed with all applicable laws in effect at the time of installation if it is currently in good and safe condition and working properly.
- (e)** All plumbing, except plumbing that conformed with all applicable laws in effect at the time of installation and has been maintained in good condition, or that may not have conformed with all applicable laws in effect at the time of installation but is currently in good and safe condition and working properly, and that is free of cross connections and siphonage between fixtures.
- (f)** All mechanical equipment, including vents, except equipment that conformed with all applicable laws in effect at the time of installation and that has been maintained in good and safe condition, or that may not have conformed with all applicable laws in effect at the time of installation but is currently in good and safe condition and working properly.
- (g)** Faulty weather protection, which shall include, but not be limited to, the following:
- (1)** Deteriorated, crumbling, or loose plaster.
 - (2)** Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors.
 - (3)** Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering.
 - (4)** Broken, rotted, split, or buckled exterior wall coverings or roof coverings.
- (h)** Any building or portion thereof, device, apparatus, equipment, combustible waste, or vegetation that, in the opinion of the chief of the fire department or his deputy, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause.
- (i)** All materials of construction, except those that are specifically allowed or approved by this code, and that have been adequately maintained in good and safe condition.

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(j) Those premises on which an accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rodent harborages, stagnant water, combustible materials, and similar materials or conditions constitute fire, health, or safety hazards.

(k) Any building or portion thereof that is determined to be an unsafe building due to inadequate maintenance, in accordance with the latest edition of the Uniform Building Code.

(l) All buildings or portions thereof not provided with adequate exit facilities as required by this code, except those buildings or portions thereof whose exit facilities conformed with all applicable laws at the time of their construction and that have been adequately maintained and increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

When an unsafe condition exists through lack of, or improper location of, exits, additional exits may be required to be installed.

(m) All buildings or portions thereof that are not provided with the fire-resistive construction or fire-extinguishing systems or equipment required by this code, except those buildings or portions thereof that conformed with all applicable laws at the time of their construction and whose fire-resistive integrity and fire-extinguishing systems or equipment have been adequately maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

(n) All buildings or portions thereof occupied for living, sleeping, cooking, or dining purposes that were not designed or intended to be used for those occupancies.

(o) Inadequate structural resistance to horizontal forces.

"Substandard building" includes a building not in compliance with Health and Safety Code Section 13143.2.

However, a condition that would require displacement of sound walls or ceilings to meet height, length, or width requirements for ceilings, rooms, and dwelling units shall not by itself be considered sufficient existence of dangerous conditions making a building a substandard building, unless the building was constructed, altered, or converted in violation of those requirements in effect at the time of construction, alteration, or conversion.

The list of conditions, hazards and uses of property determined to be substandard is not intended to be exclusive. The Building Official is authorized to declare other and additional conditions, hazards and uses of property to be substandard if they endanger the health and safety of the residents or the public pursuant to this Code.

902 – Substandard Building – Nuisance

Buildings or portions thereof which are determined to be substandard, which substantially endanger the health and safety of residents or the public, as defined in Health & Safety Code §17920.3 or its successor are hereby declared to be public nuisances, which shall be abated by repair, rehabilitation, demolition or removal in

accordance with the procedures specified in this Code and Chapters 1 and 19.44 of the Berkeley Municipal Code.

19.40.100 Notices of the Building Official

1001 – Commencement of Proceedings

When the Building Official has inspected or caused to be inspected any building subject to this Code and has found and determined that such building either has substandard conditions or is a substandard building which substantially endangers the health and safety of residents or the public, the Building Official may commence proceedings to cause the repair, rehabilitation, vacation or demolition of the building. Depending on the severity of conditions, the Building Official may begin enforcement efforts by issuing one or more Notices of Violation as set forth in Sections 1002 or may proceed immediately to issuing a Notice and Order including a declaration of substandard building as set forth in Section 1003.

If substandard conditions are not abated following issuance of one or more Notices of Violation or if conditions deteriorate to the point they substantially endanger the health and safety of residents or the public, the Building Official may proceed to issuing a Notice and Order.

1002 – Notice of Violation

1002.1 Issuance of Notice of Violation. Whenever an inspector appointed by the Building Official inspected a building or portion thereof and determined that a violation of this Code exists, the inspector shall issue a written Notice of Violation directed to the owner of record of the property. For the purpose of this Code, complying with a Notice of Violation is considered voluntary code compliance, not subject to administrative penalties or appeals to the Commission. The intent of issuing a Notice of Violation is to advise an owner of each violation and of each action the owner is required to take to remedy the violation. A re-inspection shall be scheduled to verify correction of the violations.

The Notice of Violation shall contain:

- A. The street address sufficient for identification of the premises upon which the building is located.
- B. Description of the codified violation(s).
- C. The specific action required to correct the violation and a request that the violations be corrected within the specific time period listed in the Notice.
- D. The scheduled re-inspection date and time.

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- E. The Notice shall specify that any permits, if required, be secured and the work physically commenced and completed within such time as the Building Official shall determine is reasonable under all of the circumstances, but not less than 30 days, unless an immediate hazard exists

1002.2 Service of Notice of Violation. The Notice of Violation may be served by US mail, in a sealed envelope, postage prepaid, addressed to such person to be notified at their last known business or residence address as the same appears in the public records of the City or other records pertaining to the matter to which such Notice is directed, or may be served personally on the owner, or if the owner is not present, a copy of the Notice may be posted on the property. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

1002.3 Compliance Re-inspections. Compliance re-inspections shall be conducted to verify that the violations identified on the Notice of Violation have been abated. Violations not noted on the initial Notice of Violation, but discovered during any re-inspection due to subsequent activities, damage or deterioration, shall also be subject to correction.

1002.4 Inspection Service Fees. No inspection fees shall be charged for the initial housing inspection or inspection report. If violations have been verified to be corrected at the time of the first re-inspection, no re-inspection fees shall be charged. If the violations have not been corrected, a fee shall be assessed for the first and subsequent re-inspections, in accordance with the fee schedule established by Council.

1002.5 Recordation of Notice of Violation. If compliance with the Notice of Violation is not obtained within the time specified therein, the Building Official may file in the Office of the County Recorder a Notarized Statement describing the property and certifying (i) that the building is in violation of Berkeley Municipal Code, and (ii) that the owner has been so notified. The notarized statement shall include the information set forth in Subsections 1002.1.B and 1002.1.C of this Code. Whenever the cited corrections are completed and any outstanding inspection service fees paid, the Building Official shall file a new Notarized Statement with the County Recorder certifying that all required corrections have been made so that the building is no longer in violation of Berkeley Municipal Code.

1003 – Notice and Order

1003.1 Issuance of Notice and Order. Whenever a building, or portion thereof, has been determined to be a substandard building, which substantially endangers the health and safety of residents or the public, either due to the severity of substandard conditions or due to failure to repair pursuant to proceedings specified in Section 1002, the

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Building Official shall issue a Notice and Order directed to the owner of record of the building.

The Notice and Order shall contain:

- A. The street address and a legal description sufficient for identification of the premises upon which the building is located.
- B. A statement that the Building Official has found the building to be a substandard building substantially endangering the health and safety of residents or the public, with a brief and concise description of the conditions which render the building substandard under the provisions of Sections 901 and 902 of this Code.
- C. A statement of the action required to be taken as determined by the Building Official. If in the opinion of the Building Official, the substandard conditions can be corrected or abated by repair thereof, the Notice shall state the repairs which will be required.
 1. If the Building Official has determined the building or structure must be repaired, the Order shall require that all required permits be secured and the work physically commenced within such time (not to exceed 60 days from the date of the Order) and completed within such time as the Building Official shall determine is reasonable under all of the circumstances, but not less than 30 days.
 2. If the Building Official has determined that the building or structure must be vacated, the Order shall require the building or structure be vacated within a certain time from the date of the Order as determined by the Building Official to be reasonable, but not less than 30 days.
 3. If the Building Official has determined the building or structure must be demolished, the Order shall require that the building be vacated within such time as the Building Official shall determine reasonable (not to exceed 60 days from the date of the Order), that all required permits be secured within 60 days from the date of the Order and the demolition be completed within such time as the Building Official shall determine is reasonable, but in no event less than 30 days.
- D. Statements advising that if any required repair or demolition work is not commenced within the time specified, the Building Official may:
 - a. Order the building vacated and posted to prevent further occupancy until the work is completed; and

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- b. Proceed to cause the work to be done and charge the costs thereof against the property or its owner.

E. Statements advising that:

- a. Any person having any record or title or legal interest in the building may appeal the Notice and Order or any action of the Building Official to the Commission as set forth in Chapter 19.44 of this Code; and
- b. Failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter. The Notice shall include a copy of Chapter 19.44 of this Code.

- F. A statement that, in accordance with Revenue & Taxation Code Sections 17274 and 24436, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year.

1003.2 Service of Notice and Order. The Notice and Order, and any amended or supplemental notice and order, shall be served upon the record owner, and posted on the property; and one copy thereof shall be served on each of the following if known to the Building Official or disclosed from official public records; the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the Building Official to serve any person listed above shall not invalidate any proceeding hereunder as to any person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section. In addition, the Notice and Order shall be served on tenants.

1003.3 Method of Service. Service of the Notice and Order shall be made upon all persons entitled thereto either personally or by mailing a copy of such Notice and Order by certified mail, postage prepaid, return receipt requested, to each such person at their address as it appears on the last Equalized Assessment Roll of the County or as known to the Building Official. If no address of any such person so appears or is known to the Building Official, then a copy of the Notice and Order shall be so mailed, addressed to such person, at the address of the building involved in the proceedings. The failure of any such person to receive such Notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing. Service on tenants may be by first class mail.

1003.4 Proof of Service. Proof of Service of the Notice and Order shall be certified to at the time of service by a written declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the Notice

and Order retained by the Building Official, either as an electronic record or a hard copy. The proof of service may be signed with an electronic signature.

1003.5 Appeals. Orders of the Building Official may be appealed as set forth in Chapter 19.44. For purposes of this Code, orders of the Building Official, or, on appeal, of the Commission or City Council, shall be final as set forth in Chapter 19.44.

1004 – Repair, Vacation and Demolition

In ordering the repair, vacation or demolition of any substandard building or structure, the following standards shall be followed:

- A. In general, any building or structure or portion thereof declared substandard shall be repaired in accordance with the current Building Code or other current code applicable to the type of substandard conditions requiring repair.
- B. If the building or structure, or portion thereof, substantially endangers the health or safety of its occupants or the public, it shall be ordered to be vacated, secured and maintained against entry, and the Building Official or Commission shall require its expeditious repair.
- C. If a building or structure constitutes an imminent and substantial danger to the health or safety of the public, Chapter 1.24 of the Berkeley Municipal Code shall apply.
- D. If an entire building or structure is declared to be substandard the owner may elect to demolish it instead so long as the right to such election is preserved by state law.

1005 – Notice to Vacate

1005.1 Posting. Every Notice to Vacate shall, in addition to being served as provided in Sections 1003.2 – 1003.5, be posted at or upon each main exit of the building, and shall be in substantially the following form:

DO NOT ENTER

UNSAFE TO OCCUPY

It is a misdemeanor to occupy this building, or to remove or deface this notice.

Building Official of City of Berkeley

1005.2. Compliance. Whenever such Notice is posted, the Building Official shall include a notification thereof in the Notice and Order issued under Section 1003, reciting the emergency and specifying the conditions which necessitate the posting. No person

shall remain in or enter any building which has been so posted, except that entry may be made to repair, demolish, or remove such building under Permit. No person shall remove or deface any such Notice after it is posted until the required repairs or demolition have been completed and the Building Official has approved occupancy of the building. Any person violating this subsection shall be guilty of a misdemeanor.

1006 – Recordation of Notice and Order

If compliance is not obtained with a final Order within the time specified therein, the Building Official shall file in the Office of the County Recorder a Certified Statement describing the property and certifying (i) that the building is a substandard building, and (ii) that the owner has been so notified. The certified statement shall include the information set forth in Subsections 1003.1.B and 1003.1.C. The Proof of Service required by Section 1003.4 shall also be recorded with the Notice and Order. Whenever the corrections ordered are thereafter completed, or the building demolished so that it no longer exists as a substandard building, the Building Official shall file a new Certified Statement with the County Recorder certifying that the building has been demolished or all required corrections have been made so that the building is no longer substandard, whichever is appropriate. (Ord. 6475-NS § 7, 1999)

1007 – Post-Disaster Safety Assessment

After a natural or human-caused disaster event, the Building Official or an authorized representative shall conduct a rapid safety assessment inspection of a damaged or potentially damaged building or portion thereof to evaluate safety and habitability for continued use and to determine the need for restricted or prohibited entry. Upon completion of a safety assessment, the Building Official or an authorized representative shall post the appropriate placard at each entry point to a building following the procedure set forth in Berkeley Municipal Code 19.28.020 Section 116.6.

19.40.110 Enforcement of Orders

1101 – Failure to Obey Order

1101.1 Failure to Obey Order. After any Order made pursuant to Sections 1003 or 1005 of this Code has become final, no person to whom any such Order is directed shall fail, neglect, or refuse to obey any such Order.

1101.2 Initiation of Abatement Proceedings. After any Order made pursuant to Sections 1003 or 1005 of this Code has become final, and the person to whom it is directed fails, neglects or refuses to obey such Order within the period set forth therein, the Building Official may institute any appropriate action to abate such building or structure as a public nuisance. However, if such building is encumbered by a mortgage or deed of trust, of record, the mortgagee or beneficiary under such deed of trust may,

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within 15 days after the expiration of the period set forth in the Order, comply with the requirements of the Order, in which event the cost to such mortgagee or beneficiary shall be added to and become a part of the lien secured by said mortgage or deed of trust and shall be payable at the same time and in the same manner as may be prescribed in said mortgage or deed of trust for the payment of any taxes advanced or paid by said mortgagee or beneficiary for and on behalf of said owner.

1101.3 Repair, Vacation, Demolition. In addition to any other remedy herein provided, the Building Official may vacate, repair or demolish the building, take any other appropriate action, or institute any other appropriate proceeding, if any of the following occur:

1. The repair work is not done as scheduled;
2. The owner does not make a timely choice of repair or demolition; or
3. The Building Official determines that the owner has selected an option which cannot be completed within a reasonable period of time for any reason, including, but not limited to, an outstanding Judicial or Administrative Order.

In making the election permitted by this section, the Building Official shall give preference to the repair of the building whenever it is economically feasible to do so, as long as it is not necessary to repair more than 50% of the building, and shall give full consideration to the needs for housing as expressed in the City of Berkeley Housing Element. The cost of any repair or demolition work may be recovered in the manner hereinafter provided in this Code. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot shall be paid over to the person or persons lawfully entitled thereto.

1102 – Extension of Time to Perform Work

Upon receipt of an application from the person required to conform to the Order and by agreement of such person to comply with the Order if allowed additional time, the Building Official may grant an extension of time, not to exceed an additional 120 days, within which to complete said repair, rehabilitation or demolition, if the Building Official determined that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The Building Official's authority to extend time is limited to the physical repair, rehabilitation or demolition of the premises and will not in any way affect or extend the time to appeal the Notice and Order.

1103 – Interference with Repair or Demolition Work Prohibited

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the City or with any person who owns or holds any estate

or interest in any building which has been ordered repaired, vacated or demolished under the provisions of this Code, or with any person to whom such building has been lawfully sold pursuant to the provisions of this Code, whenever such officer, employee, contractor or authorized representative of this jurisdiction, person having an interest or estate in such building or structure, or purchaser is engaged in the work of repairing, vacating and repairing, or demolishing any such building pursuant to the provisions of this Code, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this Code. (Ord. 6475-NS § 8, 1999)

19.40.120 Performance of Repair or Demolition

1201 – Performance

1201.1 Procedure. When any repair or demolition is done pursuant to Section 1101.3 of this Code, the Building Official shall cause the work to be accomplished by City personnel or by private contract under the direction of the Building Official, subject to the City of Berkeley Charter. Plans and specifications therefore may be prepared by the Building Official, or the Building Official may employ such architectural and engineering assistance on a contract basis as may be deemed reasonably necessary.

1201.2 Costs. The costs of such work shall be paid from the Repair and Demolition Fund, and may be recovered from the owner as set forth herein.

1202 – Repair and Demolition Fund

1202.1 Establishment of Repair and Demolition Fund. The City Council may establish a special revolving fund to be designated as the Repair and Demolition Fund. Subject to the City of Berkeley Charter, payments shall be made out of said Fund upon the demand of the Building Official to defray the costs and expenses which may be incurred by this jurisdiction in doing or causing to be done the necessary work of repair or demolition of substandard buildings.

1202.2 Maintenance of Fund. The City Council may at any time transfer to the Repair and Demolition Fund, out of any money in the General Fund of the City, such sums as it may deem necessary in order to expedite the performance of the work of repair or demolition, and any sum so transferred shall be deemed a loan to the Repair and Demolition Fund and shall be repaid out of the proceeds of the collections herein after provided for. All funds collected under the proceedings hereinafter provided for shall be paid to the Treasurer of the City, who shall credit the same to the Repair and Demolition Fund. (Ord. 6475-NS § 9, 1999)

19.40.130 Recovery of Cost of Repair or Demolition

1301 – Recovery of Costs

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1301.1 Account and Report of Expense. The Building Official shall keep an itemized account of the expense incurred by the City in the repair or demolition of any building done pursuant to the provisions of Section 1101.3 of this Code. Upon the completion of the repair or demolition, the Building Official shall prepare a report specifying the work done and the cost thereof. The report shall be verified by the Building Official, and shall show the itemized and total reasonable gross and net expense of the actions taken, including the expense of inspections, repairs or demolition and any other costs incurred, as well as any proceeds from salvage. The report shall also contain a statement advising:

1. That any person having any record or title or legal interest in the building may appeal from the report and demand of the Building Official to the Commission as set forth in Chapter 19.44 of this Code, and
2. That failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

The notice shall include a copy of Chapter 19.44 of this Code.

1301.2 Posting and Service. The Building Official shall post this report and a demand for payment in a conspicuous location at the property, and shall serve them upon the record owner, and each of the following if known to the Building Official or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located.

1301.3 Proof of Service. Proof of service of the report and demand shall be certified to at the time of service by a written declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the Notice and Order retained by the Building Official, either as an electronic record or a hard copy. The failure of the Building Official to serve any person required herein to be served shall not invalidate any proceeding hereunder as to any person duly served or relieve any such person from any duty or obligation imposed by the provisions of this Section.

1301.4 Appeals. The report and demand may be appealed by any person interested in or affected by the proposed charge as set forth in Chapter 19.44. For purposes of this Code, the report and demand of the Building Official, or, on appeal, of the Commission or City Council, shall be final and effective as set forth in Chapter 19.44.

1302 – Personal Obligation and Special Assessment

Charges confirmed and imposed in a final order by the City shall be a personal obligation of the property owner and an assessment against the property involved under

Government Code Section 38773.1. The City may collect these charges in any manner permitted by law, and may elect to change the nature of the assessment as set forth in Section 1.24.140 of the Berkeley Municipal Code.

1303 – Repayment of Repair and Demolition Fund

All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale or in any other manner shall be deposited in the Repair and Demolition Fund. (Ord. 6475-NS § 10, 1999)

19.40.140 Recovery of Costs for Housing Code Enforcement and Administration

1401 – Fees

1401.1 Establishment of Fees. The City Council may by resolution establish fees for the enforcement and administration of the Berkeley Housing Code and the Rental Housing Safety Program.

1401.2 Recovery of Delinquent Housing Inspection Program Fees and Administrative Citations. Unpaid housing inspection program fees established pursuant to this section, including annual flat fees, inspection service fees, late payment fees, administration lien fees, and administrative citations, which are more than 30 days delinquent shall constitute a debt that is collectible in any manner allowed by law, including, but not limited to: (1) the filing of a civil action in the Alameda County superior court; and/or (2) the recordation of a lien with the Alameda County recorder's office provided the responsible person has a legal interest in the property on which the violation was located; and/or (3) by means of a special assessment with Alameda County for inclusion on property taxes provided the responsible person has a legal interest in the property on which the violation was located; and/or (4) by denying the issuance or renewal of any city approval, license, entitlement, or permit to any responsible person who has failed to pay fees that are imposed pursuant to this section. The remedies may be concurrently used to collect unpaid fees. Such delinquent fees or citations shall be a lien or special assessment on the property.

1401.3 – Appeals.

- A.** Any person aggrieved by any decision of an administrative officer or agency with respect to the amount of fees charged under the Rental Housing Safety Program, may appeal to the City Manager by filing a notice of appeal with the City Manager within 14 days of the billing notice, setting forth in full the grounds of the appeal.
- B.** Said appeal shall be scheduled for hearing by the City Manager or his/her designee, and the appellant shall be given no less than 14 days' notice of the time and place of said hearing.

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- C. The appellant may appear at the time and place fixed in the notice and present his/her appeal. If the appellant fails to appear in compliance with the notice or to obtain a continuance, the appellant shall be deemed to have waived any and all grounds of appeal that could have been asserted against the City.
- D. Within 30 days after the conclusion of the hearing, the City Manager or his/her designee shall notify the appellant in writing of the decision, which shall be final. If the decision establishes an amount due and payable, the total amount shall be due and payable as of the date the original fee was due and payable, together with any penalties that may be due. (Ord. 6761-NS § 2 (part), 2003

1401.4 – Lien or Special Assessment Procedures.

Unless a different procedure is authorized elsewhere in this code, where the code authorizes the city to record a lien or impose a special assessment for any unpaid fee, citation, fine, cost, charge, or other monies, the following procedures shall apply:

1. Notification Procedure

A lien may be recorded or a special assessment may be imposed upon real property subject to the Rental Housing Safety Program if the unpaid fees or citations are not paid within 30 calendar days of written Notice thereof.

- A. Such Notice must have advised the owner(s) of the subject property in plain language of the city's intent to record a lien or impose a special assessment if the fee, citation, fine or other monies were not paid within 30 calendar days, the amount of the proposed lien, a description of the basis for the amount(s) comprising the lien, and notice that if the owner contests the costs, they have ten calendar days from the date of service of the notice to file objections to the costs and request a hearing on the reasonableness of the costs. The failure of the owner to request a hearing within ten calendar days of the date of service of the Notice shall constitute a waiver of the owner's right to a hearing.
- B. Service of Notice under this section shall be by first class and certified mail to the address of record of the owner of the property per Alameda County's Assessor's Office.
- C. Where the City Council designates another hearing body should the property owner(s) exercise their right to be heard, the hearing body shall make a written recommendation to the City Council that shall include factual findings based on evidence introduced at the hearing. The City Council may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the City Council.

2. Liens

- A. The lien shall be recorded in the Alameda County recorder's office and from the date of recording shall have the force, effect, and priority of a judgment lien.
- B. A lien authorized by this section shall specify the amount of the lien for the city, the name of the city department or division on whose behalf the lien is imposed, the date upon which the lien was created, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.
- C. In the event that the lien is discharged, released, or satisfied, notice of the discharge shall be recorded by the city.
- D. The city may recover from the property owner any costs incurred regarding the processing and recording of the lien.

3. Special Assessments

- A. It shall be the duty of the City Manager (or designee thereof) to submit the charges to the Alameda County Auditor – Controller Agency to add the amounts of the assessment, or assessments, to the next regular property tax bills.
- B. The amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment.
- C. The amount of a special assessment shall also constitute a personal obligation of the property owner.

1401.5 Failure to Comply. Any person violating any provision or failing to comply with any of the requirements of the Berkeley Housing Code shall be deemed guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code. (Ord. 6761-NS § 3 (part), 2003)

Section 3. This ordinance shall become effective on January 1, 2023.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Minutes of the Tuesday, September 13, 2022
Housing Advisory Commission Housing Code Subcommittee

The Subcommittee meeting was convened at 3:05 pm.

Roll Call - Housing Advisory Commission (HAC) Subcommittee members Leah Simon-Weisberg, Xavier Johnson and Debbie Potter were present.

City of Berkeley Staff present: David Lopez, Jenny McNulty, and Mike Uberti.

Election of Subcommittee Chair - Commissioner Potter moved that Commissioner Simon-Weisberg be elected chair. Commissioner Johnson seconded. The motion was approved unanimously.

Agenda Approval - The Subcommittee meeting agenda was approved unanimously – moved by Commissioner Johnson and seconded by Commissioner Potter.

Public Comments – none

Action Item – Discussion and Possible Action on Recommended Amendments to the City of Berkeley Housing Code and Adopt a Habitability Plan

Staff noted the importance of the goals of the proposed Tenant Habitability Plan, but also discussed the complexity of preparing an ordinance to require such a Plan.

Subcommittee Chair Simon-Weisberg asked staff to outline the process for getting such an ordinance drafted and considered for adoption by the City Council.

Staff explained that it would not move forward on such an effort without a referral from the City Council as it takes its direction regarding work programs from City Council based on a priority-setting process that has been established by the City Council.

Commissioner Johnson moved that the Subcommittee recommend to the HAC that City Council consider a referral to direct staff to prepare a Tenant Habitability Plan ordinance. Commissioner Potter seconded the motion and it was approved unanimously.

The Subcommittee did not make a motion regarding recommending approval of the Amendments to the City of Berkeley Housing Code and agreed that that item should be considered by the HAC at its October 6, 2022 meeting.

Commissioner Johnson moved that the meeting should be adjourned, Commissioner Potter seconded and the motion was approved unanimously. The Subcommittee meeting adjourned at 3:47 pm.

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19.40.125 Tenant Habitability Plan

1251 – Purpose and Intent

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

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

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

This article is adopted to facilitate landlord investment in renovations and the construction of new housing without subjecting tenants to either 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.

1252 – Definitions

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

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

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

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

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

Notice of Construction on Occupied Buildings

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

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

1. Replacement or substantial modification of any structural, electrical, plumbing or mechanical system that requires a permit under the Berkeley Municipal Code.
2. Abatement of hazardous materials, such as lead-based paint and asbestos, in accordance with applicable federal, state and local laws.
3. Repairs required by Building Official in Notice of Violation pursuant to 19.40.100

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

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

1253.1 Building Permits

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

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

1. The landlord has submitted a Tenant Habitability Plan to the [responsible agency], in accordance with sections 1253.2 and 1253.3, which the [responsible agency] finds to adequately mitigate the impact of the Substantial Repairs or Construction upon affected tenants; and
2. The landlord has submitted a declaration documenting service to affected tenants of both a Notice of Substantial Repairs and a copy of the non-confidential portions of the Tenant Habitability Plan in accordance with section 1254.
3. The landlord has paid any plan submission fee established by regulation under Berkeley Municipal Code section 13.76.060(F).

1253.2 Tenant Habitability Plan

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

1. Identification of the landlord, the general contractor responsible for the Substantial Repairs or Construction, and any specialized contractor responsible for hazardous material abatement, including but not limited to lead-based paint and asbestos.
2. Identification of all affected tenants including the current rent each tenant pays and the date of each tenant's last rent increase. In accordance with California Civil Code Sec. 1798 et seq., information regarding tenants shall be considered confidential.
3. Description of the scope of work covering the Substantial Repairs or Construction. Such description shall address the overall work to be undertaken on all affected units and common areas, the specific work to be undertaken on each affected unit, an estimate of the total project cost and time, and an estimate of the cost and time of renovation for each affected unit.
4. Identification of the impact of the Substantial Repairs or Construction on the habitability of affected rental units, including a discussion of impact severity and duration with regard to noise, utility interruption, exposure to hazardous materials, interruption of fire safety systems, inaccessibility of all or portions of each affected rental unit, and disruption of other tenant services.

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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. Such measures may include the adoption of work procedures that allow a tenant to remain on-site and/or the temporary relocation of tenants. If due to a declared state of emergency, childcare, eldercare, documented disabilities or work schedule or place of work that makes 8:00 - 5:00 pm Monday through Friday a grave burden, then a reasonableness standard shall be used reflecting the tenant's specific situation.
6. Identification of the impact of the Substantial Repairs or Construction on the personal property affected tenants, including work areas which must be cleared of furnishings and other tenant property, and the exposure of tenant property to theft or damage from hazards related to work or storage.
7. Identification of the mitigation measures that will be adopted to secure and protect tenant property from reasonably foreseeable damage or loss.
8. Identification of a phone number and email address of a responsible party who will be responsive to tenant complaints regarding the execution of the Substantial Repairs.
9. If tenants are to remain in place, the landlord shall voluntarily reduce the tenants' rent to compensate the tenant for any disruption to their tenancy. If a tenant feels the landlord's rent reduction is inadequate, the tenant may file a petition with Berkeley's Rent Program under section 11.100.070(c) or pursue any other legal remedy.

1253.3 Plan Acceptance

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

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

- B. The [responsible agency]'s acceptance of a Tenant Habitability Plan shall be subject to the landlord having no outstanding balances due for rent registration or code enforcement fees.
- C. The [responsible agency] shall provide landlords with written indications of deficiencies which must be addressed whenever a Tenant Habitability Plan is determined to be inadequate. A landlord may submit an amended plan in order to correct identified deficiencies.
- D. Landlords and tenants may appeal the [responsible agency]'s determination regarding a Tenant Habitability Plan to a hearing officer. The appeal shall be made in writing, upon appropriate forms provided by the [responsible agency], and shall specify the grounds for appeal, such as the plan being overly disruptive or that a temporary relocation should or should not be provided. The appeal shall be filed within 15 calendar days of the service of the Building Division's determination. The requested hearing shall be held within 30 calendar days of the filing of the appeal following the procedures adopted under. The hearing officer shall issue a written decision within ten calendar days of the hearing on the appeal, with a copy of the decision served on the landlord and the tenants by first class mail, postage prepaid, or in person.

1253.4 Notice of Substantial Repairs or Construction

- A. Notice of Substantial Repairs or Construction shall be written in the language in which the original lease was negotiated and shall provide the following information:
 - 1. The estimated start and completion dates of any Substantial Repairs associated with the accepted Tenant Habitability Plan.
 - 2. A description of the Substantial Repairs to be performed and how it will impact that particular tenant or household.
 - 3. Whether temporary relocation will be required, and if so, a notice concerning tenants' rights under Berkeley's Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance (section 13.100 et seq.) and Berkeley's Relocation Ordinance (section 11.102 et seq.)
 - 4. Instructions that tenants with questions should consult the landlord or the Rent Board.
 - 5. Notice of a tenant's right to reoccupy the units under the existing terms of tenancy upon completion of Notice of Substantial Repairs

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6. Notice that the tenant may appeal the [responsible agency]'s acceptance of a Tenant Habitability Plan provided such request is submitted within 15 days of the tenant's receipt of the Notice of Substantial Repairs
7. Notice that a tenant can make complaints to the responsible party identified in section 1253.2 (A)(1).
8. A disclaimer in at least 24 point bold font on the first page of the notice stating "THIS IS NOT AN EVICTION NOTICE. IF YOU IF YOU HAVE QUESTIONS CONCERNING YOUR RIGHTS AS A TENANT CALL 510-981-_____."

1254 – Notice and Service Requirements

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

1255 - Notices of Violation

- A. Habitability Plan submittal requirement upon finding of substandard housing pursuant to 19.40.090
 1. Building Officials shall include in Notice of Violation pursuant to 19.40.1002 whether Habitability Plan must be submitted;
 2. Building Official shall require submittal of Habitability Plan anytime owner or agent of owner has failed to apply for permits or submit a Habitability Plan when it would have been required and all Construction or repairs shall be halted until compliance is obtained.

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

1256 - Remedies

- A. A landlord who fails to abide by the terms of an accepted Tenant Habitability Plan shall be denied individual rent adjustments under Section 13.76.120 of this Code, absent extenuating circumstances.
- B. In any action by a landlord to recover possession of a rental unit under section 13.76.130(A)(7), the tenant may raise as an affirmative defense the failure of the landlord to comply with any provisions contained in this article. It shall be a complete defense to an unlawful detainer that a tenant's appeal under section 1253.3(D) is pending at the time

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

- C. Any person who willfully or knowingly with the intent to deceive, makes a false statement or representation, or knowingly fails to disclose a material fact in any plan or notice required under this article, or in any declaration, application, hearing or appeal permitted under this article, including oral or written evidence presented in support thereof, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this chapter shall be punished by a fine of not more than \$1,000.00 or by imprisonment in the County Jail for a period of not more than six months or both.
- D. Nothing in this article shall be construed to deprive a person of due process rights guaranteed by law, including, but not limited to, a right to appeal the [responsible agency]'s determination regarding a Tenant Habitability Plan to a hearing officer.
- E. The remedies provided by this article are in addition to any other legal or equitable remedies and are not intended to be exclusive. In addition to potentially other violations, a landlord's failure to provide, or bad faith deviation from a Tenant Habitability Plan shall be actionable as a failure to "exercise due diligence in completing repairs" pursuant to section 13.79.060(C)(7).

3.



Health Housing and
Community Services Department
Housing & Community Services Division

MEMORANDUM

To: Housing Advisory Commission

From: Mike Uberti, Secretary

Date: September 29, 2022

Subject: **Re-Voting on Preference Policy Recommendations for Brown Act and Staff Efficiency**

At the April 7, 2022 Housing Advisory Commission (HAC) meeting, the HAC took the following vote on agenda item 5:

Action: M/S/C (Simon-Weisberg/Johnson) to recommend City Council take the following actions:

- Adopt a policy to establish the following preferences for new affordable housing created via the City's Housing Trust Fund and Below Market Rate programs:
 - Displacement due to eminent domain for BART construction (first priority, separate lottery)
 - Displaced from Berkeley due to foreclosure since 2005 (one point)
 - Families with children (one point)
 - Homeless or at risk of homelessness (one point)
 - Ties to redlined areas (one point)
 - Ties to redlined areas – historical (one point)
 - Displaced from Berkeley due to eviction within the past seven years (one point); and
- Share the research that informed these recommendations with the City's reparations consultant; and
- Fund a study to document the City of Berkeley's history of discriminatory actions as well as its actions to regulate or fail to regulate discrimination in the housing market. This work should be sourced to local community organizations advancing racial justice initiatives in the community; and
- Adopt an ordinance to remove credit checks and eviction history from applications for housing.

Vote: Ayes: Calavita, Fain, Johnson, Lee-Egan, Mendonca, Potter, Sanidad, and Simon-Weisberg. Noes: None. Abstain: None. Absent: Rodriguez (unexcused).

Staff consulted with the City Clerk and determined that the HAC should sever the vote and re-vote for them as separate items on the agenda. The original vote requests three distinct actions: 1) adoption of the preference policy; 2) funding for a study to document the City of Berkeley's history of discriminatory actions; and 3) adoption of an ordinance to remove credit checks and eviction history from applications for housing.

Separating the votes will allow for adequate public notice as required by the Brown Act and allow staff to better manage the three distinct requests through the referral and budget process.

Staff also recommends a minor change to the preference policy vote following consultation with managers of the Alameda County Housing Portal. Housing Portal managers noted that conducting a separate lottery for those displaced by BART would be difficult to accomplish with current technology. Staff redrafted the recommendation to remove reference to explicit points and instead focus on the weight of each preference. The revised recommendation also clarifies the HAC's intent to provide a priority for those displaced by eminent domain for the construction of North Berkeley and Ashby BART and not necessarily BART stations in general.

The Commission does not need to vote for their original recommendation to be valid. However, staff recommends this action for a more efficient and transparent process. Recommendations for the separate motions are listed below.

Previous reports provided to the HAC on the preference policy can be found here using the links below.

February 3, 2022 meeting agenda: <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/HAC%20agenda%20PACKET%202022-02-03.pdf>

April 7, 2022 meeting agenda: <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-04-07%20HAC%20agenda%20packet.pdf>

Motion for Preference Policy:

- Adopt a policy to establish the following preferences for new affordable housing created via the City's Housing Trust Fund and Below Market Rate programs:
 - Displacement due to eminent domain for North Berkeley and Ashby BART construction
 - Displaced in Berkeley due to foreclosure since 2005
 - Families with children
 - Homeless or at risk of homelessness
 - Ties to redlined areas
 - Ties to redlined areas – historical
 - Displaced in Berkeley due to eviction within the past seven years;
- The preferences will be structured to provide applicants that qualify for the "Displacement due to eminent domain for North Berkeley and Ashby BART construction" a first priority and all remaining preferences will be equally weighted; and
- Share the research that informed these recommendations with the City's reparations consultant.

Motion for Discriminatory Actions Study:

- Fund a study to document the City of Berkeley's history of discriminatory actions as well as its actions to regulate or fail to regulate discrimination in the housing market. This work should be sourced to local community organizations advancing racial justice initiatives in the community.

Motion for Ordinance to Remove Credit Checks/Eviction History:

- Adopt an ordinance to remove credit checks and eviction history from applications for housing.