



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

**Tuesday, July 19, 2022
4:00 PM**

Committee Members:

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

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

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

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

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

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

AGENDA

Roll Call

Committee Action Items

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

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

1. Referral: Keep Innovation in Berkeley

From: Councilmember Robinson (Author), Councilmember Taplin (Co-Sponsor), Mayor Arreguin (Co-Sponsor), Councilmember Harrison (Co-Sponsor) (Item contains revised material)

Referred: June 13, 2022

Due: November 28, 2022

Recommendation: Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments, codified performance standards, and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:

1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards.
 - a. Performance standards should regulate and mitigate potential impacts on quality of life, public health, and environmental health, such as noise, odors, fumes, vibrations, dust, light pollution, hours of operation, and disposal and storage protocols for flammable, combustible, chemical, and hazardous substances.
2. Updating the "District Purpose" sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
4. Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D.
5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process

Financial Implications: Staff time

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Unscheduled Items

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

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

Unscheduled Items

3. Amending BMC Chapter 13.84 to Expand Relocation Assistance and Conflict Resolution for Tenants

From: Councilmember Taplin (Author)

Referred: February 8, 2022

Due: October 25, 2022

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

Financial Implications: Staff time.

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment

~~~~~  
Written communications addressed to the Land Use, Housing & Economic Development Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. 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.

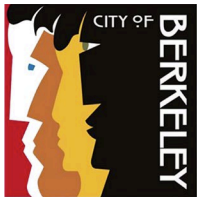
~~~~~  
I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on Thursday, July 14, 2022.

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

Communications

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



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

CONSENT CALENDAR

~~June 28~~ September 13,

2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Terry Taplin (Co-Sponsor), Mayor Jesse Arreguín (Co-Sponsor), and Councilmember Kate Harrison (Co-Sponsor)

Subject: Referral: Keep Innovation in Berkeley

RECOMMENDATION

Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments, codified performance standards, and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:

1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a Zoning Certificate/AUP; Zoning Certificate, subject to performance standards.
 - a. Performance standards should regulate and mitigate potential impacts on quality of life, public health, and environmental health, such as noise, odors, fumes, vibrations, dust, light pollution, hours of operation, and disposal and storage protocols for flammable, combustible, chemical, and hazardous substances.
- 1.2. Updating the “District Purpose” sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
- 2.3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
- 3.4. Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D.
- 4.5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.

RECOMMENDED POLICY COMMITTEE TRACK

Land Use, Housing & Economic Development Policy Committee.

BACKGROUND

The City of Berkeley has over 400 “innovation sector” businesses in tech, biotech, R&D, and other STEM industries. The 2021 Berkeley Economic Dashboard (published in Q1 2022) reported robust growth opportunities in this sector, with 10 Berkeley-based companies receiving a total of nearly \$9 million in federal and state grants for R&D.¹ 35% of Berkeley’s innovation companies develop software, 31% develop biotechnology and healthcare technologies, and 13% develop clean technologies to support environmental sustainability and address climate change. Nearly 87% of these innovation companies are relatively early stage and take advantage of the city’s coworking spaces, accelerators, and incubators.

It is critical for the City to continue efforts to encourage the growth of R&D in Berkeley. In addition to providing jobs and fueling economic development locally, innovation companies make a global impact across sectors, including in the healthcare field and the fight against climate change. Berkeley benefits from the presence of the University of California, Berkeley and the Lawrence Berkeley National Laboratory (LBNL), whose affiliates go on to found startups supported by the Berkeley Startup Cluster and accelerators or incubators like Berkeley SkyDeck or Bakar Labs.² There is a clear demand for R&D space from companies who have grown out of UC Berkeley and are seeking to build their enterprise in Berkeley, close to the talent, facilities, and entrepreneur support programs on campus. If the City’s zoning regulations do not provide sufficient opportunities for emerging growth companies, they have no choice but to leave Berkeley and settle in nearby cities that accommodate them with open arms, such as Oakland, Emeryville, San Leandro, and Alameda.

On March 22, 2022, Council adopted the first reading of a Zoning Ordinance amendment that modified the land use definition of Research and Development (R&D) in Berkeley Municipal Code 23.502.020.R.8.³ This amendment came to Council as a referral response to a March 20, 2020 referral from Mayor Arreguín and Councilmember Wengraf.

The original definition read:

Research and Development. An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities: industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.

The updated definition reads:

¹ <https://berkeleyca.gov/sites/default/files/2022-04/2022-03-22%20Item%2038%20Economic%20Dashboards%20Update.pdf>

² <https://berkeleystartupcluster.com/>

³ <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-03-22%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

Research and Development: An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping, or testing. This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

The March 2020 referral observed that the R&D definition in the BMC did not adequately reflect present-day R&D business activities. For example, the definition prohibited R&D establishments from including office space and required the inclusion of a laboratory. The referral requested that the new definition reflect evolving business practices and provide flexibility for R&D establishments to occupy spaces that meet their operating needs. Modifying the R&D definition supported the City's Strategic Plan goal of fostering a dynamic, sustainable, and locally-based economy.

Through that process, additional issues have come to light that have the effect of inhibiting innovation in Berkeley, which this referral aims to address.

Recommendation #1: Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards, Zoning Certificate/AUP.

BMC 23.204.020.A Table 23.204-1⁴ and 23.206.020.A Table 23.206-1⁵ lay out allowed land uses for each commercial and manufacturing district, respectively. Currently, R&D is permitted in three districts across the city: C-W (with an Administrative Use Permit) and MM and MU-LI (with a Zoning Certificate if under 20,000 sq. ft. and an AUP if over 20,000 sq. ft.).

Notably, the commercial districts in Southside (C-T), the southern portion of Telegraph (C-C), and the Downtown (C-DMU) do not currently allow R&D. R&D spaces close to campus would be extremely valuable to students, alumni, and others affiliated with UC Berkeley and LBNL. By allowing R&D in these districts, the City would make it easier to keep the innovation and talent that flows from the university in Berkeley.

~~Additional discussion at the Land Use, Housing & Economic Development Policy Committee, consultation with staff, and outreach to stakeholders should determine whether a Zoning Certificate or AUP is most appropriate.~~ Startups have expressed that the City's permitting process remains a challenge, particularly if the Zoning Ordinance requires an AUP. This process can take months or even years, which is problematic for R&D companies whose runway for finding a suitable space to develop proof of concept is limited by the funding they have available from early-stage investors. The timelines

⁴ <https://berkeley.municipal.codes/BMC/23.204.020>

⁵ <https://berkeley.municipal.codes/BMC/23.206.020>

associated with an AUP provide founders no concrete assurance and can jeopardize operations during the most critical time for startups.

However, noise disruption and biohazard safety are of particular concern when permitting new uses in C-T, C-C, and C-DMU due to their mixed-use residential buildings and proximity to residential districts. It is important that ~~the committee~~, staff, and the Planning Commission consider strategies for mitigating any impacts of R&D on Telegraph and Downtown Berkeley, including ~~required permits and the potential~~ use of performance standards. Performance standards, which lay out metrics and regulations that the applicant must agree to before being issued a Zoning Certificate, ~~may beare~~ an important tool to ensure conformance to the neighborhood without imposing lengthy permit approval timelines.

Recommendation #2: *Updating the “District Purpose” sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.*

The “District Purpose” sections of the Zoning Ordinance determine the purpose of each zoning district, detailing what uses are allowed, welcomed, and explicitly stated to further the City’s goals. R&D applicants need to feel confident that they will have a place in the district if they choose to locate there. In MM and MU-LI, where R&D is currently permitted, the Purpose sections do not mention R&D despite calling out the importance and belonging of similar industries, including manufacturing, industrial use, and laboratories.

Staff and the Commission should consider amending BMC 23.206.070.A and 23.206.080.A with the following language:

23.206.070 MM Mixed Manufacturing District.

- A. District Purpose. The purpose of the Mixed Manufacturing (MM) district is to:
1. Implement the West Berkeley Plan MM designation;
 2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
 3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
 4. Encourage the creation and continuation of well paid (often unionized) jobs for men and women without advanced degrees;
 5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses;

6. Allow reuse of upper story industrial space as offices to facilitate use of upper story space;
7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers; and
8. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment.

23.206.080 MU-LI Mixed Use-Light Industrial District.

A. District Purpose. The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:

1. Implement the West Berkeley Plan Light Manufacturing District designation;
2. Encourage development of a mixed use-light industrial area for a range of compatible uses;
3. Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;
4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;
5. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
6. Provide opportunities for office development when it will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock;
7. Provide the opportunity for laboratory development the development of research and development facilities in appropriate locations;
8. Support the development of businesses which contribute to the maintenance and improvement of the environment;
9. Allow on-site ancillary retail as a tool to maintain and enhance the economic viability of manufacturers in the district; and
10. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of light industrial uses.

Recommendation #3: Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.

BMC 23.322.030 details the minimum off-street parking spaces required for each use. Currently, in M-prefixed districts, R&D is not explicitly named in Table 23.322-4, meaning that it is parked under “All non-residential uses except uses listed below” at 2 spaces per 1,000 sq. ft. In contrast, laboratories are parked as 1 space per 650 sq. ft., despite R&D spaces typically accommodating a similar number of people per square foot as laboratories. This disadvantages R&D by requiring them to provide more parking

than their laboratory counterparts, which is expensive and creates incentives for employees to drive to work that run counter to the City's Climate Action Plan goals. For the purposes of consistency, R&D parking requirements should be amended to align with Laboratory parking requirements.

In C-T, off-street parking is not required, so no amendments are needed. In C-prefixed districts excluding C-T, R&D is also not listed in Table 23.322-2. It may be unclear to applicants whether R&D falls under Manufacturing (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU, 1 per 1,000 sq. ft. in C-W, and 2 per 1,000 sq. ft. in all other C-prefixed districts), or under "All non-residential uses except uses listed below," (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU and 2 per 1,000 in all other C-prefixed districts). This can create confusion for R&D companies looking to locate in C-W. Adding an R&D section here to align parking requirements with Manufacturing would improve clarity and consistency.

Staff and the Commission should consider the following additions to BMC 23.322.030 Table 23.322-2 and Table 23.322-4:

Table 23.322-2. REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

| Land Use | Required Parking Spaces |
|---|--|
| Residential Uses | |
| Accessory Dwelling Unit | See Chapter <u>23.306</u> |
| Dwellings, including Group Living Accommodations | If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required |
| Hotel, Residential | None required |
| Mixed-Use Residential (residential use only) | None required |
| Senior Congregate Housing | None required |
| Non-Residential Uses | |
| All non-residential uses except uses listed below | C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Hospital | 1 per each 4 beds plus 1 per each 3 employees |
| Library | C-DMU District: 1.5 per 1,000 sq. ft. |

| | |
|---------------------------------|---|
| | All Other Commercial Districts: 1 per 500 sq. ft. of publicly accessible floor area |
| Nursing Home | 1 per 3 employees |
| Medical Practitioners | C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 300 sq. ft. |
| Hotels, Tourist | C-DMU District: 1 per 3 guest/sleeping rooms or suites C-C, C-U, C-W Districts: 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Motels, Tourist | C-DMU District: 1 per 3 guest/sleeping rooms or suites C-C, C-U, C-W Districts: 1 per guest/sleeping room plus 1 for owner or manager [1] All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Large Vehicle Sales and Rental | C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Small Vehicle Sales and Service | C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Manufacturing | C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft [1] All Other Commercial Districts: 2 per 1,000 sq. ft. |
| <u>Research and Development</u> | <u>C-DMU District: 1.5 per 1,000 sq. ft.</u> <u>C-W District: 1 per 1,000 sq. ft [1]</u> <u>All Other Commercial Districts: 2 per 1,000 sq. ft.</u> |
| Wholesale Trade | C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Live/Work | If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |

Notes:

[1] Spaces must be on the same lot as building it serves.

Table 23.322-4. REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

| Land Use | Required Parking Spaces |
|---|---|
| Residential Uses | |
| Accessory Dwelling Unit | See Chapter <u>23.306</u> |
| Dwellings | None required |
| Group Living Accommodation | None required |
| Non-Residential Uses | |
| All non-residential uses except uses listed below | 2 per 1,000 sq. ft. |
| Art/Craft Studio | 1 per 1,000 sq. ft. |
| Community Care Facility | 1 per 2 non-resident employees |
| Food Service Establishment | 1 per 300 sq. ft. |
| Library | 1 per 500 sq. ft. of publicly accessible floor area |
| Laboratories | 1 per 650 sq. ft. |
| <u>Research and Development</u> | <u>1 per 650 sq. ft.</u> |
| Nursing Home | 1 per 5 residents, plus 1 per 3 employees |
| Medical Practitioners | One per 300 sq. ft. |
| Large Vehicle Sales and Rental | MU-LI District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay |
| Manufacturing | MU-R District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more |
| Storage, warehousing, and wholesale trade | 1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more |
| Live/Work | MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |

Notes:

[1] For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.

Recommendation #4: *Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language related to Biosafety Level (BSL) Classes 1-4 is clear and consistent with requirements in neighboring jurisdictions and other cities that support a broad range of R&D.*

BSL lab levels, ranging from BSL-1 to BSL-4, are set by the Centers for Disease Control and Prevention to protect laboratory personnel and the surrounding community. The primary risks that determine levels of containment are infectivity, severity of disease, transmissibility, and the nature of the work conducted.⁶

Chart of Biosafety Levels⁷

| Biosafety Level | BSL-1 | BSL-2 | BSL-3 | BSL-4 |
|------------------------|--|---|--|---|
| Description | <ul style="list-style-type: none"> No Containment Defined organisms Unlikely to cause disease | <ul style="list-style-type: none"> Containment Moderate Risk Disease of varying severity | <ul style="list-style-type: none"> High Containment Aerosol Transmission Serious/Potentially lethal disease | <ul style="list-style-type: none"> Max Containment "Exotic," High-Risk Agents Life-threatening disease |
| Sample Organisms | E.Coli | Influenza, HIV, Lyme Disease | Tuberculosis | Ebola Virus |
| Pathogen Type | Agents that present minimal potential hazard to personnel & the environment. | Agents associated with human disease & pose moderate hazards to personnel & the environment. | Indigenous or exotic agents, agents that present a potential for aerosol transmission, & agents causing serious or potentially lethal disease. | Dangerous & exotic agents that pose a high risk of aerosol-transmitted laboratory infections & life-threatening disease. |
| Autoclave Requirements | None | None | Pass-thru autoclave with Bioseal required in laboratory room. | Pass-thru autoclave with Bioseal required in laboratory room. |

⁶ <https://www.cdc.gov/training/quicklearns/biosafety/>

⁷ <https://consteril.com/biosafety-levels-difference/>

BMC 23.206.080.B.5⁸ reads:

Commercial Physical or Biological Laboratories. Commercial physical or biological laboratories using Class 3 organisms are not permitted in the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.

This section is the only place in the BMC where organism classes, presumably referring to BSL, are mentioned other than in the defined terms. Staff and the Commission should conduct a review of nearby jurisdictions, including Oakland, San Francisco, South San Francisco, Emeryville, Alameda, San Leandro, and Fremont, as well as other cities across the country that support a broad range of R&D, such as Cambridge, MA. This research should provide insight into best practices for BSL zoning regulations that keep the surrounding neighborhood safe while allowing biological labs where they make sense, with federally-required protocols and locally-required performance standards or other conditions in place.

Staff and the Commission should return to Council with amendments to this BMC section and other relevant sections that provide clarity for potential applicants, ensure that Biosafety Levels are clearly stated and defined in accordance with the most recent CDC guidelines, and bring the City of Berkeley in alignment with other jurisdictions.

Recommendation #5: *Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.*

The City Manager and/or Planning Commission may choose to return to Council with additional recommendations that would serve to encourage R&D in Berkeley, in addition to the ones suggested in this item.

FINANCIAL IMPLICATIONS

Staff time.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable negative environmental impacts associated with this action.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Angie Chen, Legislative Assistant

⁸ <https://berkeley.municipal.codes/BMC/23.206.080>



CONSENT CALENDAR
June 28, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Terry Taplin (Co-Sponsor), and Mayor Jesse Arreguín (Co-Sponsor), Councilmember Harrison (Co-Sponsor)

Subject: Referral: Keep Innovation in Berkeley

RECOMMENDATION

Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:

1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a **Zoning Certificate/AUP**.
2. Updating the "District Purpose" sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
4. Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D.
5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.

RECOMMENDED POLICY COMMITTEE TRACK

Land Use, Housing & Economic Development Policy Committee.

BACKGROUND

The City of Berkeley has over 400 "innovation sector" businesses in tech, biotech, R&D, and other STEM industries. The 2021 Berkeley Economic Dashboard (published in Q1 2022) reported robust growth opportunities in this sector, with 10 Berkeley-based

companies receiving a total of nearly \$9 million in federal and state grants for R&D.¹ 35% of Berkeley's innovation companies develop software, 31% develop biotechnology and healthcare technologies, and 13% develop clean technologies to support environmental sustainability and address climate change. Nearly 87% of these innovation companies are relatively early stage and take advantage of the city's coworking spaces, accelerators, and incubators.

It is critical for the City to continue efforts to encourage the growth of R&D in Berkeley. In addition to providing jobs and fueling economic development locally, innovation companies make a global impact across sectors, including in the healthcare field and the fight against climate change. Berkeley benefits from the presence of the University of California, Berkeley and the Lawrence Berkeley National Laboratory (LBNL), whose affiliates go on to found startups supported by the Berkeley Startup Cluster and accelerators or incubators like Berkeley SkyDeck or Bakar Labs.² There is a clear demand for R&D space from companies who have grown out of UC Berkeley and are seeking to build their enterprise in Berkeley, close to the talent, facilities, and entrepreneur support programs on campus. If the City's zoning regulations do not provide sufficient opportunities for emerging growth companies, they have no choice but to leave Berkeley and settle in nearby cities that accommodate them with open arms, such as Oakland, Emeryville, San Leandro, and Alameda.

On March 22, 2022, Council adopted the first reading of a Zoning Ordinance amendment that modified the land use definition of Research and Development (R&D) in Berkeley Municipal Code 23.502.020.R.8.³ This amendment came to Council as a referral response to a March 20, 2020 referral from Mayor Arreguín and Councilmember Wengraf.

The original definition read:

Research and Development. An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities: industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.

The updated definition reads:

Research and Development: An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping, or testing. This may include labs,

¹ <https://berkeleyca.gov/sites/default/files/2022-04/2022-03-22%20Item%2038%20Economic%20Dashboards%20Update.pdf>

² <https://berkeleystartupcluster.com/>

³ <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-03-22%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

The March 2020 referral observed that the R&D definition in the BMC did not adequately reflect present-day R&D business activities. For example, the definition prohibited R&D establishments from including office space and required the inclusion of a laboratory. The referral requested that the new definition reflect evolving business practices and provide flexibility for R&D establishments to occupy spaces that meet their operating needs. Modifying the R&D definition supported the City's Strategic Plan goal of fostering a dynamic, sustainable, and locally-based economy.

Through that process, additional issues have come to light that have the effect of inhibiting innovation in Berkeley, which this referral aims to address.

Recommendation #1: Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a [Zoning Certificate/AUP].

BMC 23.204.020.A Table 23.204-1⁴ and 23.206.020.A Table 23.206-1⁵ lay out allowed land uses for each commercial and manufacturing district, respectively. Currently, R&D is permitted in three districts across the city: C-W (with an Administrative Use Permit) and MM and MU-LI (with a Zoning Certificate if under 20,000 sq. ft. and an AUP if over 20,000 sq. ft.).

Notably, the commercial districts in Southside (C-T), the southern portion of Telegraph (C-C), and the Downtown (C-DMU) do not currently allow R&D. R&D spaces close to campus would be extremely valuable to students, alumni, and others affiliated with UC Berkeley and LBNL. By allowing R&D in these districts, the City would make it easier to keep the innovation and talent that flows from the university in Berkeley.

Additional discussion at the Land Use, Housing & Economic Development Policy Committee, consultation with staff, and outreach to stakeholders should determine whether a Zoning Certificate or AUP is most appropriate. Startups have expressed that the City's permitting process remains a challenge, particularly if the Zoning Ordinance requires an AUP. This process can take months or even years, which is problematic for R&D companies whose runway for finding a suitable space to develop proof of concept is limited by the funding they have available from early-stage investors. The timelines associated with an AUP provide founders no concrete assurance and can jeopardize operations during the most critical time for startups.

⁴ <https://berkeley.municipal.codes/BMC/23.204.020>

⁵ <https://berkeley.municipal.codes/BMC/23.206.020>

However, noise disruption and biohazard safety are of particular concern when permitting new uses in C-T, C-C, and C-DMU due to their mixed-use residential buildings and proximity to residential districts. It is important that the committee, staff, and the Planning Commission consider strategies for mitigating any impacts of R&D on Telegraph and Downtown Berkeley, including required permits and the potential use of performance standards. Performance standards, which lay out metrics and regulations that the applicant must agree to before being issued a Zoning Certificate, may be an important tool to ensure conformance to the neighborhood without imposing lengthy permit approval timelines.

Recommendation #2: Updating the “District Purpose” sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.

The “District Purpose” sections of the Zoning Ordinance determine the purpose of each zoning district, detailing what uses are allowed, welcomed, and explicitly stated to further the City’s goals. R&D applicants need to feel confident that they will have a place in the district if they choose to locate there. In MM and MU-LI, where R&D is currently permitted, the Purpose sections do not mention R&D despite calling out the importance and belonging of similar industries, including manufacturing, industrial use, and laboratories.

Staff and the Commission should consider amending BMC 23.206.070.A and 23.206.080.A with the following language:

23.206.070 MM Mixed Manufacturing District.

- A. District Purpose. The purpose of the Mixed Manufacturing (MM) district is to:
1. Implement the West Berkeley Plan MM designation;
 2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
 3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
 4. Encourage the creation and continuation of well paid (often unionized) jobs for men and women without advanced degrees;
 5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses;
 6. Allow reuse of upper story industrial space as offices to facilitate use of upper story space;

7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers; and
8. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment.

23.206.080 MU-LI Mixed Use-Light Industrial District.

A. District Purpose. The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:

1. Implement the West Berkeley Plan Light Manufacturing District designation;
2. Encourage development of a mixed use-light industrial area for a range of compatible uses;
3. Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;
4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;
5. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
6. Provide opportunities for office development when it will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock;
7. Provide the opportunity for ~~laboratory development~~ the development of research and development facilities in appropriate locations;
8. Support the development of businesses which contribute to the maintenance and improvement of the environment;
9. Allow on-site ancillary retail as a tool to maintain and enhance the economic viability of manufacturers in the district; and
10. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of light industrial uses.

Recommendation #3: Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.

BMC 23.322.030 details the minimum off-street parking spaces required for each use. Currently, in M-prefixed districts, R&D is not explicitly named in Table 23.322-4, meaning that it is parked under “All non-residential uses except uses listed below” at 2 spaces per 1,000 sq. ft. In contrast, laboratories are parked as 1 space per 650 sq. ft., despite R&D spaces typically accommodating a similar number of people per square foot as laboratories. This disadvantages R&D by requiring them to provide more parking than their laboratory counterparts, which is expensive and creates incentives for employees to drive to work that run counter to the City’s Climate Action Plan goals. For

the purposes of consistency, R&D parking requirements should be amended to align with Laboratory parking requirements.

In C-T, off-street parking is not required, so no amendments are needed. In C-prefixed districts excluding C-T, R&D is also not listed in Table 23.322-2. It may be unclear to applicants whether R&D falls under Manufacturing (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU, 1 per 1,000 sq. ft. in C-W, and 2 per 1,000 sq. ft. in all other C-prefixed districts), or under “All non-residential uses except uses listed below,” (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU and 2 per 1,000 in all other C-prefixed districts). This can create confusion for R&D companies looking to locate in C-W. Adding an R&D section here to align parking requirements with Manufacturing would improve clarity and consistency.

Staff and the Commission should consider the following additions to BMC 23.322.030 Table 23.322-2 and Table 23.322-4:

Table 23.322-2. REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

| Land Use | Required Parking Spaces |
|---|--|
| Residential Uses | |
| Accessory Dwelling Unit | See Chapter 23.306 |
| Dwellings, including Group Living Accommodations | If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required |
| Hotel, Residential | None required |
| Mixed-Use Residential (residential use only) | None required |
| Senior Congregate Housing | None required |
| Non-Residential Uses | |
| All non-residential uses except uses listed below | C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Hospital | 1 per each 4 beds plus 1 per each 3 employees |
| Library | C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 500 sq. ft. of publicly accessible floor area |

| | |
|---------------------------------|---|
| Nursing Home | 1 per 3 employees |
| Medical Practitioners | C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 300 sq. ft. |
| Hotels, Tourist | C-DMU District: 1 per 3 guest/sleeping rooms or suites C-C, C-U, C-W Districts: 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Motels, Tourist | C-DMU District: 1 per 3 guest/sleeping rooms or suites C-C, C-U, C-W Districts: 1 per guest/sleeping room plus 1 for owner or manager [1] All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Large Vehicle Sales and Rental | C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Small Vehicle Sales and Service | C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Manufacturing | C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft [1] All Other Commercial Districts: 2 per 1,000 sq. ft. |
| <u>Research and Development</u> | <u>C-DMU District: 1.5 per 1,000 sq. ft.</u> <u>C-W District: 1 per 1,000 sq. ft [1]</u> <u>All Other Commercial Districts: 2 per 1,000 sq. ft.</u> |
| Wholesale Trade | C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Live/Work | If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |

Notes:

[1] Spaces must be on the same lot as building it serves.

Table 23.322-4. REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

| Land Use | Required Parking Spaces |
|----------|-------------------------|
|----------|-------------------------|

| | |
|---|---|
| Residential Uses | |
| Accessory Dwelling Unit | See Chapter <u>23.306</u> |
| Dwellings | None required |
| Group Living Accommodation | None required |
| Non-Residential Uses | |
| All non-residential uses except uses listed below | 2 per 1,000 sq. ft. |
| Art/Craft Studio | 1 per 1,000 sq. ft. |
| Community Care Facility | 1 per 2 non-resident employees |
| Food Service Establishment | 1 per 300 sq. ft. |
| Library | 1 per 500 sq. ft. of publicly accessible floor area |
| Laboratories | 1 per 650 sq. ft. |
| <u>Research and Development</u> | <u>1 per 650 sq. ft.</u> |
| Nursing Home | 1 per 5 residents, plus 1 per 3 employees |
| Medical Practitioners | One per 300 sq. ft. |
| Large Vehicle Sales and Rental | MU-LI District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay |
| Manufacturing | MU-R District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more |
| Storage, warehousing, and wholesale trade | 1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more |
| Live/Work | MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |

Notes:

[1] For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.

Recommendation #4: *Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language related to Biosafety Level (BSL) Classes 1-4 is clear and consistent with requirements in neighboring jurisdictions and other cities that support a broad range of R&D.*

BSL lab levels, ranging from BSL-1 to BSL-4, are set by the Centers for Disease Control and Prevention to protect laboratory personnel and the surrounding community. The primary risks that determine levels of containment are infectivity, severity of disease, transmissibility, and the nature of the work conducted.⁶

Chart of Biosafety Levels⁷

| Biosafety Level | BSL-1 | BSL-2 | BSL-3 | BSL-4 |
|------------------------|--|---|--|---|
| Description | <ul style="list-style-type: none"> · No Containment · Defined organisms · Unlikely to cause disease | <ul style="list-style-type: none"> · Containment · Moderate Risk · Disease of varying severity | <ul style="list-style-type: none"> · High Containment · Aerosol Transmission · Serious/Potentially lethal disease | <ul style="list-style-type: none"> · Max Containment · "Exotic," High-Risk Agents · Life-threatening disease |
| Sample Organisms | E.Coli | Influenza, HIV, Lyme Disease | Tuberculosis | Ebola Virus |
| Pathogen Type | Agents that present minimal potential hazard to personnel & the environment. | Agents associated with human disease & pose moderate hazards to personnel & the environment. | Indigenous or exotic agents, agents that present a potential for aerosol transmission, & agents causing serious or potentially lethal disease. | Dangerous & exotic agents that pose a high risk of aerosol-transmitted laboratory infections & life-threatening disease. |
| Autoclave Requirements | None | None | Pass-thru autoclave with Bioseal required in laboratory room. | Pass-thru autoclave with Bioseal required in laboratory room. |

BMC 23.206.080.B.5⁸ reads:

⁶ <https://www.cdc.gov/training/quicklearns/biosafety/>

⁷ <https://consteril.com/biosafety-levels-difference/>

⁸ <https://berkeley.municipal.codes/BMC/23.206.080>

Commercial Physical or Biological Laboratories. Commercial physical or biological laboratories using Class 3 organisms are not permitted in the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.

This section is the only place in the BMC where organism classes, presumably referring to BSL, are mentioned other than in the defined terms. Staff and the Commission should conduct a review of nearby jurisdictions, including Oakland, San Francisco, South San Francisco, Emeryville, Alameda, San Leandro, and Fremont, as well as other cities across the country that support a broad range of R&D, such as Cambridge, MA. This research should provide insight into best practices for BSL zoning regulations that keep the surrounding neighborhood safe while allowing biological labs where they make sense, with federally-required protocols and locally-required performance standards or other conditions in place.

Staff and the Commission should return to Council with amendments to this BMC section and other relevant sections that provide clarity for potential applicants, ensure that Biosafety Levels are clearly stated and defined in accordance with the most recent CDC guidelines, and bring the City of Berkeley in alignment with other jurisdictions.

Recommendation #5: *Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.*

The City Manager and/or Planning Commission may choose to return to Council with additional recommendations that would serve to encourage R&D in Berkeley, in addition to the ones suggested in this item.

FINANCIAL IMPLICATIONS

Staff time.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable negative environmental impacts associated with this action.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Angie Chen, Legislative Assistant



Kate Harrison
Councilmember District 4

ACTION CALENDAR
July 28, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Kate Harrison
Subject: Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

RECOMMENDATION

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

BACKGROUND

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

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

1) Regulatory burden shifted to the Host Platform

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

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

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

2) Hosts can have only one residence

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

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

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

4) Closing 14/30 day loophole

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

5) Remedies

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

Resolution in Support of Senate Bill 54 and Assembly Bill 1080:
The California Circular Economy and Plastic Pollution Reduction Act

ACTION CALENDAR
July 28, 2020

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

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

CONTACT PERSON

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

ATTACHMENTS

Ordinance

100Chapter 23C.22 Short-Term Rentals

23C.22.010 Purposes

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

- A. To prevent long-term rental units from being replaced with Short-Term Rentals and protect affordable housing units from conversion.
- B. To preserve and protect neighborhood character and livability from nuisances that are often associated with Short-Term Rentals.
- C. To generate City revenue to share City infrastructure cost and other public expenditures by operation of Short-Term Rentals under established standards.
- D. To provide alternative forms of lodging. (Ord. 7521-NS § 1 (part), 2017)

23C.22.020 Applicability

- A. Short-Term Rentals shall be allowed in residential uses in the following zoning districts: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.
- B. Short-Term Rentals shall be prohibited in below market rate (BMR) units. BMR units for Short-Term Rental purposes refer to Dwelling Units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income-qualified.
- C. A property containing a Dwelling Unit protected by a No-Fault Eviction cannot operate Short-Term Rentals for five years from eviction unless it is a single-family home that has been vacated for purposes of Owner Occupancy in compliance with the Rent Stabilization Ordinance.
- D. Short-Term Rentals are only allowed in a single, Accessory Building and in single existing Accessory Dwelling Units (ADUs), or a Golden Duplex unless such ADUs are or have within the last 10 (ten) years preceding the effective date of this ordinance been used for long term rentals, as defined by the requirements of the Rent Stabilization Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date this Ordinance first became effective. (Ord. 7521-NS § 1 (part), 2017)

23C.22.030 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23C.22.040 Permit And License Required

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

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

23C.22.050 Operating Standards and Requirements

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

A. Proof of Host Residency.

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

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

B. STR Duration and Required Residency Timeframes

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

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

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

D. Notification.

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

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

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

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

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

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

I. Housing Platform Responsibilities.

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

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

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

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

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

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

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

23C.22.060 Remedies

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

B. Violation of any provision of this Chapter is punishable as set forth in Chapters [1.20](#) and [1.28](#).

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

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

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

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

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

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

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

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

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

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



CONSENT CALENDAR
Feb. 22, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

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

RECOMMENDATION

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

1. Section 13.84.010 – Delete language referring to “Relocation Services”.
2. Section 13.84.020 – Create definition of Emergency Relocation to establish process and expectation for owner to provide relocation money for emergency events.
3. Section 13.84.030 – 1) Change title to clarify that tenants are entitled to payments when Relocation applies, rather than “Services or Assistance”. 2) Clarify the type of determination notices that parties would receive from City officials.
4. Section 13.84.040 – Create different procedures for “Planned Relocation” and “Emergency Relocation”. Move “Owner Responsibilities” content to other sections.
5. Section 13.84.050 – 1) Change title to clarify that it is about procedure and not payments. 2) Add Notice and Order to “Determination Notice”. 3) Move Section B and C to Appeals Section.
6. Section 13.84.060 – 1) Change title to clarify Relocation Prompted by owner. 2) Include language to indicate that Relocation can also be requested by owner when there is no building permit application. 3) Clarify in Section E that the “Owner must provide” proof of notice.
7. Section 13.84.070.A – 1) Include Moving and Storage to Short term Relocation entitlements if applicable to the situation. 2) Section 13.84.070.A.3 regarding a tenant's ability to pay costs up front. 3) 13.84.070.A.4.b – meal allowances. 4) 13.84.070.B.2.b – reimbursement for moving and storage costs changed to pay up front. 5) 13.84.070.B.3 – Changing how Rent Differential is calculated 6) Section 13.84.070.B.4 – Consider specifying different utility costs, such as disconnection and reconnection. 7) 13.84.070.N1 – Consider meals Per Diem rates for what is appropriate for the region. 8) Add Section to speak to replacement unit reservation costs and potential cancellation costs if move back notice is given earlier than expected.
8. Section 13.84.080 – Remove.

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

FINANCIAL IMPLICATIONS

Staff time.

CURRENT SITUATION AND ITS EFFECTS

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

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

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

BACKGROUND

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

1. Updating the cost of pet boarding and motel costs more frequently, without the need for Council action.
2. Annual reports to the Housing Advisory Commission on number of tenants requiring relocation payments.
3. Enforcing relocation payments via tax lien on property owner.
4. Funding for Berkeley Rent Board to enforce Relocation Ordinance.

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

1. Considerations for tenants with disabilities or high sensitivities to environmental conditions.
2. Considerations for hazardous or environmental but not structural conditions in building/unit; assessment of state licensed 3rd party reports and medical doctor assessments by City of Berkeley Health Officer or designee.
3. Stronger evaluation of substandard conditions from Building Official which would require relocation when there is:
 - a. Lack of bathroom/toilette facilities for more than 24 hours
 - b. Lack of water for more than 24 hours
 - c. Lack of heating for more than 72 hours

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Terry Taplin Council District 2 510-981-7120

Attachments:

- 1: Ordinance

Berkeley Municipal Code Chapter 13.84
RELOCATION SERVICES AND PAYMENTS FOR RESIDENTIAL
TENANT HOUSEHOLDS

Sections:

Section 13.84.010 Purpose

Section 13.84.020 Definitions

Section 13.84.025 Notice

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

Section 13.84.040 ~~Owner responsibilities~~

Section 13.84.050 Relocation ~~payment and appeals~~ Procedures for Code Enforcement Activity and Emergency Situations

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

Section 13.84.070 Relocation and other payments

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

Section 13.84.090 Move-back option

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

Section 13.84.110 Private right of action

Section 13.84.120 Severability

Section 13.84.010 Purpose.

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

Section 13.84.020 Definitions

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

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

Section 13.84.025 Notice

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

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

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

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

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

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

Section 13.84.040 Owner responsibilities

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

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

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

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

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

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

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

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

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

- B. The Owner shall be responsible for providing Relocation payments directly to the Tenant Household required to relocate pursuant to Section 13.84.060 and 13.84.070 of this Chapter. The Owner is also responsible for complying with the Berkeley Municipal Code Section 13.76.130 (Rent Stabilization and Eviction for Good Cause Ordinance).
- C. Planned Relocation: If the Owner determines that Relocation is necessary due to planned Voluntary Code Compliance work, the Owner shall provide a written Notice of Temporary Relocation to any affected Tenant Households at least 30 days in advance of the required Relocation Such notice shall summarize the repairs to be undertaken and the estimated duration of Relocation. Any such notice which the Owner serves upon a Tenant Household shall refer to and shall be accompanied by a copy of this Chapter and the City's Request for Relocation Payment form. Nothing in this Section shall relieve the Owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.
- D. Emergency Relocation: In the case of an "Emergency Relocation" where the Building Official or Fire Marshall determines that the "Residential Unit" or "Room" is unsafe and should not be occupied, the Owner is required to initiate short term Relocation to the Tenant Household within 72 hours from the official determination that the unit or room is uninhabitable. If the displacement of the tenant or household lasts for more than 29 days, the parties may adjust to Long-Term Relocation Payments or seek to find alternative arrangements that are acceptable for both parties.
- E. The Owner shall notify the Tenant Household when repairs are completed and permit the Tenant Household to reoccupy the Residential Unit or Room as per Section 13.84.090. The Tenant Household shall retain all rights of tenancy that existed prior to Relocation, except as set forth in Section 13.84.070.G.2.
- ~~F. Any affected Tenant Household or Owner who disputes a determination made by the Building Official or Fire Marshal under subsection A of this section, may file a written request for a hearing by the Housing Advisory Commission. Such request for hearing must be filed within ten (10) days of the date of the Notice from the Building Official or Fire Marshall.~~
- ~~G. Appeals of determinations by the Building Official or Fire Marshall of the necessity to Relocate due to an imminent threat to life and safety shall not delay enforcement of the vacation ordered by the Building Official or Fire Marshall.~~
- H. The determination by the Building Official or Fire Marshal that a Tenant Household is required to Relocate pursuant to this Chapter shall not relieve the Owner of his/her obligation to provide a Notice of Temporary Relocation pursuant to Section 13.84.0540. Any such Notice which the Owner serves upon a Tenant Household shall refer to and shall be accompanied by a copy of this Chapter, and the City's Request for Relocation Payment form. Nothing in this Section shall relieve the Owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.
- I. Each Tenant Household which has been served with a Notice of Temporary Relocation from the Owner indicating that Relocation is required in accordance with the Notice of Violation shall complete a Request for Relocation Payment form to calculate the amount of the initial payment to which the Household is entitled pursuant to the Berkeley Municipal Code Section 13.84.070. The Tenant Household shall serve the completed

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

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

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

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

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

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

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

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

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

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

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

Section 13.84.070 Relocation and other payments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The dislocation allowance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~A. The City may provide payment required by Section 13.84.070 to Tenant Households in situations where the Owner fails or refuses to pay for required Relocation costs. The City shall recover from the Owner all costs incurred as a result of making such payments. In order for the City to consider such payments, a request must be made by the Tenant Household to the City Manager or his or her designee within twenty (20) days from the Owner's failure or refusal to make the required payments as required in Sections 13.84.050.F and 13.84.060.G.~~

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

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

Section 13.84.090 Move-back option

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

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

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

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

[A Tenant Household shall be entitled to reimbursement for non-refundable costs](#)

[associated with securing replacement housing based on the owner's initial estimate of the duration of displacement.](#)

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

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

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

1. ~~Appeals Related to Code Enforcement Activity.~~

a. ~~Any affected Tenant Household or Owner who disputes a determination made by the Building Official or Fire Marshal that relocation is either required or not required under this chapter under subsection A of this section, may file a written request for a hearing by the City Hearing Officer in accordance with Berkeley Municipal Code Section 19.44 only after attempting to resolve the issue through conflict resolution through the Rent Stabilization Board or any other appropriate entity. Such request for hearing must be filed within ten (10) days of the date of the Notice from the Building Official or Fire Marshall, or ten (10) days after conflict resolution attempts have been exhausted.~~

b. ~~Appeals of determinations by the Building Official or Fire Marshall of the necessity to relocate due to an imminent threat to life and safety shall not delay enforcement of the order to vacate the premises by the Building Official or Fire Marshall.~~

2. ~~Appeals Related to Voluntary Code Compliance~~

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

- Commented [5]:** Get input from Rent Board Staff.
- Commented [6R6]:** FYI, Matt Siegel and Jay K. were part of the committee that developed the recommendations.
- Commented [7R6]:** Make this section for all appeals. Can we make conflict resolution required BEFORE an appeal can be entertained?

4. If the Owner disagrees with the Tenant Household's claim for Relocation payments, and such disagreement cannot be resolved through conflict resolution or mediation, then the Owner may file a written request for a hearing by the City Hearing Officer~~Housing Advisory Commission~~ as to the amount of the claim, or his or her responsibility for Relocation assistance pursuant to this Chapter. Such a request must be filed within five-ten (510) business days of the conclusion of mediation ~~or within ten (10) days of the Owner's receipt of the Tenant Household's claim of Relocation payments as set forth in Sections 13.84.050.E or 13.84.060.F, whichever comes later.~~

5. If the Tenant Household disagrees with the Owner as to the necessity to Relocate, and such disagreement cannot be resolved through conflict resolution or mediation, the Tenant Household may request in writing that the Building Official make a determination. Such request must be filed within five-ten (510) business days of the conclusion of mediation, ~~or within ten (10) days of the Tenant Household's receipt of the Relocation notice in Section 13.84.060.C, whichever comes later.~~ The Building Official shall determine whether Relocation is necessary and the Owner shall serve all affected Tenant Households with a copy of the Building Official's determination. This decision shall be final.

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

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

Section 13.84.110 Private right of action

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

Section 13.84.120 Severability

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

