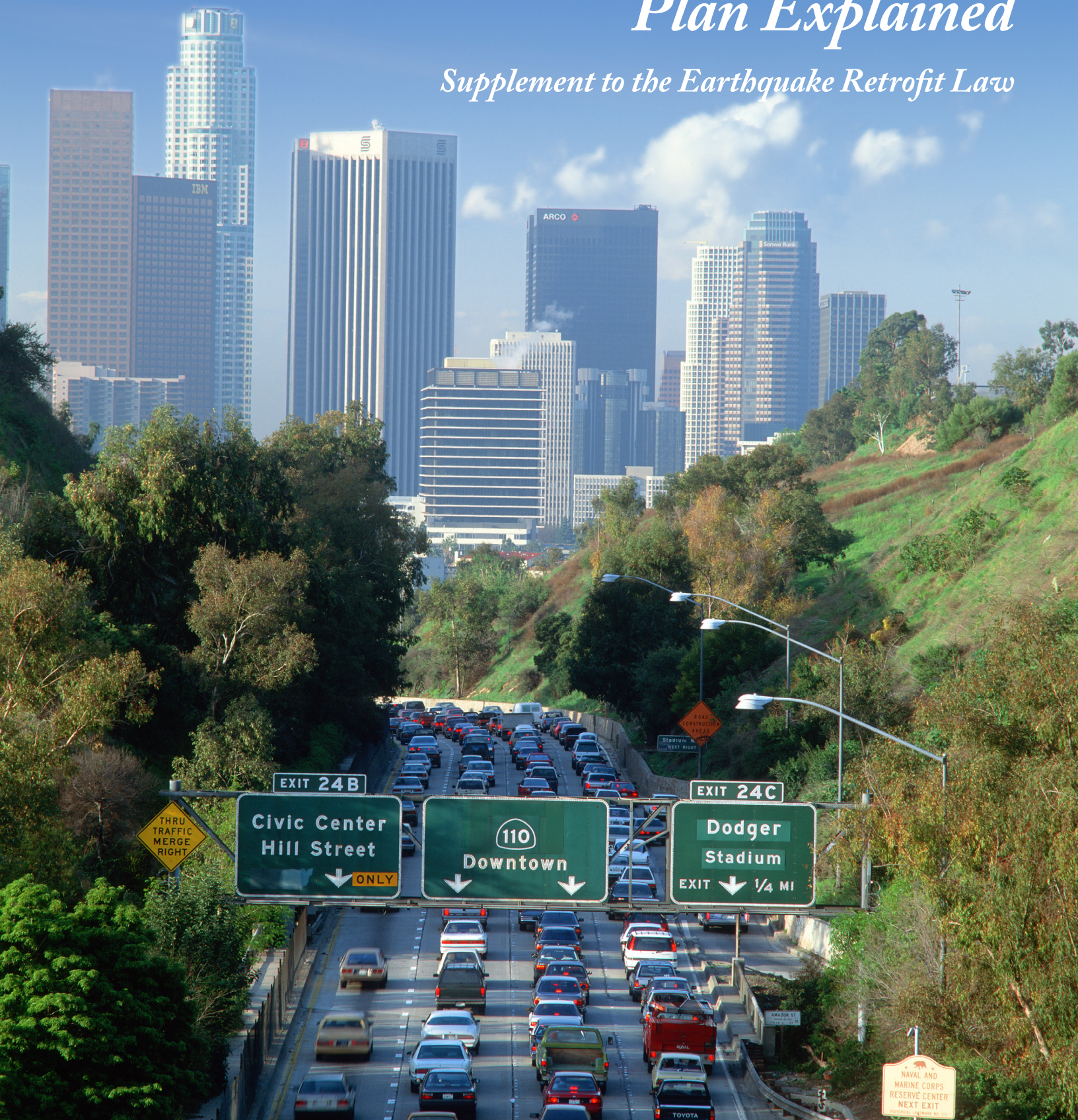


# *The Tenant Habitability Plan Explained*

*Supplement to the Earthquake Retrofit Law*



*Peter Strauss*  
Partner

O: 747.444.3303  
M: 310.993.7600  
[peter@iconicinvo.com](mailto:peter@iconicinvo.com)



# THE TENANT HABITABILITY PLAN EXPLAINED

## TABLE OF CONTENTS

<b>Introduction</b>	3
<b>Overview</b>	4
<b>Tenant Habitability Plan Ordinance</b>	8

# INTRODUCTION

In October 2015 the Los Angeles City Council unanimously approved one of the nation's toughest retrofitting ordinances, mandating seismic upgrades aimed at improving earthquake safety in over 14,000 buildings throughout the city.

This guide is designed to help property owners understand and navigate the complex process of compliance with the Tenant Habitability Plan, which is a core requirement that must be fulfilled prior to retrofitting work being approved or permitted. We believe every property owner should be informed.





# OVERVIEW

## WHAT IS THE TENANT HABITABILITY PLAN?

*The Tenant Habitability Plan is a new requirement that has been imposed jointly between the Los Angeles Housing & Community Investment Department and the Department of Building & Safety to ensure property owner compliance with all housing regulations when conducting construction and upgrades. Most property owners are unaware of this new requirement, which can be lengthy and complicated.*

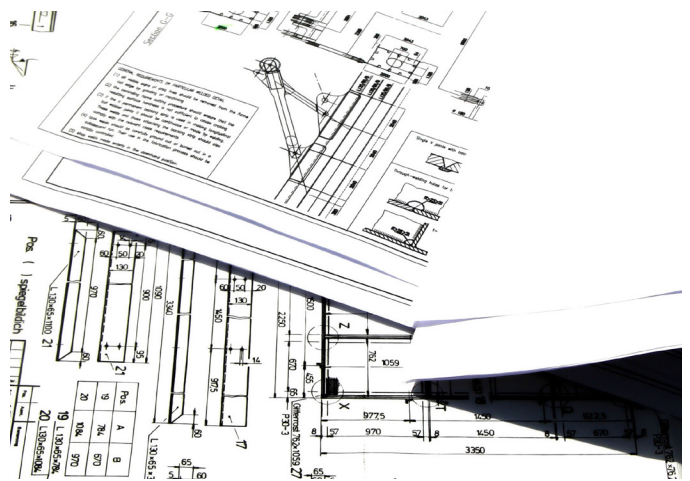
The Tenant Habitability Plan was originally adopted by the City of Los Angeles to encourage owners of apartment properties to renovate and update their properties. A key benefit of the Plan was that property owners could perform improvements and pass through a portion of the associated costs to the tenants. The Tenant Habitability Plan is of great value for multifamily property owners who elect to update and refurbish properties at their own discretion, but not necessarily for owners under the burden of mandatory compliance with ordinances such as the soft-story retrofitting requirements.

## WHAT IS THE PROCESS?

### STEP 1: PREPARING & SERVING OF NOTICE OF WORK

Property owners must provide every tenant with:

- Estimated start and end dates of proposed construction/renovation work for which the Tenant Habitability Plan is being prepared for;
- Comprehensive details of the work to be performed. This needs to describe the potential disturbance and impact on each tenant and household;  
*Property owners must provide an individual plan for every unit in their building.*
- Detailed plans outlining the temporary or permanent relocation plans for each individual tenant. Owners must outline where tenants will be relocated to, per diem amounts to be provided, efforts owners will undertake to assist with relocation to and from the property;
- Detailed contact information for the Los Angeles Housing Department and Habitability Department;
- Notice of their rights to reoccupy their units under the same terms as prior to their relocation;
- Notice that they have the right to appeal the Tenant Habitability Plan with the Los Angeles Housing Department within 15 Days of being served by Landlord.





# OVERVIEW



## Key Items to Consider:

- Owners of properties built prior to 1979 must obtain a comprehensive lead-based paint and asbestos report from a licensed contractor. Testing generally includes interior walls, doorways, windows, and ceilings. In addition, all exterior stucco and roofing is also tested. All asbestos and lead based paint must be properly treated and abated prior to commencement of retrofitting.
- The Notice of Work must be served to all tenants 60 Days prior to commencement of retrofit work.
- Tenants do not have to agree to the owner's plan and may appeal the Tenant Habitability Plan with the Los Angeles Housing Department.

## STEP 2 PREPARING THE TENANT HABITABILITY PLAN FOR DEPARTMENT OF HOUSING REVIEW

### Application package must:

- Clearly identify the property owner and the general contractor and sub-contractors responsible for the construction and retrofitting work;
- Clearly identify all affected tenants, including their names, current rent, date of their last rent increase, and phone numbers. The Housing Department will call to verify compliance with notice timelines and tenants' acceptance of Tenant Habitability Plan;
- Provide a detailed description of all aspects of the work involved, including estimates of the anticipated time-frame and cost of the entire project. Application must break down the work to be completed, estimated time-frame of the work, and anticipated costs for each affected unit;
- Clearly identify the impact of the work to each individual tenant. This must include expected disturbance resulting from noise, utility interruption, potential exposure to hazardous material, potential interruption of fire safety systems, potential inaccessibility to all or portions of the building and common areas, and possible disruption of any other tenant services;
- Clearly identify mitigation measures that will be adopted to minimize disturbances and effects to tenants. This may include the adoption of work procedures that will allow tenants to remain in their units and/or the relocation of tenants.
- Identify the potential impact of the work on the personal property of the tenants. This must include how

# OVERVIEW

personal belongings and furniture will be protected from dust, debris, and hazardous materials, and protection of personal property from theft or damage; and,

- Provide the Housing Department proof that the tenants have been served the “Notice of Work” in a timely manner.

## STEP 3 REVIEW AND APPROVAL OF PLAN BY DEPARTMENT OF HOUSING

The Department of Building and Safety will not issue permits for retrofitting work prior to receiving approval from the Housing Department that the Tenant Habitability Plan has been submitted and approved.

- Within five days of submission, the Housing Department will determine whether the Tenant Habitability plan submitted by the property owner meets the minimum standards.
- Approval is subject to the owner having a zero-balance for code enforcement and rent registration fees.
- The Housing Department will contact each tenant and verify their approval of the Plan, and ensure timely receipt of notices.
- Following review, the Housing Department may provide owners with corrections. Upon completion of the corrections, the Plan may be re-submitted for additional review and approval.

### Key Items to Consider:

- Tenants may appeal the “Notice of Work” provided by the owner. Tenants can appeal the description of the impact to their unit or services during the time of the work, relocation plan, or per diem offered by landlord.
- The Housing Department will not approve the Tenant Habitability Plan and allow for issuance of building permits until all of the tenants are in agreement of the plan.

### ADDITIONAL FACTS:

1. **Permanent Relocation:** In the event the construction/retrofitting work will impact the affected units for 30+ days, tenants have the right to voluntarily terminate tenancy and demand relocation assistance from the property owner within 15 days of service of the Notice of Work. This means that owners may be liable for relocation assistance of up to \$19,300 per unit for qualifying tenants.



2. **Temporary Relocation:** Property owners must pay for all temporary relocation costs, even if those costs exceed the actual rent paid by the tenant. In addition, property owners must also pay for all costs associated with the tenant moving and returning to his/her unit.



# RENT STABILIZATION ORDINANCE

TENANT HABITABILITY PROGRAM SUPPLEMENT - EFFECTIVE MAY, 2005

## **SEC. 152.02. DEFINITIONS.**

*(Added by Ord. No. 176,544, Eff. 5/2/05.)*

**The following words and phrases, whenever used in this article, shall be construed as defined in this section. Words and phrases not defined here shall be construed as defined in Sections 12.03, 151.02 and 162.02 of this Code, if defined in those sections.**

**Notice of Primary Renovation Work.** Written notice, served by the landlord upon a tenant or tenant household at least 60 days, or as otherwise modified pursuant to Section 152.04, prior to the commencement of any Primary Renovation Work or Related Work and using a form established by the Department, advising the tenant of forthcoming Primary Renovation Work and Related Work, the impact of such work on the tenant, and measures the landlord will take to mitigate the impact on the tenant. (Amended by Ord. No. 183,893, Eff. 11/22/15.)

**Temporary Relocation.** The moving of a tenant from the tenant's permanent residence to habitable temporary housing accommodations in accordance with a Tenant Habitability Plan. The temporary relocation of a tenant from his/her permanent place of residence shall not constitute the voluntary vacation of the unit and shall not terminate the status and rights of a tenant, including the right to reoccupy the same unit, upon the completion of the Primary Renovation Work and any Related Work, subject to any rent adjustments as may be authorized under this chapter.

## **SEC. 152.03. PROCEDURE FOR UNDERTAKING PRIMARY RENOVATION WORK.**

### **A. Building Permits.**

1. No landlord shall undertake Primary Renovation Work without first obtaining a permit, pursuant to Sections 91.106, 92.0129, 92.0132, 93.0201, 94.103, or 95.112.2 of this Code. This requirement applies to all Primary Renovation Work, regardless of whether such work is eligible for a rent adjustment under any of the provisions of Section 151.07 A.1. of this Code and regardless of which provision of that subdivision, if any, is intended to be used as a ground for seeking a rent adjustment following the completion of the work.

2. The Department shall clear a landlord's application for a permit for Primary Renovation Work if both of the following conditions have been met:

a. The landlord has submitted a Tenant Habitability Plan which, in accordance with Subsection C. of this section, the Department finds to adequately mitigate the impact of Primary Renovation Work and any Related Work upon affected tenants; and

b. The landlord has submitted a declaration documenting service to affected tenants of both a Notice of Primary Renovation Work and a copy of the non-confidential portions of the Tenant Habitability Plan.

**B. Tenant Habitability Plan.** At a minimum, a Tenant Habitability Plan shall provide the following information, together with any other information the Department deems necessary to ensure that the impact of Primary Renovation Work and any Related Work upon affected tenants is adequately mitigated:

1. Identification of the landlord, the general contractor responsible

for the Primary Renovation Work, and any specialized contractor responsible for hazardous material abatement, including but not limited to lead-based paint and asbestos.

2. Identification of all affected tenants including the current rent each tenant pays and the date of each tenant's last rent increase. In accordance with California Civil Code Sec. 1798 et seq., information regarding tenants shall be considered confidential.

3. Description of the scope of work covering the Primary Renovation Work and any Related Work. Such description shall address the overall work to be undertaken on all affected units and common areas, the specific work to be undertaken on each affected unit, an estimate of the total project cost and time, and an estimate of the cost and time of renovation for each affected unit.

4. Identification of the impact of the Primary Renovation Work and Related Work on the habitability of affected rental units, including a discussion of impact severity and duration with regard to noise, utility interruption, exposure to hazardous materials, interruption of fire safety systems, inaccessibility of all or portions of each affected rental unit, and disruption of other tenant services.

5. Identification of the mitigation measures that will be adopted to ensure that tenants are not required to occupy an untenable dwelling, as defined in California Civil Code Section 1941.1, outside of the hours of 8:00 am through 5:00 pm, Monday through Friday, and are not exposed at any time to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos. Such measures may include the adoption of work procedures that allow a tenant to remain on-site and/or the temporary relocation of tenants.

6. Identification of the impact of the Primary Renovation Work and Related Work on the personal property of affected tenants, including work areas which must be cleared of furnishings and other tenant property, and the exposure of tenant property to theft or damage from hazards related to work or storage.

7. Identification of the mitigation measures that will be adopted to secure and protect tenant property from reasonably foreseeable damage or loss.

### **C. Plan Acceptance.**

1. The Department shall make a determination regarding the adequacy of a landlord's Tenant Habitability Plan within five working days of the Department's receipt of the plan for review. The Department shall accept those plans which meet the requirements of Subsection B. of this section and which it determines, with reference to the standards set forth in California Civil Code Section 1941.1 and in accordance with any regulations or guidelines adopted by the Commission, will adequately mitigate the impacts of Primary Renovation Work and any Related Work upon tenants. The Tenant Habitability Plan may allow for the temporary disruption of major systems during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, without requiring the relocation of tenants in order to adequately mitigate the impacts upon the affected tenants. However tenants should not be exposed at any time to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos.

2. The Department's acceptance of a Tenant Habitability Plan shall be subject to the landlord having no outstanding balances due for rent registration or code enforcement fees.

3. The Department shall provide landlords with written indications of deficiencies which must be addressed whenever a Tenant Habitability Plan is determined to be inadequate. A landlord may submit

# RENT STABILIZATION ORDINANCE

TENANT HABITABILITY PROGRAM SUPPLEMENT - EFFECTIVE MAY, 2005

an amended plan in order to correct identified deficiencies.

4. Landlords and tenants may appeal the Department's determination regarding a Tenant Habitability Plan to a hearing officer. The appeal shall be made in writing, upon appropriate forms provided by the Department, and shall specify the grounds for appeal. The appeal shall be filed within 15 calendar days of the service of the Department's determination, as required by Section 152.04 of this Code and shall be accompanied by the payment of an administrative fee of \$35.00. The requested hearing shall be held within 30 calendar days of the filing of the appeal following the procedures set forth in Section 151.07 A.3. of this Code. The hearing officer shall issue a written decision within ten calendar days of the hearing on the appeal, with a copy of the decision served on the landlord and the tenants by first class mail, postage prepaid, or in person.

D. Notice of Primary Renovation Work. Notice of Primary Renovation Work shall be written in the language in which the original lease was negotiated and shall provide the following information:

1. The estimated start and completion dates of any Primary Renovation Work and Related Work associated with a Tenant Habitability Plan accepted by the Department.
2. A description of the Primary Renovation Work and Related Work to be performed and how it will impact that particular tenant or household.
3. The details of temporary relocation, if necessitated by the Primary Renovation Work, and associated tenant rights under this article.
4. Instructions that tenants with questions should consult the landlord, the Department, or the Department's designee.
5. Notice of a tenant's right to reoccupy the units under the existing terms of tenancy upon completion of Primary Renovation Work, subject to rent adjustments as authorized under this chapter.
6. Notice that the tenant may appeal the Department's acceptance of a Tenant Habitability Plan in cases where the tenant does not agree with the landlord regarding the necessity for the tenant to either be temporarily displaced or remain in place during Primary Renovation Work, provided such request is submitted within 15 days of the tenant's receipt of the Notice of Primary Renovation Work.

## **SEC. 152.04. NOTICE AND SERVICE REQUIREMENTS.**

After the Department accepts the Tenant Habitability Plan, a landlord shall serve a copy of the Tenant Habitability Plan, Notice of Primary Renovation Work, a summary of the provisions of this article and, if applicable, a permanent relocation agreement form on any tenant affected by the Primary Renovation Work. Service of these items shall be provided in the manner prescribed by Section 1162 of the California Code of Civil Procedure and at least 60 days prior to the date on which the Primary Renovation Work and any Related Work is scheduled to begin.

For purposes of the Mandatory Earthquake Reduction requirements in LAMC Sections 91.9301, et seq., and 91.9501, et seq., and as authorized by Section 152.08 of this article, the Commission shall have the authority by regulation to modify the service and notice requirements. (Added by Ord. No. 183,893, Eff. 11/22/15.)

## **SEC. 152.05. PERMANENT RELOCATION ASSISTANCE.**

A. If the Primary Renovation Work and any Related Work will impact the tenability of a rental unit for 30 days or more, any tenant affected by the Primary Renovation Work and Related Work shall have the option to voluntarily terminate the tenancy in exchange for permanent relocation assistance pursuant to Section 151.09 G. of this Code and the return of any security deposit that cannot be retained by the landlord under applicable law. If the Primary Renovation Work and Related Work continues for 30 days longer than the projected completion date set forth in the later of either the Tenant Habitability Plan or any modifications thereto accepted by the Department, the tenant's option to accept permanent relocation assistance shall be renewed. (Amended by Ord. No. 183,893, Eff. 11/22/15.)

B. A tenant may request to receive permanent relocation assistance within 15 days of service of the Tenant Habitability Plan. The tenant must inform the landlord of the decision to select permanent relocation by mailing or personally delivering a completed Permanent Relocation Agreement form to the landlord or agents thereof. Thereafter, the landlord shall have 15 days to provide the tenant with relocation assistance in the manner and for the amounts set forth in Section 151.09 G. of this Code.

C. Nothing in this section relieves the landlord from the obligation to provide relocation assistance pursuant to an administrative agency action or any other provision of federal, state or local law. If a tenant is entitled to monetary relocation benefits pursuant thereto, such monetary benefits shall operate as credit against any other monetary benefits required to be paid to the tenant under this section.

D. For purposes of the Mandatory Earthquake Reduction requirements in LAMC Sections 91.9301, et seq., and 91.9501, et seq., and as authorized by Section 152.08 of this article, the Commission shall have the authority by regulation to extend the time provisions by up to the maximum of an additional 180 days. (Amended by Ord. No. 183,893, Eff. 11/22/15.)

## **SEC. 152.06. TEMPORARY RELOCATION AND TEMPORARY REPLACEMENT HOUSING.**

A. The landlord shall indicate in its Tenant Habitability Plan whether the temporary relocation of one or more tenant households is necessary. Pursuant to Section 152.03 of this Code, the Department independently may determine whether temporary relocation is necessary in conjunction with its review of the Tenant Habitability Plan. The Department may also require the temporary relocation of a tenant at any time during the project if the Department determines temporary relocation is necessary to ensure the health or safety of the tenant.

B. The temporary relocation of a tenant pursuant to this article shall not constitute the voluntary vacating of that rental unit and shall not terminate the status and rights of a tenant, including the right to reoccupy the tenant's rental unit upon the completion of the Primary Renovation Work and any Related Work.

C. A tenant who is temporarily relocated as a result of Prima-



# RENT STABILIZATION ORDINANCE

TENANT HABITABILITY PROGRAM SUPPLEMENT - EFFECTIVE MAY, 2005

ry Renovation Work shall continue to pay rent in the manner prescribed by any lease provision or accepted in the course of business between the landlord and the tenant.

D. A landlord shall pay for all temporary housing accommodation costs and any costs related to relocating the tenant to temporary housing accommodations, regardless of whether those costs exceed rent paid by the tenant. The landlord shall also pay any costs related to returning the tenant to his/her unit, if applicable. The Commission may adopt guidelines or regulations regarding the payment of moving costs.

E. A landlord may choose to place a tenant's rent and any other required payments in an escrow account. All costs of opening and maintaining the escrow account shall be borne by the landlord. Monies deposited into the escrow account shall be distributed in accordance with guidelines or regulations established by the Commission. The cost of opening an escrow account is not recoverable under Section 151.07 A.1.d. of this Code. (Amended by Ord. No. 177,103, Eff. 12/18/05.)

F. A landlord must temporarily relocate a tenant to habitable temporary housing accommodations if the Primary Renovation Work and any Related Work will make the rental unit an untenable dwelling, as defined in California Civil Code Section 1941.1, outside of the hours of 8:00 am through 5:00 pm, Monday through Friday, or will expose the tenant at any time to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos.

1. Temporary Replacement Housing Accommodations for 30 or more consecutive days. If the temporary relocation lasts 30 or more consecutive days, the landlord shall make available comparable housing either within the same building or in another building. For purposes of this section, a replacement unit shall be comparable to the existing unit if both units are comparable in size, number of bedrooms, accessibility, proximity to services and institutions upon which the displaced tenant depends, amenities, including allowance for pets, if necessary, and, if the tenant desires, location within five miles of the rental unit. The landlord and tenant may agree that the tenant will occupy a non-comparable replacement unit provided that the tenant is compensated for any reduction in services.

2. Temporary Replacement Housing Accommodations for fewer than 30 consecutive days. If the temporary relocation lasts less than 30 consecutive days, the landlord shall make available temporary housing that, at a minimum, provides habitable replacement accommodations within the same building or rental complex, in a hotel or motel, or in other external rental housing. The Commission may adopt guidelines or regulations regarding temporary housing. If the temporary housing is in a hotel, motel or other external rental housing, it shall be located no greater than two miles from the tenant's rental unit, unless no such accommodation is available, and contain standard amenities such as a telephone.

3. Per Diem Payment. A landlord and tenant may mutually agree to allow the landlord to pay the tenant a per diem amount for each day of temporary relocation in lieu of providing temporary replacement housing. The agreement shall be in writing and signed by the landlord and tenant and shall contain the tenant's acknowledgment that he/she received notice of his/her rights under this section and that the tenant understands his/her rights. The landlord shall provide a copy of this agreement to the Department.

G. The landlord shall provide written notice, before the tenant is temporarily displaced, advising the tenant of the right to reoccupy the unit under the existing terms of tenancy once the Primary Renovation Work and any Related Work is completed. Unless the landlord provides the temporary replacement housing, the tenant shall provide the landlord with the address to be used for future notifications by the landlord. When the date on which the unit will be available for reoccupancy is known, or as soon as possible thereafter, the landlord shall provide written notice to the tenant by personal delivery, or registered or certified mail, and shall provide a copy of that notice to the Department. If the tenant was temporarily relocated for over 30 days and has a separate tenancy agreement with a third party housing provider, the landlord shall give the tenant a minimum of 30 days written notice to reoccupy. In all other cases, the landlord shall give the tenant a minimum of seven days written notice to reoccupy, unless the landlord gave the tenant written notice of the date of reoccupancy prior to the start of temporary relocation.

## SEC. 152.07. REMEDIES.

A. A landlord who fails to abide by the terms of an accepted Tenant Habitability Plan shall be denied individual rent adjustments under Section 151.07 A.1.(d) of this Code, absent extenuating circumstances.

B. In any action by a landlord to recover possession of a rental unit, the tenant may raise as an affirmative defense the failure of the landlord to comply with any provisions contained in this article.

C. Any person who willfully or knowingly with the intent to deceive, makes a false statement or representation, or knowingly fails to disclose a material fact in any plan or notice required under this article, or in any declaration, application, hearing or appeal permitted under this article, including oral or written evidence presented in support thereof, shall be guilty of a misdemeanor.

Any person convicted of a misdemeanor under the provisions of this chapter shall be punished by a fine of not more than \$1,000.00 or by imprisonment in the County Jail for a period of not more than six months or both. Each violation of any provision of this chapter and each day during which such violation is committed, or continues, shall constitute a separate offense.

D. Any person who fails to provide relocation assistance pursuant to Section 152.05 of this Code shall be liable in a civil action to the person to whom such assistance is due for damages in the amount of the unpaid relocation assistance, together with reasonable attorney's fees and costs as determined by the court.

E. Any person who breaches any duty or obligation set forth in Section 152.06 of this Code shall be liable in a civil action by any person, organization or entity, for all actual damages, special damages in an amount not to exceed the greater of twice the amount of actual damages or \$5,000, and reasonable attorney's fees and costs as determined by the court. Damages of three times the amount of the actual damages may be awarded in a civil action for willful failure to comply with the payment obligations, to provide safe, decent and sanitary temporary replacement housing, or to allow a tenant to reoccupy a rental unit once the primary work is completed.

# RENT STABILIZATION ORDINANCE

TENANT HABITABILITY PROGRAM SUPPLEMENT - EFFECTIVE MAY, 2005

F. Any agreement, whether written or oral, waiving any of the provisions contained in this article shall be void as contrary to public policy.

G. Nothing in this article shall be construed to deprive a person of due process rights guaranteed by law, including, but not limited to, a right to appeal the Department's determination regarding a Tenant Habitability Plan to a hearing officer.

H. The remedies provided by this article are in addition to any other legal or equitable remedies and are not intended to be exclusive.

## **SEC. 152.08. AUTHORITY OF COMMISSION TO REGULATE.**

A. The Commission shall be responsible for carrying out the provisions of this article and shall have the authority to issue orders and promulgate policies, rules and regulations to effectuate the purposes of this article. All such rules and regulations shall be published once in a daily newspaper of general circulation in the City of Los Angeles, and shall take effect upon such publication. The Commission may make such studies and investigations, conduct such hearings, and obtain such information as it deems necessary to promulgate, administer and enforce any regulation, rule or order adopted pursuant to this article.

B. In order to provide sufficient time for owners to comply with the Mandatory Earthquake Hazard Reduction requirements in LAMC Sections 91.9301, et seq., and 91.9501, et seq., the Commission may do the following:

1. Modify the service and notice requirements set forth in Section 152.04 this article; and/or
2. Grant, upon request by owner, an extension of up to 180 days beyond the original project completion date without triggering the permanent relocation assistance requirements set forth at Section 151.09 G. of this Code. Prior to granting an owner's request to extend project completion dates, the Commission shall notify the Department of Building and Safety of the request. If work performed pursuant to Mandatory Earthquake Hazard Reduction Requirements is not completed by the original project completion date or by a subsequent date authorized by RAC, any tenant, subtenant, lessee, sublessee, or other person(s) entitled to use and/or occupy the building or residential unit affected by such work shall have the option to voluntarily terminate the tenancy in exchange for permanent relocation assistance, pursuant to Section 151.09 G., and the return of any security deposit that cannot be retained by the owner under applicable law.

C. Before modifying service and notice requirements and/or granting time extensions under its authority in subparagraph B. of this section, the Commission shall find that the modifications and/or time extensions are necessary to carry out the purpose of the Mandatory Earthquake Hazard Reduction requirements of this Code.