



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: October 3, 2013

To: Honorable Mayor and City Council

From: Nestor Otazu, Community Preservation Manager

Subject: Request by Councilmember Krasne for Discussion Regarding the Regulation of Air Conditioning in Multi-Family Apartment Buildings as it Relates to Tenants' Legal Rights and Habitability and Update on Issues Identified at 350 N. Crescent Drive

Attachments:

1. California Civil Code Section 1942
2. Notice of Violation
3. 2009 International Property Maintenance Code, Section 603-1
4. Beverly Hills Municipal Code, Section 4-5-702 and Chapter 6 Rent Stabilization

INTRODUCTION

Several tenants of the apartment building located at 350 N. Crescent Drive registered complaints to the City Council related to ongoing inoperable building mechanical air conditioning equipment. As a result, at the City Council meeting on September 10, 2013, Councilmember Krasne requested further information and discussion pertaining to tenants' legal rights as it relates to air conditioning systems in multi-family apartment buildings provided as amenity.

Additionally, at the City Council meeting on September 24, 2013, several complaints from tenants were registered regarding several units in the building not being properly maintained.

BACKGROUND

Handling and Processing of Complaints for Multi-Family Apartment Buildings

The City's code enforcement staff responds to housing complaints related to property, building and zoning violations. Tenants of multi-family apartment buildings typically

contact code enforcement to report complaints and violations relating to specific building maintenance and substandard building conditions.

In cases involving larger multi-family apartment buildings, the BHMC Section 4-4-301 requires that minimum property owner contact information or an onsite responsible person (resident manager) be available to receive and adequately address tenant complaints and concerns. For example, multi-family apartment buildings containing between 4 and 15 units must have posted on the premises contact information of the property owner or person in charge of the building. Multi-family apartment buildings with more than 16 units must have a manager or other responsible person residing on the premises.

As tenant complaints are received by staff, the tenant is asked a variety of questions aimed to determine the nature of the call and the severity of the alleged condition. The tenant is also asked whether there was prior communication with the property owner or manager reporting of the concern and if so, to provide written copy(s) of the request to code enforcement for further investigation. If no communication was attempted, the tenant is encouraged to contact and discuss the concern with the property owner or manager. Assisting and guiding the tenants through this process has proven to reduce the need to file a complaint and many times preserves the relationship between tenant and landlord.

In the event code enforcement responds to a tenant request for a site inspection and confirms and documents one or more violations, enforcement action is then initiated through the issuance of one of several Notices. Typically, a Notice of Violation is issued and is either personally served or mailed to the property owner of record and, if applicable any other responsible persons. The Notice of Violation includes the following:

- Date of violation
- Names of responsible property owner/persons
- Description of the violation
- BHMC or BHMC adopted code violated
- Corrective action needed
- Compliance date

Following the compliance date, a follow up site inspection is conducted to verify that full compliance was achieved. Partial or non-compliance may result in the issuance of a Final Notice of Violation. Failure to comply with the Final Notice of Violation may result in referring the matter to the City Prosecutor for further enforcement, potentially leading to filing a criminal complaint in Superior Court.

UPDATE TO EQUIPMENT REPAIRS AND SUBSTANDARD COMPLAINTS

Upon learning of the complaints received at 350 N. Crescent Drive, code enforcement performed inspections and verified the inoperable building air conditioning with the tenants. Subsequently, city staff contacted and met with the property owner and their contractors to discuss compliance requirements. The property owner directed their contractor to immediately conduct a comprehensive inspection and perform repairs in various common building areas. Following extended tests, the contractor, with the guidance of the equipment manufacturer, replaced both air conditioning compressor units and recommended replacement of other related electrical equipment. Both compressors were ordered and installed under the guidance and oversight of the equipment manufacturer representative. The property owner advised the City that the

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major repair to the building air conditioning equipment was completed on September 23, 2013.

Staff verified the system was operating and providing limited conditioned air to various units, but not adequately to all of the units in the building. As a result, code enforcement issued the property owner a Notice of Violation on September 24, 2013 requesting that each unit have the mechanical air conditioning equipment restored to its proper operating condition.

Additionally, at the City Council meeting on September 24, 2013, it was reported by a tenant representative that 12 of the 44 units had substandard building conditions. On September 25, 2013, staff contacted each of the 12 tenants to arrange for an onsite inspection to verify the reported conditions.

In response to complaints received, staff requested the assistance of the County of Los Angeles Public Health Department to assist the City with a joint inspection of each unit to address all tenant concerns related to substandard building conditions.

DISCUSSION

The City of Beverly Hills has adopted several building and housing codes and laws aimed at providing Beverly Hills tenants a safe and healthy living environment in multi-family apartment buildings. In conjunction with local and state building codes and laws, tenants are provided further protection through the administration of County laws promulgated by the County of Los Angeles Public Health. In addition, the Beverly Hills Municipal Code (BHMC), Section 4-5-702 identifies the reduction of housing services and provides tenants with civil remedies in the event housing services are significantly reduced. The combination of local, county and state laws and codes provide tenants with protection related to the construction, remodeling and repair standards of buildings and dwelling units.

Related Codes

Through its building and housing codes, the City of Beverly Hills regulates building equipment, which includes building service equipment and building facilities including mechanical, electrical and plumbing systems. In addition, to ensure tenant safety and enjoyment, such codes require that such building systems be maintained. The housing codes are designed to define and identify the level in which a specific condition in a dwelling unit becomes sub-standard or uninhabitable for tenant occupancy.

Today, many apartment buildings employ the use of built-in air conditioning systems either as part of the original building design and construction or as a retro-fit after original construction of the building. In either case, the State of California as well as the City of Beverly Hills requires that plans be submitted and the necessary building and trade permits be obtained to ensure the proper application and compliance of codes are followed to ensure safe and compliant standards are met.

Currently, both State and local Codes regulate the maintenance of existing building service equipment including built in air conditioning equipment. Regulation of this equipment requires that it be maintained in a safe working condition, and shall be capable of performing the intended function. A verified violation of either technical or maintenance codes may result in the city taking enforcement action to correct the violation. Such enforcement action typically involves the verification and identification of the violation through a site inspection, issuance of a written Stop Work Order or Notice

of Violation citing the violation, applicable code section and establishes a compliance date. In this particular case, Code Enforcement immediately contacted the property owner who responded by contacting his contractor to inspect, service and provide necessary equipment repairs.

Currently, Codes do not provide specific language pertinent to the degree of chilled air temperature a system must produce and the time in which a unit would be required to cycle on to begin cooling or off to cease cooling. Air conditioning systems are not intended as a substitute for required exchange air ventilation, which complies with Code by either a mechanical means, and/or by operable windows.

Tenant Remedies through the Rent Stabilization Ordinance

The City of Beverly Hills Rent Stabilization Ordinance applies to tenants who occupy a lawful dwelling unit of a multi-family apartment building for which there is a valid existing apartment rental agreement. The City of Beverly Hills Rent Stabilization Ordinance provides regulation for certain tenants' when housing services are reduced. The Ordinance further classifies tenants into one of two categories; BHMC Section 4-5-102(g) defines a tenant (commonly referred to as a Chapter 5 tenant) as a tenant who originally moved in at an initial monthly rent amount of \$600.00 or less. Conversely, a Chapter 6 tenant is defined as one who initially began their tenancy at any amount above \$600.00 per month.

Chapter 5 Tenant Remedies

The BHMC Section 4-5-202 defines housing services as "*All services connected with the use or occupancy of an apartment unit, including, but not limited to, repairs, replacement, maintenance, painting, light, heat, water, elevator service, laundry facilities and privileges, janitor service, refuse removal, furnishings, telephone, off street parking, and any other benefits, privileges, or facilities*".

In addition to the State of California Civil Code remedies, the BHMC Section 4-5-702 states it is unlawful for a landlord to reduce housing services with the intent or the purpose of circumventing the code. A violation of this code is deemed an increase in rent and subject to the provisions and tenant remedies prescribed in BHMC 4-5-705.

Chapter 6 Tenant Remedies

The BHMC does not specifically address reduction of housing services in relation to tenant remedies. The State of California Civil Code, applicable to both Chapter 5 and Chapter 6 tenants, does provide several remedies available for the tenant to address in requesting repairs to be made. The tenant has the following options available only after proper notification is made to the property owner as described in the Civil Code:

- The "Repair and Deduct" Remedy allows a tenant to deduct money from the rent, up to the amount of one month's rent, to pay for repair of defects in the unit. This remedy covers substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability.
- The "Abandonment" Remedy allows a tenant to abandon (move out of) a defective rental unit. This remedy may be used where defects would cost more than one month's rent.

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- The "Rent Withholding" Remedy allows a tenant to withhold (stop paying) some or all of the rent if repairs are not made to serious defects that violate the implied warranty of habitability. In order for a tenant to withhold rent, the defects or repairs must be more serious than would justify use of the "repair and deduct" and "abandonment" remedies.

Other Jurisdictions

Research was conducted to determine whether other jurisdictions required air conditioning mechanical equipment as a habitable requirement in local codes. The cities of Palm Springs, Desert Hot Springs, San Dimas, Los Angeles and Santa Monica were researched and confirmed not to have codes pertaining to mechanical air conditioning related to habitability requirements.

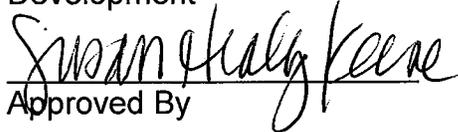
FISCAL IMPACT

None

RECOMMENDATION

Staff seeks direction from the City Council as to how to proceed forward.

Susan Healy Keene
Director of Community
Development


Approved By

Nestor Otazu,
Community Preservation Manager


Approved By

Attachment 1

CALIFORNIA CIVIL CODE SECTION 1942

1942. (a) If within a reasonable time after written or oral notice to the landlord or his agent, as defined in subdivision (a) of Section 1962, of dilapidations rendering the premises untenable which the landlord ought to repair, the landlord neglects to do so, the tenant may repair the same himself where the cost of such repairs does not require an expenditure more than one month's rent of the premises and deduct the expenses of such repairs from the rent when due, or the tenant may vacate the premises, in which case the tenant shall be discharged from further payment of rent, or performance of other conditions as of the date of vacating the premises. This remedy shall not be available to the tenant more than twice in any 12-month period.

(b) For the purposes of this section, if a tenant acts to repair and deduct after the 30th day following notice, he is presumed to have acted after a reasonable time. The presumption established by this subdivision is a rebuttable presumption affecting the burden of producing evidence and shall not be construed to prevent a tenant from repairing and deducting after a shorter notice if all the circumstances require shorter notice.

(c) The tenant's remedy under subdivision (a) shall not be available if the condition was caused by the violation of Section 1929 or 1941.2.

(d) The remedy provided by this section is in addition to any other remedy provided by this chapter, the rental agreement, or other applicable statutory or common law.

1942.1. Any agreement by a lessee of a dwelling waiving or modifying his rights under Section 1941 or 1942 shall be void as contrary to public policy with respect to any condition which renders the premises untenable, except that the lessor and the lessee may agree that the lessee shall undertake to improve, repair or maintain all or stipulated portions of the dwelling as part of the consideration for rental.

The lessor and lessee may, if an agreement is in writing, set forth the provisions of Sections 1941 to 1942.1, inclusive, and provide that any controversy relating to a condition of the premises claimed to make them untenable may by application of either party be submitted to arbitration, pursuant to the provisions of Title 9 (commencing with Section 1280), Part 3 of the Code of Civil Procedure, and that the costs of such arbitration shall be apportioned by the arbitrator between the parties.

1942.2. A tenant who has made a payment to a utility pursuant to Section 777, 777.1, 10009, 10009.1, 12822, 12822.1, 16481, or 16481.1 of the Public Utilities Code may deduct the payment from the rent as provided in that section.

1942.3. (a) In any unlawful detainer action by the landlord to recover possession from a tenant, a rebuttable presumption affecting the burden of producing evidence that the landlord has breached the habitability requirements in Section 1941 is created if all of the following conditions exist:

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(1) The dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1, is deemed and declared substandard pursuant to Section 17920.3 of the Health and Safety Code, or contains lead hazards as defined in Section 17920.10 of the Health and Safety Code.

(2) A public officer or employee who is responsible for the enforcement of any housing law has notified the landlord, or an agent of the landlord, in a written notice issued after inspection of the premises which informs the landlord of his or her obligation to abate the nuisance or repair the substandard or unsafe conditions identified under the authority described in paragraph (1).

(3) The conditions have existed and have not been abated 60 days beyond the date of issuance of the notice specified in paragraph (2) and the delay is without good cause.

(4) The conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2.

(b) The presumption specified in subdivision (a) does not arise unless all of the conditions set forth therein are proven, but failure to so establish the presumption shall not otherwise affect the right of the tenant to raise and pursue any defense based on the landlord's breach of the implied warranty of habitability.

(c) The presumption provided in this section shall apply only to rental agreements or leases entered into or renewed on or after January 1, 1986.

1942.4. (a) A landlord of a dwelling may not demand rent, collect rent, issue a notice of a rent increase, or issue a three-day notice to pay rent or quit pursuant to subdivision (2) of Section 1161 of the Code of Civil Procedure, if all of the following conditions exist prior to the landlord's demand or notice:

(1) The dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1 or violates Section 17920.10 of the Health and Safety Code, or is deemed and declared substandard as set forth in Section 17920.3 of the Health and Safety Code because conditions listed in that section exist to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants of the dwelling.

(2) A public officer or employee who is responsible for the enforcement of any housing law, after inspecting the premises, has notified the landlord or the landlord's agent in writing of his or her obligations to abate the nuisance or repair the substandard conditions.

(3) The conditions have existed and have not been abated 35 days beyond the date of service of the notice specified in paragraph (2) and the delay is without good cause. For purposes of this subdivision, service shall be complete at the time of deposit in the United States mail.

(4) The conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2.

(b) (1) A landlord who violates this section is liable to the tenant or lessee for the actual damages sustained by the tenant or lessee and special damages of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000).

(2) The prevailing party shall be entitled to recovery of reasonable attorney's fees and costs of the suit in an amount fixed by the court.

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(c) Any court that awards damages under this section may also order the landlord to abate any nuisance at the rental dwelling and to repair any substandard conditions of the rental dwelling, as defined in Section 1941.1, which significantly or materially affect the health or safety of the occupants of the rental dwelling and are uncorrected. If the court orders repairs or corrections, or both, the court's jurisdiction continues over the matter for the purpose of ensuring compliance.

(d) The tenant or lessee shall be under no obligation to undertake any other remedy prior to exercising his or her rights under this section.

(e) Any action under this section may be maintained in small claims court if the claim does not exceed the jurisdictional limit of that court.

(f) The remedy provided by this section may be utilized in addition to any other remedy provided by this chapter, the rental agreement, lease, or other applicable statutory or common law. Nothing in this section shall require any landlord to comply with this section if he or she pursues his or her rights pursuant to Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

1942.5. (a) If the lessor retaliates against the lessee because of the exercise by the lessee of his rights under this chapter or because of his complaint to an appropriate agency as to tenantability of a dwelling, and if the lessee of a dwelling is not in default as to the payment of his rent, the lessor may not recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days of any of the following:

(1) After the date upon which the lessee, in good faith, has given notice pursuant to Section 1942, or has made an oral complaint to the lessor regarding tenantability.

(2) After the date upon which the lessee, in good faith, has filed a written complaint, or an oral complaint which is registered or otherwise recorded in writing, with an appropriate agency, of which the lessor has notice, for the purpose of obtaining correction of a condition relating to tenantability.

(3) After the date of an inspection or issuance of a citation, resulting from a complaint described in paragraph (2) of which the lessor did not have notice.

(4) After the filing of appropriate documents commencing a judicial or arbitration proceeding involving the issue of tenantability.

(5) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenantability is determined adversely to the lessor.

In each instance, the 180-day period shall run from the latest applicable date referred to in paragraphs (1) to (5), inclusive.

(b) A lessee may not invoke subdivision (a) more than once in any 12-month period.

(c) It is unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of those acts, for the purpose of retaliating against the lessee because he or she has lawfully organized or participated in a lessees' association or an

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organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law. In an action brought by or against the lessee pursuant to this subdivision, the lessee shall bear the burden of producing evidence that the lessor's conduct was, in fact, retaliatory.

(d) Nothing in this section shall be construed as limiting in any way the exercise by the lessor of his or her rights under any lease or agreement or any law pertaining to the hiring of property or his or her right to do any of the acts described in subdivision (a) or (c) for any lawful cause. Any waiver by a lessee of his or her rights under this section is void as contrary to public policy.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a lessor may recover possession of a dwelling and do any of the other acts described in subdivision (a) within the period or periods prescribed therein, or within subdivision (c), if the notice of termination, rent increase, or other act, and any pleading or statement of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to recover possession, increase rent, or do any of the other acts described in subdivision (a) or (c). If the statement is controverted, the lessor shall establish its truth at the trial or other hearing.

(f) Any lessor or agent of a lessor who violates this section shall be liable to the lessee in a civil action for all of the following:

(1) The actual damages sustained by the lessee.

(2) Punitive damages in an amount of not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) for each retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect to that act.

(g) In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.

(h) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

1942.6. Any person entering onto residential real property, upon the invitation of an occupant, during reasonable hours or because of emergency circumstances, for the purpose of providing information regarding tenants' rights or to participate in a lessees' association or association of tenants or an association that advocates tenants' rights shall not be liable in any criminal or civil action for trespass.

The Legislature finds and declares that this section is declaratory of existing law. Nothing in this section shall be construed to enlarge or diminish the rights of any person under existing law.

1942.7. (a) A person or corporation that occupies, owns, manages, or provides services in connection with any real property, including the individual's or corporation's agents or successors in interest, and that allows an animal on the premises, shall not do any of the following:

(1) Advertise, through any means, the availability of real

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property for occupancy in a manner designed to discourage application for occupancy of that real property because an applicant's animal has not been declawed or devocalized.

(2) Refuse to allow the occupancy of any real property, refuse to negotiate the occupancy of any real property, or otherwise make unavailable or deny to any other person the occupancy of any real property because of that person's refusal to declaw or devocalize any animal.

(3) Require any tenant or occupant of real property to declaw or devocalize any animal allowed on the premises.

(b) For purposes of this section, the following definitions apply:

(1) "Animal" means any mammal, bird, reptile, or amphibian.

(2) "Application for occupancy" means all phases of the process of applying for the right to occupy real property, including, but not limited to, filling out applications, interviewing, and submitting references.

(3) "Claw" means a hardened keratinized modification of the epidermis, or a hardened keratinized growth, that extends from the end of the digits of certain mammals, birds, reptiles, and amphibians, often commonly referred to as a "claw," "talon," or "nail."

(4) "Declawing" means performing, procuring, or arranging for any procedure, such as an onychectomy, tendonectomy, or phalangectomy, to remove or to prevent the normal function of an animal's claw or claws.

(5) "Devocalizing" means performing, procuring, or arranging for any surgical procedure such as a vocal cordectomy, to remove an animal's vocal cords or to prevent the normal function of an animal's vocal cords.

(6) "Owner" means any person who has any right, title, or interest in real property.

(c) (1) A city attorney, district attorney, or other law enforcement prosecutorial entity has standing to enforce this section and may sue for declaratory relief or injunctive relief for a violation of this section, and to enforce the civil penalties provided in paragraphs (2) and (3).

(2) In addition to any other penalty allowed by law, a violation of paragraph (1) of subdivision (a) shall result in a civil penalty of not more than one thousand dollars (\$1,000) per advertisement, to be paid to the entity that is authorized to bring the action under this section.

(3) In addition to any other penalty allowed by law, a violation of paragraph (2) or (3) of subdivision (a) shall result in a civil penalty of not more than one thousand dollars (\$1,000) per animal, to be paid to the entity that is authorized to bring the action under this section.

Attachment 2



CITY OF BEVERLY HILLS
 Community Development Department - Code Enforcement Division
 455 North Rexford Drive TEL: 310-285-1119
 Beverly Hills, CA 90210 FAX: 310-273-0972

NOTICE OF VIOLATION

First Notice

Final Notice

Violation Date: September 24, 2013

Case No.: CE1320784

LOCATION

350 N CRESCENT DRIVE
 BEVERLY HILLS, CA 90210

RESPONSIBLE PERSON

Michael Seltzer [Principal] / Rohit Mehta [Principal]
 Beverly Hills Apartments LLC [Property Owner]
 1511 S Pontius Avenue, #102
 Los Angeles, CA 90025

The Community Development Department recently received a complaint regarding a condition at the above location that is in violation of the Beverly Hills Municipal Code. I have inspected the property observed the following violation(s):

BHMC 9-1-1601: Adoption of International Property Maintenance Code; section 603.1. All mechanical appliances....."shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function".

On September 23, 2013, you reported to the City at 3:38 p.m., "I have walked through the Crescent building and the air conditioning is working, including the compressors, so air is flowing throughout the building. In the two units previously discussed, the air is flowing, but not quiet cooling to the same temperatures as the others."

Subsequently, on September 24, 2013, an unscheduled field inspection was conducted at the building, several units were inspected. Units #108, #205, #311, #314, penthouse #1, and #201 were inspected for adequate building mechanical air conditioning delivery. Every register was checked in each apartment unit and confirmed unbalanced airflow volume and inadequate chilled air being delivered to the unit.

Our records indicate:

- You are the property owner(s) You are the business owner(s) You have lawful control of the property
- You received a **Verbal Warning** September 3,2013, pertaining the faulty building mechanical air conditioning system and you failed to comply.

In order to bring the property/condition into compliance, the following actions/corrections are required within 48 hours:

- Provide a third party inspection and certification report for proper air conditioning delivery all units in the building by a licensed air conditioning contractor.**
- Initiate and maintain routine equipment maintenance program to ensure tenant's amenities are maintained at all times.**

Our intent is to obtain voluntary compliance. Your prompt attention in resolving this matter will be appreciated. If you have any questions, please contact me as soon as possible.

- Failure to comply with this notice will result in the referral of this matter to the City Prosecutor for further legal action.
- Attachments BHMC 9-1-1601: Adoption of International Property Maintenance Code; **section 603.1**

TYPE OF SERVICE:

Issued to U.S. First Class Mail Posted at

OFFICER / INSPECTOR: Terence May **PHONE** 310-285-1186 **DATE** September 24, 2013

xc: crescent@westsidehabitats.com
xicompany@gmail.com
mdseltzer@gmail.com

Attachment 3

CHAPTER 6

MECHANICAL AND ELECTRICAL REQUIREMENTS

SECTION 601
GENERAL

601.1 Scope. The provisions of this chapter shall govern the minimum mechanical and electrical facilities and equipment to be provided.

601.2 Responsibility. The *owner* of the structure shall provide and maintain mechanical and electrical facilities and equipment in compliance with these requirements. A person shall not occupy as *owner-occupant* or permit another person to occupy any *premises* which does not comply with the requirements of this chapter.

SECTION 602
HEATING FACILITIES

602.1 Facilities required. Heating facilities shall be provided in structures as required by this section.

602.2 Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, *bathrooms* and *toilet rooms* based on the winter outdoor design temperature for the locality indicated in Appendix D of the *International Plumbing Code*. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

Exception: In areas where the average monthly temperature is above 30°F (-1°C), a minimum temperature of 65°F (18°C) shall be maintained.

602.3 Heat supply. Every *owner* and *operator* of any building who rents, leases or lets one or more *dwelling units* or *sleeping units* on terms, either expressed or implied, to furnish heat to the *occupants* thereof shall supply heat during the period from [DATE] to [DATE] to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, *bathrooms* and *toilet rooms*.

Exceptions:

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the *International Plumbing Code*.
2. In areas where the average monthly temperature is above 30°F (-1°C) a minimum temperature of 65°F (18°C) shall be maintained.

602.4 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from

[DATE] to [DATE] to maintain a temperature of not less than 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

602.5 Room temperature measurement. The required room temperatures shall be measured 3 feet (914 mm) above the floor near the center of the room and 2 feet (610 mm) inward from the center of each exterior wall.

SECTION 603
MECHANICAL EQUIPMENT

603.1 Mechanical appliances. All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.

603.2 Removal of combustion products. All fuel-burning equipment and appliances shall be connected to an *approved* chimney or vent.

Exception: Fuel-burning equipment and appliances which are *labeled* for unvented operation.

603.3 Clearances. All required clearances to combustible materials shall be maintained.

603.4 Safety controls. All safety controls for fuel-burning equipment shall be maintained in effective operation.

603.5 Combustion air. A supply of air for complete combustion of the fuel and for *ventilation* of the space containing the fuel-burning equipment shall be provided for the fuel-burning equipment.

603.6 Energy conservation devices. Devices intended to reduce fuel consumption by attachment to a fuel-burning appliance, to the fuel supply line thereto, or to the vent outlet or vent piping therefrom, shall not be installed unless *labeled* for such purpose and the installation is specifically *approved*.

SECTION 604
ELECTRICAL FACILITIES

604.1 Facilities required. Every occupied building shall be provided with an electrical system in compliance with the requirements of this section and Section 605.

604.2 Service. The size and usage of appliances and equipment shall serve as a basis for determining the need for additional

Attachment 4

Article 7. Remedies

4-5-701: ILLEGAL RENT OR WITHHOLDING OF RELOCATION FEES:

- A. It shall be unlawful for any landlord wilfully to demand, accept, receive, or retain any payment of rent in excess of the maximum lawful rent permitted for an apartment unit by this chapter after receiving written notice from the city that such payment does or will exceed such allowable maximum.

- B. It shall be unlawful for any landlord wilfully to fail to provide any tenant with any relocation benefit to which such tenant is entitled after receiving written notice from the city that such relocation benefit is due and owing to such tenant. (1962 Code § 11-7.01)

4-5-702: REDUCTION OF HOUSING SERVICES:

It shall be unlawful for any landlord to reduce housing services with the intent, or for the purpose, of circumventing substantially the requirements and/or provisions or spirit of this chapter. A violation of this section shall be deemed an increase in rent to the extent of the monetary advantage achieved thereby for the landlord or to the extent necessary for the tenant to incur expenses to gain equivalent housing services by other means, whichever is greater. Any such violation shall accordingly be subject to the tenants' remedies prescribed in sections 4-5-704 and/or 4-5-705 of this article. (1962 Code § 11-7.02)

4-5-703: UNLAWFUL EVICTIONS:

- A. A landlord shall not issue or cause to be issued a notice of termination of tenancy in order to circumvent the application of this chapter. For the purposes of this section, a notice of termination of tenancy shall include any notice, oral or written, given to a tenant for the purpose of having the tenant vacate an apartment unit. The failure of a landlord to withdraw any such notice of termination of tenancy after the landlord has been given written notice by the city manager or his designee or by the city attorney that such notice of termination of tenancy is in violation of the provisions of this chapter shall constitute prima facie evidence of the intent of the landlord to circumvent the application of this chapter and shall be unlawful.

- B. It shall be unlawful for a landlord to evict, or to attempt to evict, a tenant or to regain, or attempt to regain, the possession of an apartment unit upon a pretext that the landlord desires occupancy for himself or herself or some relative in order to circumvent the application of this chapter. A tenant in such circumstances may refuse to deliver possession of the apartment unit and may establish the landlord's subterfuge as a defense in any action brought by the landlord to recover the possession of the apartment unit. Additionally, in the event a violation of this section is discovered by the tenant after the possession of an apartment unit has been regained by the landlord, such landlord shall be liable to the dispossessed tenant in a civil action for treble the amount of the rent which would have been payable by the tenant had the tenant not been dispossessed, and for the entire period of the dispossession, not exceeding six (6) months; and in any such action the tenant shall also be entitled to payment by the landlord of the tenant's reasonable attorney fees and costs as determined by the court. (1962 Code § 11-7.03)

4-5-704: REFUSAL TO COMPLY WITH ILLEGAL REQUESTS:

- A. A tenant may refuse to pay any increase in rent which is in violation of the provisions of this chapter, and such violation shall be a defense in any action brought to recover the possession of an apartment unit or to collect rent.
- B. In addition to the remedies set forth in subsection A of this section, in any action brought to recover the possession of an apartment unit, the court may consider as grounds for denial any violation of any provision of this chapter. In addition, a court determination that the action was brought in retaliation for the exercise of any right conferred by this chapter shall also be grounds for denial. (1962 Code § 11-7.04)

4-5-705: CIVIL REMEDIES:

Whenever it is necessary for any tenant to file a court action to recover the payment of rent which was in excess of the maximum lawful rent allowed by the provisions of this chapter, or to collect any relocation fee provided for in this chapter, or whenever it is necessary for the tenant to defend against any wrongful action filed in court against the tenant by the landlord to recover the possession of the tenant's apartment unit, the landlord shall be liable to the tenant for damages in the amount of five hundred dollars (\$500.00) or not more than three (3) times the amount by which the payment or payments demanded, accepted, received, or retained exceed the lawful amount of rent or relocation fees due to the tenant, whichever is greater. The prevailing party in any such suit shall be entitled to reasonable attorney fees and costs as determined by the court. (1962 Code § 11-7.05)

4-5-706: PENALTIES:

Any person violating any of the provisions, or failing to comply with any of the requirements, of this chapter shall be subject to the penalties and punishment of title 1, chapter 3 of this code. (1962 Code § 11-7.06)

4-5-707: ADMINISTRATIVE PENALTIES:

No building, demolition, or moving permit shall be issued unless the applicant therefor has complied with all the provisions of this chapter applicable to the apartment unit or units on which the proposed work is to be done. No final map shall be approved unless it is found that the subdivider has complied with all the provisions of this chapter or any prior law of the city relating to rent stabilization applicable to the subdivision at the time the tentative map was approved. (1962 Code § 11-7.07)

4-5-202: WORDS DEFINED:

HOUSING SERVICES: All services connected with the use or occupancy of an apartment unit, including, but not limited to, repairs, replacement, maintenance, painting, light, heat, water, elevator service, laundry facilities and privileges, janitor service, refuse removal, furnishings, telephone, off street parking, and any other benefits, privileges, or facilities.

BEVERLY HILLS MUNICIPAL CODE

TITLE 4, CHAPTER 6 RENT STABILIZATION, PART II

4-6.01: APPLICATION:

The provisions of this chapter are applicable to all multiple residential dwellings consisting of two (2) or more units with the exception of those units within the existing rent stabilization provisions of Chapter 5 of this title, and those units excluded under subsections 4-5.102(a) through (e) of this title. (1962 Code § 12-1.01)

4-6.02: BASE RENT:

Except as provided in sections 4-6.04 and 4-6.05 of this chapter, the maximum rent which an apartment owner may charge for any dwelling unit regulated by this chapter is the monthly rental charged for such unit on April 30, 1986, plus any rental increases permitted by section 4-6.03 of this chapter. (1962 Code § 12-1.02; amd. 1988 Code)

4-6.03: RENTAL INCREASES:

An increase in rental above the base rental specified in section 4-6.02 of this chapter is permissible for any dwelling unit regulated by this chapter, subject to each of the following limitations:

- A. Only one increase shall be permissible within any twelve (12) month period; provided, further, that a twelve (12) month period shall have elapsed since the last increase.
- B. Such increase shall not exceed a maximum of ten percent (10%) of the rental then in effect.
- C. The tenant shall be given written notice of any such increase in accordance with the requirements of state law and the terms of any written lease or rental agreement applicable to the tenancy prior to the effective date of such increase. (1962 Code § 12-1.03; amd. Ord. 04-O-2449, eff. 6-18-2004)

4-6.04: WAIVER OF PROVISIONS OF THIS CHAPTER PROHIBITED:

- A. Any provision of an apartment rental agreement or lease, or any other agreement between a landlord and a tenant, which waives any provision of this chapter relating to the maximum amount of rent to be paid for an apartment unit, shall be deemed to be against public policy and shall be void, unless expressly authorized by state law.
- B. This amended section is applicable to any apartment rental agreement, lease, amendment or extension, that is subject to the provisions of this chapter and that is executed on or after December 29, 2000. This section, as it existed on December 29, 2000, shall continue to govern any apartment rental agreement, lease, amendment or extension, that is subject to the provisions of this chapter, and that was executed prior to December 29, 2000. (1962 Code § 12-1.04; amd. Ord. 01-O-2371, eff. 3-30-2001)

4-6.05: VACANCIES:

- A. Any dwelling unit regulated by this chapter that is: 1) "voluntarily vacated" by all tenants of that unit, as defined in section 4-5.202 of this title, or 2) vacated because the tenants are evicted for the reasons specified under section 4-5.502, 4-5.503, 4-5.504, 4-5.505, 4-5.507, or 4-5.508 of this title, may be subsequently rented at any amount mutually agreed upon by the landlord and the new tenant. The monthly amount agreed upon for the commencement of the tenancy shall be the base rental, and any subsequent rental increases shall be subject to the provisions of section 4-6.03 of this chapter.

Sec. 4-5.502. Failure to pay rent.

A landlord may bring an action to recover the possession of an apartment unit if the tenant has failed to pay the rent to which the landlord is entitled or any surcharge which has been lawfully imposed. (11-5.02; Amd. * 3, Ord. 91-0-2135, eff. January 9, 1992)

Sec. 4-5.503. Violations of obligations.

A landlord may bring an action to recover the possession of an apartment unit if the tenant has violated an obligation or covenant of the tenancy, including, but not limited to, any obligation in a written apartment rental agreement, other than the obligation to render possession upon proper notice, and has failed to cure such violation after having received written notice thereof from the landlord. (11-5.03)

Sec. 4-5.504. Maintenance of nuisances.

A landlord may bring an action to recover the possession of an apartment unit if the tenant is committing or permitting to exist a nuisance in, or is causing damage to, the apartment unit or to the appurtenances thereof, or to the common areas of the complex containing the apartment unit, or is creating an unreasonable interference with the comfort, safety, or enjoyment of any of the other residents of the same or any adjacent building. (11-5.04)

Sec. 4-5.505. Illegal uses.

(a) A landlord may bring any action to recover the possession of an apartment unit if the tenant is using or permitting an apartment unit to be used for an illegal purpose.

(b) For the purposes of this Section, "illegal purpose" shall mean and include, but not be limited to, the occupancy of the apartment unit by a number of persons in excess of the following numbers:

Bachelor/single	3 persons
One bedroom of 1,200 square feet or less	4 persons
One bedroom in excess of 1,200 square feet	5 persons
Two (2) bedrooms of 1,500 square feet or less	5 persons
Two (2) bedrooms in excess of 1,500 square feet	6 persons
Three (3) bedrooms of 2,100 square feet or less	7 persons
Three (3) or more bedrooms in excess of 2,100 square feet	8 persons

(11-5.05)

Sec. 4-5.507. Refusal to provide access.

A landlord may bring an action to recover the possession of an apartment unit if the tenant has refused the landlord reasonable access to the unit for the purpose of making repairs or improvements, or for the purpose of inspection as permitted or required by an apartment rental agreement or by law, or for the purpose of showing the apartment unit to any prospective purchaser or mortgagee.

(11-5.07)

Sec. 4-5.508. Unapproved subtenants.

A landlord may bring an action to recover the possession of an apartment unit if the person in possession of the apartment unit at the end of the term of any apartment rental agreement is a subtenant who was not approved by the landlord. This Section shall not be deemed to invalidate any provision in any written apartment rental agreement pertaining to the assignment or subleasing of an apartment unit.

(11-5.08)

- B. At least twenty four (24) hours prior to the execution of a lease or rental agreement by a tenant, the landlord shall provide written notice to the prospective tenant, in the form and languages required by the city: 1) of the provisions of this chapter, including the amount of the annual rent increase that is allowed by this chapter; 2) of any parking restrictions in the area adjacent to the apartment building; 3) that at the termination of the lease agreement, unless the lease is extended or a new lease is entered into, a month to month tenancy will be created if the tenant holds over and the landlord accepts rent from the tenant; 4) that the month to month tenancy can be terminated at any time, if the landlord provides written notice to the tenant in accordance with the requirements of all applicable laws; 5) of the city's home occupation requirements; and 6) of state laws that establish certain rights and responsibilities of landlords and tenants. The landlord shall provide notice in a manner so that the prospective tenant receives the notice at least twenty four (24) hours prior to the execution of the lease or rental agreement. When the landlord provides the notice required by this subsection to the prospective tenant, the landlord shall have the prospective tenant acknowledge in writing that the tenant received the written notice, as required by this subsection. The landlord shall retain written documentation of compliance with this provision for the duration of the tenancy. There shall be a rebuttable presumption that the landlord did not provide the written notice to the tenant that is required by this section, if the landlord fails to produce said written documentation upon request.
- C. In addition to any other remedy for a violation of this code, if a landlord fails to provide the written notice required by subsection B of this section to the tenant, the landlord shall be subject to an administrative penalty pursuant to Title 1, Chapter 3, Article 3 of this code in the amount of five hundred dollars (\$500.00). The provisions of this subsection shall not be applicable to a lease or rental agreement that is entered into within six (6) months of the effective date hereof, or December 18, 2004. (1962 Code § 12-1.05; amd. Ord. 01-O-2371, eff. 3-30-2001; Ord. 04-O-2449, eff. 6-18-2004)

4-6.06: INVOLUNTARY TERMINATION OF TENANCIES BY LANDLORDS:

Written notice provided in accordance with state law shall be given to any tenant in order for a landlord to terminate the tenancy of a rental unit subject to this chapter. (1962 Code § 12-1.06; amd. Ord. 04-O-2449, eff. 6-18-2004)

4-6.07: WATER SERVICE PENALTY SURCHARGE:

- A. In addition to the rent otherwise permitted by this chapter, the landlord may pass through to the tenant of an apartment unit regulated by this chapter ninety percent (90%) of the cost of any water service penalties and/or surcharges imposed by the city pursuant to the water rate schedule established by resolution of the city council provided that the landlord installs water conservation plumbing fixtures in such unit in accordance with the requirements of Title 9, Chapter 4, Article 1 of this code or voluntarily installs, at the landlord's expense, low flow toilets or such other water saving toilets approved by the director of public works, showerhead restrictors and faucet aerators in such unit. If the landlord does not install such water conservation plumbing fixtures, the landlord shall be liable for and pay without any pass through to the tenant all penalties and/or surcharges imposed by the city on the landlord's apartment units.
- B. In order to qualify for the pass through authorized by subsection A of this section, the landlord shall:
1. Notify all tenants, in a form required by the rent stabilization office, by registered or certified mail, of the provisions of this section and any other information required to be given by the rent stabilization office; and
 2. Provide all affected tenants with copies of the water bill for the applicable billing period and the basis for the calculation of the pass through. (Ord. 91-O-2118, eff. 5-24-1991)

4-6.08: REFUSE FEE SURCHARGE:

- A. In addition to the rent otherwise permitted by this chapter, the landlord may pass through to the tenant of an apartment unit regulated by this chapter the cost of any refuse fee imposed by the city pursuant to a resolution or ordinance of the city council.
- B. In order to qualify for the pass through authorized by subsection A, the landlord shall:
1. Provide written notice, by registered or certified mail, to all tenants thirty (30) days in advance of the imposition of the pass through, of the provisions of this section, that the pass through is not part of the base rent, that the refuse fee may be increased by the city, and any other information required to be given by the rent stabilization office.
 2. Provide all tenants with a copy of the landlord's utility bill which sets forth the appropriate refuse fee and the basis for the calculation of the pass through. (Ord. 91-O-2135, eff. 1-9-1992)