



Berkeley City Council

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CONSENT CALENDAR
January 19, 2010

To: Honorable Mayor and Members of the City Council

From: Councilmember Laurie Capitelli
Councilmember Jesse Arreguin

Subject: Enforcement of Tenant Notification Provisions of Soft Story Ordinance

RECOMMENDATION

Request that the City Manager: 1. Send a final warning letter to property owner/managers of buildings defined as 'soft story' buildings that are not in the process of being retrofitted (see notes) by February 25, 2010. The letter should also indicate that citations will be issued beginning April 1, 2009 to buildings not in compliance (indicating applicable fines for such violation). 2. Have the City staff produce notification signs the minimum size specified in the ordinance with the specified language or provide 3rd party vendors with specifications so that building owners can purchase signs for posting. 3. Collaborate with the staff of the Rent Stabilization Board to ensure property owners have posted appropriate warning signs to tenants.

FINANCIAL IMPLICATIONS

Unknown.

BACKGROUND

There are still several "soft story" buildings that have not yet complied to the current soft story ordinance, including the formal notification to current and prospective tenants regarding the condition of the buildings. There has been little or no enforcement of the ordinance which is why the Disaster and Fire Safety Commission proposed Action Item No. 35 on December 15, 2009 (See attached.)

Required notification would be to owners of: 1) buildings having approved engineering reports identifying them as soft story buildings; 2) buildings having filed engineering reports that are still under review and 3) buildings having done nothing to comply with the ordinance. (Staff report indicates this would be 233 buildings.) The letter should reiterate the requirements of the ordinance including the posting of notification to tenants and indicate the availability of the signs from either the City or another source.

The letter should also indicate that citations will be issued beginning April 1, 2009 to buildings not in compliance (indicating applicable fines for such violation).

CONTACT PERSON

Councilmember Laurie Capitelli, District 5 981-7150
Councilmember Jesse Arreguin, District 4 981-7140

ATTACHMENTS:

1 Report from Disaster and Fire Safety Commission dated Dec. 15, 2009



Disaster and Fire Safety Commission

ACTION CALENDAR

December 15, 2009

To: Honorable Mayor and Members of the City Council
From: Disaster and Fire Safety Commission
Submitted by: Sabina Imrie, Secretary, Disaster and Fire Safety Commission
Subject: Enforcement and Revision of Tenant Notification Provisions of Soft Story Ordinance

RECOMMENDATION

To address the need to adequately inform tenants and prospective tenants in soft story buildings of the risks of living in such buildings, the Commission recommends that:

- 1) The City Council direct the City Manager to instruct all applicable city departments and agencies to check for warning signage at properties remaining on the soft story inventory, and direct that violation letters be sent to owners that have no signage.
- 2) The City Council direct the City Manager to consider providing or charging for warning signs (possibly made by the Berkeley sign department) for buildings that remain on inventory and that do not have adequate signage.
- 3) The City Council refer to the City Manager preparation of an amendment to BMC19.39.060 to require building owners, and/or their marketing agents, to provide notice of soft story earthquake risk to all prospective tenants in all their marketing material (e.g., flyers, web postings, advertisements, etc.); and to require that each building owner get new and renewing tenants to sign disclosure forms acknowledging that they have read the soft story earthquake warning risk statement prior to signing their leases.
- 4) The City Council refer to the City Manager preparation of an amendment to BMC section 19.39.060 to provide for escalation of penalties for non-compliance of signage requirements, and tenant/prospective tenant disclosure requirements.

FISCAL IMPACTS OF RECOMMENDATION

Unknown.

CURRENT SITUATION AND ITS EFFECTS

The problem with the current ordinance is that tenants and prospective tenants are not being adequately informed that they live in soft story building, and of the risks of living in such a building:

- 1) It appears that the majority of owners, of building on the soft story inventory, are not posting warning signs as required in BMC section 19.39.060.2. The code reads that the building owners must “*post in a conspicuous place... a clearly visible warning sign not less than 8” by 10” the following statement ‘Earthquake Warning: This is a soft story building with a soft, weak, or open front ground floor. You may not be safe inside or near such a building during an earthquake’*” A May 2009 survey of buildings on the city Inventory of Potentially Hazardous Story Building (by now Disaster & Fire Safety Commissioner, John Caner) in the Willard neighborhood (bounded by Telegraph, College, Ashby, and Dwight) found that only two of the fifteen buildings had warning signs posted. One of the postings was a flimsy paper sign attached with putty at a low-visibility location in the building.
- 2) Section 19.39.060.2.of the current ordinance requires building owners to “*notify each tenant in writing using the form of Appendix A below, and each new tenant at change of tenancy, that the building is included on the inventory*”. Given the number of violations regarding signage, and the paucity of reports that tenants have been notified, it appears that compliance with the current ordinance is poor. But more important, the city should require notification to a prospective tenant before they sign a lease, not afterwards. Prospective tenants should be able to make informed decisions—particularly regarding an issue that could determine loss of home, or even loss of life, in the event of a major earthquake. Once they have signed a lease, it is too late. Also, notification prior to signing a lease should also act as an incentive for building owners to retrofit buildings and thus compete more effectively a better informed rental marketplace.

BACKGROUND

While the Disaster and Fire Safety Commission continues to urge the City Council to adopt and fund Phase 2 of the Berkley Soft Story Program (including requiring retrofit of all soft story buildings), this report addresses: 1) concerns regarding the current “Owner and tenant obligations” section of the’ Potentially Hazardous Buildings Containing Soft, Weak, or Open Store Fronts” ordinance (BMC 19.39.060), and 2) makes specific recommendations to solve these problems.

RATIONALE FOR RECOMMENDATION

Tenants and prospective tenants need to be adequately informed that they live in a soft story building and of the risks of living in such a building.

ALTERNATIVE ACTIONS CONSIDERED

No action, resulting in inadequate or no notice of risks to tenants of soft story buildings due to apparent non-compliance with BMC section 19.39.060.2.

CITY MANAGER

See companion report.

CONTACT PERSON

Sabina Imrie, Assistant Fire Chief, Fire Department, 981-5502