



Housing Advisory Commission

56a

ACTION CALENDAR

June 24, 2014

To: Honorable Mayor and Members of the City Council
From: Housing Advisory Commission
Submitted by: Marian Wolfe, Chairperson, Housing Advisory Commission
Subject: Imposing Fees When Multifamily Properties are Destroyed Due to Fault of Property Owner

RECOMMENDATION

Adopt a Resolution that directs staff to make changes to the Demolition Ordinance or other City ordinances to accomplish the following:

1. Make changes to the Demolition Ordinance requiring Owners of buildings that are destroyed due to the “fault” of the owner, including gross negligence or other conduct by the owner or his/her agents which constitutes the predominant cause of the destruction, to comply with the replacement unit provisions, tenant protections and relocation requirements under Sections 23C.08.020.A.4 and 23C.08.020.B and C;
2. Consider the establishment of a penalty schedule – either through the Rental Housing Safety Program or another mechanism – to facilitate compliance with habitability and life safety codes;
3. Impose a fee on property owners who decide to rebuild at the same site for each below-market rate unit destroyed through fault of the property owner;
4. Levy a fine, equivalent to the fee described above, against the owner of demolished property in the event that this owner elects to sell the site or retain it as an undeveloped parcel. If the property owner refuses to pay this fee, then it should become a lien against the property; and
5. Revise the Relocation Ordinance to confer the same rights onto the tenants of buildings that are voluntarily demolished as other tenant situations specified under the Relocation Ordinance.

FISCAL IMPACTS OF RECOMMENDATION

Staff time is involved. There are potential revenues should fees be imposed after being triggered by the proposed mechanism.

CURRENT SITUATION AND ITS EFFECTS

At its March, April, and May 2014 regular meetings, the HAC discussed and approved language that the City Council should consider as a starting point when prescribing the process of determining fault and the obligation of property owners whose properties are determined to be destroyed due to their fault or the fault of their agent(s). At its May 1, 2014 meeting, the HAC voted to recommend the following (MSC: Darrow/Soto-Vigil. Ayes: Darrow, Droste, Soto-Vigil, Tregub, Wolfe; Noes: None; Abstain: Judd; Absent: Drake, Magofna, Skjerpung):

1. The City should consider establishing a penalty schedule – either through the Rental Housing Safety Program or another mechanism – to facilitate compliance with habitability and life safety codes and that penalties be increased when a code violation has not been abated by the owner within the requested timeframe.
2. For those property owners who decide to rebuild at the same site, we urge the City to calculate a fee for each below-market rate unit destroyed through fault of the property owner. If possible, this fee would be calculated on the basis of the difference between the last known rent on each destroyed unit and the current market rent for the same size unit. This fee should cover this difference over a period of time, not less than 10 years. If a property owner rebuilds (and adds additional units), the regular housing mitigation impact fee should apply to the additional units.
3. A property owner who is determined to be at fault may elect not to rebuild a destroyed property. In the event that this owner elects to sell the site (or retain it as an undeveloped parcel), we recommend that the City establish a fine against the owner and the property. This fine should be the equivalent to the fee defined under (2). If the property owner refuses to pay this fee, then it should become a lien against the property, similar to the way the City currently charges properties with the costs of code enforcement abatement.
4. Currently, in situations of involuntary demolition (such as when the building is destroyed due to the fault of the property owner), the former occupants of the building are exempt from the rights that would have otherwise been accorded to them either through voluntary demolition (per the Demolition Ordinance) or temporary relocation (per the Relocation Ordinance). The Council should consider according the destroyed building's former occupants rights that are commensurate to those specified under the Relocation Ordinance. In addition, the Demolition Ordinance should be revised to account for situation of involuntary demolition requiring Owners of buildings that are destroyed due to the "fault" of the owner, including gross negligence or other conduct by the owner or his/her agents which constitutes the predominant cause of the destruction, to comply with the replacement unit provisions, tenant protections and relocation requirements under Sections 23C.08.020.A.4 and 23C.08.020.B and C;

5. The following language should be inserted into the Berkeley Municipal Code, the Zoning Code, as part of a new Council resolution, or as a modification to the existing Council resolution (such as Resolution No. 65,920, passed in October 2012, which set in place the Housing Mitigation Fee):

Proposed Language: Buildings Destroyed Due to Fault of the Property Owner

Applicability

A. This ordinance applies to Dwelling Units destroyed through the fault of the property owner.

Definition of Fault

A. For the purposes of this ordinance, a property owner is to be understood as at fault if his or her actions or negligent failure to act caused the destruction of the Dwelling Unit(s). For purposes of this ordinance, the term "fault" shall include not only intentional acts of the property owner, but also negligence or other conduct by the owner or his/her agents which constitutes the predominant cause of the destruction.

Determination of Fault

A. Determination of fault is the burden of the City.

B. Determination of fault shall be made by City Staff and is appealable to the Housing Advisory Commission. If appealed, the commission will hold a quasi-judicial hearing in accordance with applicable guidelines.

C. The process of determining fault must include a review of all documents reasonably available to city staff that may directly or indirectly pertain to the cause of destruction. This includes assessments of property damage and any injuries or deaths resulting from the incident, as documented in fire department, police, and insurance records. It further includes written documentation or oral testimony of occupants or other credible witnesses that suggest failure to comply with building codes and/or failure to abate existing code violations may have materially contributed to the property's destruction. To this end, Rental Housing Safety Program records, permit verifications of equipment or appliances that caused or contributed to the destruction of the building, and any other information to help assess this data could be employed.

Appeal

A. The property owner and any of the affected former occupants of the building, or their agents, may appeal City Staff's decision on the determination of fault to the Housing Advisory Commission.

Replacement Fee and Property Owner Obligations

A. A fee shall be assessed for each unit built to replace a unit determined to be destroyed through the fault of the property owner. The fee will be imposed at the time the building permit for the replacement units is issued. The fee shall be paid into the City of Berkeley Housing Trust Fund.

B. The amount of the fee is equivalent to the difference between the last known rent of the unit and the market rate of comparable units rented in the City of Berkeley. To calculate this market rate rent, the most precise, commonly accepted data shall be used. If the last known rent of the unit is not available (e.g. if the unit was vacant at the time of its destruction) and no contemporary past data for its last known rent can be found, staff shall use supporting information (e.g. last known rent of other comparable units in the building, known rent of comparable units in buildings in the same general area) to project what the rent may have been if it had been rented at the time of the unit's destruction. The fee will be charged annually for a period of time to be determined by the City Council.

C. Additional Dwelling Units built on the site that represent an increase in the number of units from the number that existed in the destroyed structure would be subject to the Housing Impact Fee for new construction. For example, if a 30-unit structure was proposed in place of a destroyed 20-unit structure, 20 of the units would be considered replacement units and would be covered under this replacement fee, and 10 units would be considered new construction and covered under the Housing Impact Fee for new construction.

D. If a property owner who is determined to be at fault elects not to rebuild a destroyed property or make progress towards that goal within a reasonable timeframe and decides to sell the site (or retain it as an undeveloped parcel), the City shall establish a fine against the owner and the property. This fine should be the equivalent to the fee defined under (B). If the property owner refuses to pay this fee, then it should be become a lien against the property. "Reasonable timeframe" shall be defined by the City Council.

E. If the property owner has been determined to be at fault for the destruction of the unit, tenants shall receive first right of refusal for the replacement units and shall be covered by the provisions of the Relocation Ordinance.

BACKGROUND

On February 11, 2014, the City Council unanimously voted to refer to the City Manager and Housing Advisory Commission the subject of this Council item. Below is a link to the item and the action taken.

[Referral to City Manager: Exemption of Fire-Damaged Buildings from Affordable Housing Mitigation Fee](#) (Continued from January 21, 2014)

From: Councilmembers Arreguin, Anderson, and Worthington

Recommendation: Refer to the City Manager and Housing Advisory Commission (HAC) issues relating to the applicability of the Affordable Housing Mitigation fee to buildings destroyed by fire.

Financial Implications: Staff time

Contact: Jesse Arreguin, Councilmember, District 4, 981-7140

Action: 1 speakers. M/S/C (Arreguin/Worthington) to refer to the City Manager and Housing Advisory Commission (HAC) issues relating to the assessment of an "Impact Fee" to buildings destroyed by fire under certain circumstances (listed below) and remove reference to Affordable Housing Impact fee. Also, to refer the proposal of raising the fines assessed for housing code violations.

Item URL: http://cityofberkeley.info/Clerk/City_Council/2014/02_Feb/Documents/2014-02-11_Item_17_Referral_to_City_Manager_Exemption.aspx

ENVIRONMENTAL SUSTAINABILITY

No opportunities for environmental sustainability have been identified for this item.

RATIONALE FOR RECOMMENDATION

These recommendations represent the result of the collective efforts of the Housing Advisory Commission to explore this issue over the past four months in response to the City Council referral.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CITY MANAGER

See City Manager companion report.

CONTACT PERSON

Kristen Lee, Secretary, Housing Advisory Commission, (510) 981-5427
Igor Tregub, Vice Chair, Housing Advisory Commission, (510) 295-8798

Attachments:

1. Resolution

RESOLUTION NO. ##,###-N.S.

IMPOSING FEES WHEN MULTIFAMILY PROPERTIES ARE DESTROYED DUE TO
FAULT OF PROPERTY OWNER

WHEREAS, on February 11, 2014, the City Council unanimously voted to refer to the City Manager and Housing Advisory Commission the issues relating to the assessment of an “Impact Fee” on buildings destroyed by fire under certain circumstances and a proposal to raise fines assessed for housing code violations related to this issue; and

WHEREAS, buildings that are destroyed by fire and are entirely demolished and rebuilt are not subject to rent control, and displaced tenants are not eligible for assistance under the Relocation Ordinance; and

WHEREAS, the Planning Commission is considering amendments to the Demolition Ordinance to remove barriers to the demolition of housing units if the loss of affordability is mitigated and tenants are protected; and

WHEREAS, under BMC Section 23C.08.020.A.1 most fire-damaged buildings that are red-tagged can receive an emergency demolition permit by the Building Official, and under the proposed amendments to the Demolition Ordinance those buildings would not be covered by the affordable unit replacement requirements and tenant protections in BMC Sections 23C.08.020.A4, and B & C; and

WHEREAS, at its May 1, 2014 meeting, the Housing Advisory Commission passed a motion to recommend that City Council adopt the language contained in the related Council item.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Staff is directed to make changes to the Demolition Ordinance or other City ordinances or Resolutions to accomplish the following:

1. Make changes to the Demolition Ordinance (suggested language is contained below under “Current Situation and Its Effects”) requiring Owners of buildings that are destroyed due to the “fault” of the owner, including gross negligence or other conduct by the owner or his/her agents which constitutes the predominant cause of the destruction, to comply with the replacement unit provisions, tenant protections and relocation requirements under Sections 23C.08.020.A.4 and 23C.08.020.B and C;
2. Consider the establishment of a penalty schedule – either through the Rental Housing Safety Program or another mechanism – to facilitate compliance with habitability and life safety codes;
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5. Revise the Relocation Ordinance to confer the same rights onto the tenants of buildings that are demolished as other tenant situations specified under the Relocation Ordinance.