



Rent Stabilization Board

DATE: January 19, 2017

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Commissioners Igor Tregub and Leah Simon-Weisberg

SUBJECT: Creating Additional Administrative Powers of Zoning Officer to Deny or Hold in Abeyance New Permit Applications Until Outstanding Code Enforcement Issues are Resolved

RECOMMENDATION

The Rent Board recommends to the Berkeley City Council that it direct the City Manager to prioritize this referral and request of the Planning Commission to discuss it as a high-priority item.

BACKGROUND

The Housing Advisory Commission (HAC) voted on May 1, 2014 to submit the following recommendation to the Berkeley City Council:

“Refer to the City Manager and Berkeley Planning Commission to explore the creation of a mechanism that would explicitly allow staff new discretionary powers to prevent applicants from being granted new residential permits until they have abated outstanding noncompliance issues or code violations in other buildings they own in Berkeley within a reasonable time frame or taken good faith measures to commence doing so.”

On September 9, 2014, the Berkeley City Council adopted the following action:

Action: Moved to Action Calendar. M/S/C (Bates/Worthington) to approve the recommendation.

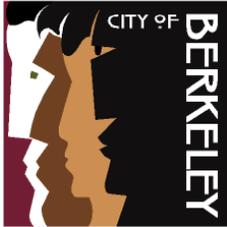
Vote: All Ayes.

In the wake of the recent Ghost Ship tragedy, there has been a renewed concern about the powers available to the planning and code enforcement staff in various cities to ensure compliance with life safety codes. Furthermore, the Rent Board has counseled many tenants who have alleged serious habitability code violations (some of which may be related to life safety) in their units and that have gone unabated for longer than is reasonable or acceptable.

Therefore, the Rent Board believes that the 2014 referral – as well as the City Manager’s response on p. 3 of Additional Reference 1 below – should be considered by Berkeley’s Planning Department and Planning Commission as soon as reasonably possible.

ADDITIONAL REFERENCES

1. “Creating Additional Administrative Powers of Zoning Officer to Grant or Recommend New Permits as Related to Code Enforcement,” dated 9/9/14.
http://www.cityofberkeley.info/Clerk/City_Council/2014/09_Sep/Documents/2014-09-09_Item_29_Creating_Additional_Administrative.aspx
2. Staff Referral Log, dated 7/15/16.
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-07-15_Staff-Referral%20Log.pdf



Housing Advisory Commission

CONSENT CALENDAR
September 9, 2014

To: Honorable Mayor and Members of the City Council
 From: Housing Advisory Commission
 Submitted by: Marian Wolfe, Chairperson, Housing Advisory Commission
 Subject: Creating Additional Administrative Powers of Zoning Officer to Grant or Recommend New Permits as Related to Code Enforcement

RECOMMENDATION

Refer to the City Manager and Berkeley Planning Commission to explore the creation of a mechanism that would explicitly allow staff new discretionary powers to prevent applicants from being granted new residential permits until they have abated outstanding noncompliance issues or code violations in other buildings they own in Berkeley within a reasonable time frame or taken good faith measures to commence doing so.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and potential reductions in immediate revenue from permitting fees

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley Zoning Officer currently does not have explicit authority to delay or disapprove granting new permits to property owners with other properties in Berkeley that are out of compliance with any codes or who also own other property that has been declared a nuisance.

Under the proposed change, the permitting of several residential as well as nonresidential properties that was granted in the past year could have been deferred or denied. A proposed change would explicitly grant city staff from the Planning Department this authority and provide a common set of expectations for applicants.

At its May 1, 2014 meeting, the Housing Advisory Commission voted to recommend that City Council direct staff and the Planning Commission to explore the creation of a mechanism that would explicitly allow staff new discretionary powers to prevent applicants from being granted new residential permits until they have abated outstanding noncompliance issues or code violations in other buildings they own in Berkeley within a reasonable time frame or taken good faith measures to commence doing so (M/S/C: Soto-Vigil/Tregub Ayes: Darrow, Soto-Vigil, Tregub, Wolfe; Noes: None; Abstain: Droste, Judd; Absent: Skjerping. Excused Absences: Drake, Magofna).

While the scope of the HAC is limited to residential property, this language could be expanded to include all types of property owned by the applicant in Berkeley, such as commercial, industrial, and mixed-use.

BACKGROUND

During the research phase for this item, several municipalities, including Oakland, San Jose and Redwood City, were contacted. It appears that the planning staff of several California municipalities currently exercise discretion in granting permits to new projects when existing projects owned by an applicant are out of code compliance or are deemed a nuisance. This practice, however, does not appear to be codified; in the municipalities that utilize this principle, it appears to exist as “institutional knowledge.”

The following language is suggested as a starting point, to be reviewed and amended by the City Council, City Manager, and Planning Commission:

“Staff or a quasi-judicial body such as the Zoning Adjustments Board or City Council shall have the administrative power to deny or defer the granting of an administrative use permit or use permit for a proposal to build a new structure or modify an existing structure due to the existence of any outstanding code violations, documented noncompliance with existing laws, and/or nuisance declarations on the subject property or other property or properties in Berkeley in which the applicant or applicants have at least a 50% ownership interest. Such permits may be granted to the applicant once it has been documented by staff that these non-compliances or violations have been appropriately abated and other criteria for the granting of the permit have been met. Notwithstanding this provision, all permits shall be subject to compliance with the Berkeley Zoning Code.”

The forum in which this language ought to appear is open to discussion. An amendment to the Berkeley Municipal Code that the Zoning Adjustment Board may consider a bad history and current violations as evidence that a proposed project would be detrimental could be a starting point. It could appear as a policy statement governing the ability of Planning and Land Use Staff to conduct administrative review on permit applications. The language could alternatively be inserted into the Zoning Code.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Creating a mechanism that would explicitly allow staff new discretionary powers to prevent approval of applicants of new residential permits until owners have abated outstanding noncompliance issues or code violations in other buildings they own in Berkeley would provide incentive to property owners to abate any code violations or nuisance conditions on their other properties prior to applying for new use permits.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

The City Manager concurs that creating additional administrative powers of the Zoning Office would require more study. The study should consider:

1. How the City could “defer” processing a complete application without violating the Permit Streamlining Act and due process;
2. Specifically, what criteria would be used to deny an application; and
3. Whether the Planning Commission should consider an amendment to 23B.32.040 and 23B.28.040 to clarify what type of code violations are substantial enough to cause detriment to a neighborhood in Berkeley in order to be the basis for denial of a permit application.

CONTACT PERSON

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