



Rent Stabilization Board

Date: September 30, 2013

To: Jenny McNulty, Program and Administration Manager, Planning Department

From: *LJK* Lisa Stephens, Chair, Berkeley Rent Stabilization Board

Subject: Rent Board's Comments on Proposed Soft Story Phase II Ordinance

Background

For over a decade, the Rent Stabilization Board has encouraged and supported the City in its efforts to require that multifamily properties with high vulnerability to collapse during an earthquake meet reasonable seismic safety standards. Over that time, the Board has discussed the topic at numerous meetings and prepared several reports and studies in order to help Council adopt policies that are based on facts and statistics rather than anecdotal testimony and/or speculation. The Rent Board has also assisted in doing outreach so that both owners and tenants are able to track and comment on proposed changes to rules related to SWOF buildings. The Board also proactively informs owners and tenants what the current requirements are in an effort to assist our community to reach compliance with the provisions of existing laws.

The Berkeley Rent Stabilization Board supports the proposed ordinance concerning SWOF. The Rent Board also commends the efforts of property owners who have already retrofitted their buildings, and is encouraged that over half of the residential units on the "soft story" inventory are in buildings that have already been reinforced and removed from the list. We believe that a required mandatory retrofit regulation in combination with the market forces that reward property owners who make their buildings safer will spur seismic upgrades in the majority of the remaining properties on the inventory. Below, I have attempted to summarize and synthesize the comments and positions adopted by the Board at their September 16th meeting. These comments are based upon the draft ordinance presented in August and September and the Board may offer additional comments or revise our position based upon the final proposal that is before the City Council in October.

1. The Rent Board strongly supports the draft SSPII Ordinance as presented but would like to see minor amendments to ensure better information to tenants and assure that owners suffering financial hardship are afforded necessary assistance.
2. While we hope that our suggestions are incorporated into the draft ordinance presented to Council in October we believe that, even if the Ordinance remains unchanged, it is important to adopt SSPII now rather than send it back for many months of refinement and delay.

3. The Board's discussions and eventual motion fell into three main areas:
 1. Suggested Changes to the Ordinance currently proposed.
 2. Suggestions to Council and staff related to implementation of the Ordinance and/or necessary follow-up actions.
 3. Actions the Rent Board is committed to taking once the Ordinance is adopted.

Suggested Changes to the Ordinance

1. In response to concerns raised by tenants the Board felt that the Notice to Tenants (Appendix A) should be strengthened by expanding the information required in Appendix A to include information about the following:
 - a. Tenants' private right of action
 - b. Tenants' right to return to the property if relocated
 - c. A summary of the requirements of both Phase I and Phase II of the Soft Story Ordinance.
 - d. Rules, rights and regulations if the seismic work results in the loss of services.
 - e. The earthquake warning sign requirement/plaque requirement.
2. The Board supports the provisions in the proposed ordinance that allow owners to delay work if they genuinely lack the financial means to do so. The hardship provision should be strengthened to ensure that only those owners that can demonstrate true need should be eligible for extensions of time and/or City financial assistance. To that end, the ordinance should be amended to:
 1. Require that property owners submit proof, under penalty of perjury, of all assets in the United States, as the basis for a claim of hardship, rather than solely relying upon the stated profitability of the building in question.
 2. If the extension is granted, require that a specific, credible, plan to fully finance the seismic improvements be developed during the hardship extension period, for approval by the City.
 3. Limit the number of hardship extensions that can be approved by staff to no more than two. Additional extensions must be approved by the City Council.
 4. Limit hardship provision eligibility to individuals and partnerships. LLC's or other corporate structures that hide and shield assets of individual members should not qualify.
3. The Board believes that the signage designed to warn tenants of the potential hazard could be improved by amending BMC 19.39.096 to require inclusion of the following language on the signs posted "This sign shall not be removed unless a sign (or plaque) indicating that the building has been retrofitted is installed in its place". The Ordinance should also require a sign (or plaque) provided by the City be installed on all retrofitted buildings. Owners who have already completed the seismic work would receive special acknowledgement on their plaque that the work was done before the mandatory ordinance was adopted.

Suggestions to Council and staff related to implementation of the Ordinance and/or necessary follow-up actions.

Upon adoption of the Ordinance, the City Council and/or Staff should immediately begin to take action to ensure effective implementation by:

1. Amending other ordinances and procedures to prioritize public safety and provide additional incentives to comply.
2. Reviewing hardship applications to provide guidance on appropriate programs to overcome barriers to compliance and assure that those without access to resources receive the necessary assistance.
3. Developing strong enforcement procedures.

Specific recommendations include:

1. **Amending other ordinances and procedures to prioritize public safety and provide additional incentives to comply:**
 - a. City Council should provide clear direction to staff that public safety takes precedence over parking. We received testimony that owners have been delayed in securing permits or denied seismic permits solely because parking spaces were proposed for elimination. We cannot verify the accuracy of these claims and we understand that BMC 23C.04.075 allows for the discretion to approve permits even if it results in the loss of a parking space. If there is any confusion about how staff exercises discretion, Council should make clear that public safety and not parking is the paramount concern.
 - b. City Council should amend the Relocation Ordinance to make properties that are not in compliance with both Phase 1 and Phase 2 ineligible for the natural disaster exemption in the Relocation Ordinance.
 - c. Staff should prioritize outreach to and enforcement of properties that are not in compliance with Phase 1 of the Soft Story Ordinance.
 - d. Staff should make sure there is a clear process that allows the public to request the City to review buildings with SWOF conditions to determine if the building should be placed on the inventory of SWOF buildings. Previously, the Board was informed that no such process for review exists. If there is now one in place, it should be made transparent and easily accessible to the public.
2. **Remove some of the financial barriers in achieving compliance by considering the following changes and/or new policies:**

As we have reported previously, ability to obtain additional financing for seismic work may be extremely complicated for certain owners, especially if they have purchased during the past 8-10 years. This may be true even if 90-100% of the units have been decontrolled and the rents have been raised to market. With over 80% of the units already decontrolled, rent control should be a genuine concern in only a handful of cases. We believe that there may be other, greater impediments to an owner acquiring the necessary financing to complete the work that will need to be addressed at the appropriate time.

- a. Council should consider waiving certain parking requirements to allow creation of additional in-fill units to defray the cost of retrofitting to owners. Owners should be encouraged to create additional bedrooms and or units within the existing footprint of the ground floor space. The requirement for additional parking for the new unit has been raised as an obstacle to the creation of this additional housing. The Board is sensitive to the need for parking but believes that in cases where we both create additional housing AND improve seismic safety that appropriate exceptions to the parking requirements (including, but not limited to compact/mini spaces, tandem parking and/or a waiver of the parking requirement) should be authorized.
- b. Council should consider establishing a loan program or loan guarantee program for owners that have demonstrated a real financial hardship. This can best be done after we have some real data from owners who have successfully gone through with retrofits as well as owners that have been unable to secure the necessary financing to proceed with required seismic work. The Rent Board is willing to continue working with the City in analyzing the available financial data.
- c. Council should consider waiving the permit fees for seismic retrofits when owners can demonstrate financial hardship.
- d. Council should consider extending eligibility to qualify for the .5% rebate in the Transfer Tax for seismic work performed after purchase of a residential building, as a refund for owners that have purchased a SWOF building. There are many ways in which this could be done, each with different financial and equity issues. Council may wish to consider the desirability of this policy as well as what would be a fair and appropriate time period and eligibility criteria.

3. Developing strong enforcement procedures:

While most owners will seek to comply with the mandatory retrofit requirements, a few may not. There are still a handful of owners that have neither completed the engineering report nor posted the signage required in Phase I of the Ordinance, which was adopted in 2005. Given that this is a life-safety issue, enforcement is a key tool the City should use to achieve compliance.

- a. Staff should clearly spell out, to owners, the enforcement mechanisms that will be used when compliance deadlines have passed. Staff has indicated that enforcement may include fines, liens and if necessary, having a receiver appointed to complete the required work. The Planning Department and City Council should communicate what specific enforcement measures will be taken against non-compliant properties and publish a description of the enforcement measures in the FAQs and any other informational handouts.

Actions the Rent Board is committed to taking once the Ordinance is adopted

1. **The Board remains committed to guaranteeing that all owners who perform seismic work on their building will receive a fair return on their investment.** This is guaranteed under the current regulations. In addition, the Board will assign a dedicated staff person to review proposed work with owners, so they have a clearer understanding, prior to beginning the work, what, if any, portion of the costs may be passed through. Furthermore, once the work is performed and the owner files a petition, these cases will be expedited, in order to get a decision back to the owner as soon as possible.
2. **The Rent Board is committed to making the necessary regulation changes to remove the financial barriers that prevent owners from retrofitting while continuing to protect tenants from unreasonable rent increases and displacement.** Specifically, the Board will:
 - a. **Consider the need to allow the pass through of a portion of the cost of the retrofit as a rent increase to tenants for an owner who otherwise does not qualify under the current regulations.** As noted above, due to the rent increases allowed under Costa/Hawkins, most properties would not qualify to pass on retrofit costs to tenants under the current regulations. The Board has agreed to review the need and appropriateness of allowing owners to pass through some of the cost of retrofitting to those tenants not already paying market rent. Because of the lack of data about the need to most owners or the impact on tenant households, the Board will do this review once hardship information and actual data is available. Rent Board staff will continue to work with the City to obtain and analyze this information so that we all are making informed decisions that enable us to better achieve our policy objectives. Such regulation changes may in turn generate the need for the City to establish or expand some forms of assistance to very low-income tenants, who might otherwise be displaced by such increases.
 - b. **Make changes to the regulations so that the impacts of a decrease in services due to a mandated seismic retrofit are clear to both property owners and tenants.** If a mandated retrofit requires the removal of services, such as a parking space, currently dedicated to a tenant, or some other amenity, the Rent Board will provide clear guidelines on how a reduction of service may impact the rent ceiling for a particular unit. Regulations will be revised to reduce the financial impact on the owner as well as assuring that, when possible, the tenant has the service restored quickly. This will allow owners to make informed decisions when considering the best plan for a seismic retrofit.
3. **The Board remains committed to continuing outreach and education to owners and tenants about this important issue.** Our goal is to make sure that those affected know about the requirements of the Ordinance and that the law is followed.

The Rent Stabilization Board is also willing to take measures to encourage compliance with SWOF. Specifically, we will consider a regulation reducing the maximum allowable rents for the rental units in properties that remain out of compliance for extended periods of time. Any regulation would apply only on properties where no action has been taken by the owner to neither secure the permit nor complete the work within the required deadlines. Rent reductions would not apply to owners that have hardship claims pending or extensions granted by the City