



Jesse Arreguín
City Councilmember, District 4

ACTION CALENDAR
October 27, 2015

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Revising the Rental Housing Safety Program

RECOMMENDATION

Refer to the City Manager the following proposals to revise the Rental Housing Safety Program (RHSP) and improve housing safety in the City of Berkeley:

- **Prioritize proactive inspections** on those properties with a history of housing code complaints, Rent Board Individual Rent Adjustment (IRA) petitions due to habitability issues, and properties at risk of major habitability issues.
- **Increase re-inspection fees** to generate additional revenue for the program and hire more inspectors, while focusing on those properties not in compliance. In addition, the City Manager should consider modifying the across-the-board RHSP fee to tie it to inflation (CPI Housing Index).
- **Consider an across-the-board RHSP fee increase.** The per-unit and per-room fees have not been adjusted since 2009, while the costs of administering the program, as well as rents and inflation, have increased.
- **Enhanced enforcement of Schedule A requirement**, including amending city law to require submission of the Schedule A checklist to a designated city agency.
- **Explore establishment of a mandatory inspection program** such as cyclical inspections, inspections based on geographic area or inspections at time of sale.
- **Allow confidential housing code complaints**
- **Amend the Housing Code to make mold and mildew a public nuisance** requiring that excessive mold growth due to structural issues and lack of repairs by owner be subject to RHSP enforcement and remediated if found on inspection.

- **Increase remedies for non-compliance.** Penalties for each violation of RHSP are not to exceed \$500. Increasing the civil penalty above \$500 would provide a greater incentive for owners to provide the checklist to tenants and to promote timely repairs of code violations that are found to exist.

The goal of this recommendation is to improve housing safety and habitability while shifting costs to those properties not in compliance and containing the costs to those following the law.

FINANCIAL IMPLICATIONS

Staff time involved in analyzing proposed changes to the Rental Housing Safety Program. Increasing proactive inspections and expanded enforcement of the Schedule A requirement will require additional staff resources, which could be funded by an increase in re-inspection fees or an across-the-board RHSP fee increase. This item requests both exploration of increased enforcement, and ways of generating additional revenue to operate the program.

BACKGROUND

City Council adopted Ordinance No. 6,651-N.S. on August 23, 2001, establishing the Rental Housing Safety Program. The purpose of the RHSP is to encourage a collaborative effort among property owners, tenants, and the City to improve the quality and safety of rental housing in Berkeley. The RHSP incorporates state-mandated housing code inspections that are conducted in response to tenant complaints with random and selective inspections of tenant-occupied units and buildings to identify existing or potential housing code violations before they compromise the safety and well-being of tenants. The RHSP further requires rental property owners to annually certify that their units meet housing safety standards.

The Rental Housing Safety Program consists of five components:

- **Annual fee** (BMC Section 12.48.090): Property owners are billed annually to support program operations. In May 2009, Council approved an increase to \$26 per unit for rent and \$13 per room for rent starting in FY 2010.
- **Schedule A, Self-Certification Safety Checklist** (BMC Section 12.48): Rental property owners must annually inspect their units, complete the Schedule A checklist and provide a copy to the tenant to certify that specific housing safety standards are being met. Currently, owners are not required to submit a copy of the Schedule A form to the City. According to the 2009 Rent Board tenant survey, fewer than 20% of tenants reported receiving the completed Schedule A form from their landlord despite the legal requirement that landlords provide a copy of the form.
- **Reactive/Complaint Inspections** (BMC Section 19.40): Tenants, owners, or other City Departments may request an inspection. Owners have 45 days to

remedy any violations noted. Inspectors will return in 45 day increments until the violations have been corrected, and re-inspection fees apply.

- **Proactive inspections:** These inspections are undertaken on a random basis of properties randomly selected. In addition, RHSP conducts inspections of properties that received funding from the City's Housing Trust Fund and units with Shelter Plus Care certificates.
- **Inspection of Weather-Exposed Elements (BMC Section 12.48.005):** All owners of apartment houses and hotels must arrange an inspection of all weather-exposed elements, such as elevated wood and metal decks, balconies, landings, or stairway systems every three years, by a licensed general contractor or other certified individual to verify that the elements are in general safe condition, adequate working order, and free from hazardous dry rot, fungus, deterioration, decay, or improper alteration. Property owners must provide proof of compliance by submitting an affidavit form to the City.

The 4x4 Rent Board/City Council Joint Committee at its meeting of September 10, 2015 discussed how to improve housing safety in Berkeley, including changes to the Rental Housing Safety Program (RHSP). While the Committee did not take a formal vote, the concepts recommended in this report were discussed and there was agreement amongst all Committee members that the City needed to make improvements to the RHSP to increase inspections and make rental housing safer.

On October 8, 2015 the Rent Board Habitability Committee voted unanimously to support these improvements to the Rental Housing Safety Program.

RATIONALE FOR RECOMMENDATION

The tragic collapse of a fifth-floor balcony at the Library Gardens complex on June 16, 2015 focused public attention on the safety of rental units throughout the City of Berkeley. Beyond the structural issues that caused the balcony to collapse, the building was also the subject of multiple complaints submitted to Berkeley's Rent Stabilization Board and Housing Code Enforcement staff describing other safety hazards and concerns. In the aftermath of this tragedy, the City has already taken steps to improve the safety of housing in Berkeley through the Exterior Elevated Elements Program (E3). Strengthening the Rental Housing Safety Program to ensure the safety of all aspects of rental housing should be the next step.

Since 2001, the Rental Housing Safety Program has served as a resource to both landlords and tenants, providing information on code requirements and conducting safety inspections of rental properties. Despite this, the program has not fully realized its original goal, which was to expand the prior state-mandated code inspection program to focus on proactive inspections. This would help identify problems in properties before they become safety hazards. The fact that several large apartment fires have occurred

in recent years signifies that our housing stock is aging and in need of repair, and that the program has not been effective in addressing these problems. A majority of rental units in Berkeley are over 40 years old and are subject to deferred maintenance. Nevertheless, according to statistics provided by city staff, the RHSP largely operates as a reactive enforcement program. Proactive inspections make up a small percentage of overall inspections. This is principally due to the limited number of housing inspectors, but also due to the approach to conducting proactive inspections through random selection. Prioritizing proactive inspections on those properties with a history of complaints and violations could ensure that the units at greatest risk of life safety problems get remedied first.

In addition, the program was amended in 2003 to eliminate the requirement that the Schedule A inspection checklist be submitted to the City. Therefore we have a code inspection program based largely on the “honor system” and there is no way to definitively know whether owners have completed the check list or provided a copy to the tenant as required by city law. The only way to know is if a complaint is made, or if the unit is randomly one of the few hundred that receives a proactive inspection.

While the program has been largely successful over the years, there are aspects of the RHSP that, if improved upon, can strengthen the program’s inspection and outreach capacity, allowing staff to more efficiently target cases of non-compliance with building and safety code. This item provides multiple options for achieving these goals, leaving it to the discretion of City staff to determine which option(s) are most appropriate.

There are a variety of options for staff to consider for building upon the progress the RHSP has made and enabling the program to conduct more targeted work. Below are several options that can be adopted independently or in conjunction with one another, based upon the results of staff analysis.

Prioritize proactive inspections on those properties with a history of housing code complaints, Rent Board Individual Rent Adjustment (IRA) petitions due to habitability issues, and properties at risk of major habitability issues.

Adjustments to Re-inspection Fees. Re-inspection fees for housing code violations have remained at the same rate since the fees were established in September of 2003 (Resolution No. 62,230-NS). While all owners are responsible for paying the annual per unit/room fee to the RHSP, only those owners found to be repeatedly in violation of housing safety code are responsible for paying re-inspection fines. It is important to note that the majority of owners are in compliance with housing codes and recognize the value in keeping their property in safe and fair condition. However, when repeated safety code violations do occur, re-inspection of units not only requires staff time and resources to investigate and follow-up with owners and tenants, but continuous safety code violations also represent a prolonged threat to tenants’ safety. By increasing re-inspection fees to adjust for inflation, the City will earn additional revenue for the

program as well as impose harsher penalties on owners who fail to address code violations and continue to put the health and safety of their tenants at risk. This will also provide greater incentive to owners to correct code violations in a timelier manner, improving the overall safety of rental units throughout the city. Owners who have not violated housing code, or corrected the code violation after the first inspection, will not be affected by the increased re-inspection fee.

The revenue from these fee increases can be used to hire an additional Inspector for the program and/or hire a clerical FTE position, such as an Office Specialist, to increase the number of inspections each year and monitor distribution of and compliance with Schedule A, a critical component of the RHSP. Staff should consider and analyze these options, and report their findings and recommendations back to the Council at a future meeting.

A 2014 study released by Berkeley's Rent Board reported that a full-time Certified Housing Inspector position would cost the City \$137,304 annually and an Office Specialist III position would cost \$100,710 annually (calculated at 150% of maximum salary to adjust for benefits). These additional positions would result in a total of five Housing Inspectors and 2.2 administrative/clerical staff members.

Suggested re-inspection fee increases were calculated to adjust for inflation and improve the program's capacity in meeting its goals, such as increasing the number of proactive inspections of residential rental properties, intensifying the self-certification component of the RHSP (Schedule A), and hiring an additional FTE housing inspector and/or clerical staff member to assist with these tasks. The recommended program changes would have varying fiscal impacts. For example, the financial implications of increasing re-inspection fees depend in part on the number of citations and the frequency of re-inspections due to landowners' failure to address housing code violations after their property's first inspection. The program currently conducts about 1,507 inspections annually, including 1,200 anticipated tenant requests for inspection and 307 proactive inspections in FY 2013/14, and 490 proactive inspections in FY 2014/15.

(The re-inspection fee- #1 and #2 could be increased from \$300 to at least \$389 and re-inspection fee- #3 increased from \$400 to \$519 if adjusted to reflect the rate of inflation between 2003 and 2015.)

In 2009 it was reported that the program conducted an average of 504 re-inspections annually. Applying the proposed increase of the first re-inspection fee- #1 at \$350 (\$389 inflation) to this figure shows that the RHSP could earn at least \$176,400 (\$196,056) in additional program income (an increase of \$25,200 (\$44,856) from the current re-inspection fee-#1 of \$300) by increasing re-inspections fees. This is a conservative estimate because it assumes that the average number of re-inspections has not

increased since 2009, and because it assumes that each citation only required one re-inspection, rather than additional re-inspections which would result in added fines.

The following table presents a complete schedule of current and proposed fees:

Fee	Current Fee	Proposed Fee
Annual fee-residential rental buildings	\$26.00 per unit	\$26.00 per unit (no change)
Annual fee- residential hotels and boarding houses with 5 or more rooms	\$13.00 per room	\$13.00 per room (no change)
Initial Investigation	No fee	No fee (no change)
Re-inspection in which all cited housing code violations have been corrected	No fee	No fee (no change)
Re-inspection in which all cited housing code violations have not been corrected- #1	\$300 per unit	\$350 per unit (or \$390 per inflation)
Re-inspection whether or not all cited housing code violations have been corrected- #2	\$300 per unit	\$400 per unit (or \$390 per inflation)
Re-inspections whether or not unit is cleared or all cited code violations- #3 and any additional	\$400 per unit	\$500 per unit (or \$519 per inflation)
Late payment fee- 30 days	10% of billed amount	10% of billed amount (no change)
Late payment fee- 60 days	20% of billed amount	25% of billed amount
Administrative lien fee	\$125 per property	\$125 per property (no change)

Increase in the across-the-board RHSP fee. The current fee of \$26 per unit has not been increased six years and has not been adjusted for inflation. The current fee level should be examined to see if it is sufficient to not only maintain the existing operation of the program but to increase inspections and implement the other proposals put forward in this item. In addition adding an automatic CPI increase should also be explored so that the fee keeps up with the pace of inflation to cover increased operating costs.

Enhanced Enforcement of Schedule A. In 2009 a survey conducted by the Rent Board, 45% of tenants reported that the property owner had inspected their apartment in the previous year and 16% of tenants reported receiving a copy of Schedule A certifying the safety of their unit/room. Schedule A is a crucial component of the RHSP, providing valuable safety information to both owners and tenants. This form ensures that owners can be held accountable for monitoring the safety of their rental property. However, if owners are not conducting inspections or completing Schedule A, and if tenants are not aware of Schedule A's existence, safety issues or code violations might go unnoticed or unaddressed, putting tenants' safety and the value of the property at risk. To improve compliance with Schedule A, there are a number of options the RHSP could pursue:

- Amend City law to require that the Schedule A form be sent to a designated city agency. This will create an incentive for owners to do the self-inspection and will give the City critical information to track compliance. The revenue generated from increased re-inspection fees and potentially an across-the-board fee increase could fund an additional clerical staff person to process the Schedule A forms, freeing up time for inspectors to conduct reactive and proactive inspections.
- The RHSP could mail a copy of Schedule A to tenants on an annual basis, to inform tenants about safety issues and remind them that owners are required to complete an inspection of their units/rooms. The program may need to hire an additional Office Specialist or other administrative/clerical position to manage the process of mailing Schedule A to tenants, potentially with the assistance of Rent Board staff which already sends regular mailing to all tenants covered by its ordinance. By delegating this task to office staff, Inspectors will have more time to dedicate to inspections and tenant complaints.

Allow confidential housing code complaints Currently complaints over violations of the housing code cannot be made confidentially or anonymously. Other city departments such as the Fire Department do accept confidential and anonymous complaints.

Allowing confidential complaints, which would enable a tenant or property owner to file complaint without another party knowing, and would be independently verified through an inspection, could improve the city's inspection program. Tenants are often fearful of retaliation from either on-site managers or their landlords should they voice complaints about habitability issues either in their unit or at their property. Confidential complaints as opposed to anonymous complaints could help reduce the likelihood of potential abuse, and an in depth review and analysis of this idea could lead to the development

of acceptable safeguards and protocols that allow tenants to effectively advocate for their rights under city law and weed out complaints that are not legitimate.

Amend the Housing Code to make mold and mildew a public nuisance allowing excessive mold growth due to structural conditions and lack of repairs by the owner be subject to RHSP enforcement and remediated if found on inspection. Currently excessive mold and mildew growth is not a violation of the housing code and is not required to be abated if discovered during an inspection, only structural causes of mold damage (i.e. leak in roof) are required to be fixed. The 2009 Rent Board tenant survey found that mold was one of the most frequently listed physical problems in a building at 26% of those tenants surveyed. San Francisco over ten years ago declared mold a nuisance and enabled its housing inspectors to cite and require abatement of mold. The city should examine how to deal with mold as part of the RHSP process, not as part of a separate code enforcement process. Standards would need to be developed to define what mold growth constitutes a nuisance.

Senate Bill 655 recently signed into law by Governor Brown specifies that visible mold growth, except mold that is minor and found on surfaces that accumulate moisture as part of their proper and intended use, is a substandard condition that must be remediated.

The bill defines mold as microscopic organisms or fungi that can grow in damp conditions in the interior of a building. This legislation applies to local governments including our RHSP. In light the Governor's signing of SB 655 Berkeley should re-examine its house codes relating to mold.

http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0651-0700/sb_655_bill_20150908_enrolled.pdf

Increase remedies for non-compliance. Penalties for each violation of RHSP are not to exceed \$500. Increasing the civil penalty above \$500 would provide a greater incentive for owners to provide the checklist to tenants and to promote timely repairs of code violations that are found to exist.

CREATING A MANDATORY INSPECTION PROGRAM

Mandatory Inspection at Time of Sale. When any rental property is sold to a new owner(s), an inspection of the property and units/rooms will be conducted by a RHSP Inspector to certify that the property meets all safety code requirements. The property owner will be responsible for fixing any code violations prior to beginning new tenancies at the property, and will be subject to re-inspection and associated fees and citations in the event that code violations remain unaddressed after the first inspection.

Cyclical Inspections. A cyclical inspections model would enable the RHSP to proactively monitor the safety of all rental units/rooms in the city on a regular basis, in addition to the complaint-driven inspections of units/rooms. Several other California cities, including Hayward, Richmond, and Concord, currently use the cyclical

inspections model in their rental inspections programs. A 2014 study by the Rent Stabilization Board determined that the RHSP would need at least 3.75 inspectors each conducting 6 inspections a day to complete the cycle of inspections every five years, or at least 6.25 inspectors each conducting 6 inspections a day to complete the cycle of inspections every three years. If re-inspection fees are increased, the additional revenue could be used to hire another inspector and/or staff. As there are currently four Housing Inspectors with the RHSP, it is possible the program could transition into a system of cyclical inspections without hiring an additional inspector. However, because this transition would involve significantly changing the RHSP's structure, hiring an additional Inspector, or, at minimum an Office Specialist, would likely be necessary to assist in facilitating this transition.

Focus Area. Alternatively, rather than inspecting all units/rooms in the city on one large-scale inspection cycle, the City could adopt a "focus area" model similar to the one implemented by the City of Hayward. In this model, RHSP staff would prioritize proactive inspections of properties where owners have not paid RHSP annual fees, have not submitted Schedule A, have a history of RHSP complaints submitted by tenants, previous code violations, and/or Rent Board petitions. The cycle of inspections for these problematic properties would be shorter than for the remainder of rental properties in the city. All rental properties outside the focus area would be proactively inspected less often, such as once every ten years with a random sample of 10% being inspected every year until the cycle restarts, as is done in Hayward. This model would allow the program to focus its resources on properties most likely to have code violations, and transition away from randomized proactive inspections into a more deliberate and focused process. Adopting this model would likely require significant changes to the RHSP's structure, as mentioned above, and could also necessitate adding new Inspector and/or Office Specialist positions.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

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