



Date: March 6, 2015
To: Patrick H. West, City Manager *P.H.W.*
From: Amy J. Bodek, Director of Development Services *AJB*
For: Honorable Mayor and Members of the City Council
Subject: Results of Research on Comprehensive Code Enforcement Options

On January 7, 2014 the City Council approved the 2013-2021 Housing Element, which was subsequently certified by the State Department of Housing and Community Development on April 2, 2014. In accordance with State law, each jurisdiction must update its Housing Element periodically. The City's certified Housing Element covers the planning period from 2013 to 2021. The Housing Element sets forth the City's objectives that focus on the following issues: (1) conserving and improving existing affordable housing; (2) providing adequate sites for new housing; (3) assisting in the development of affordable housing; (4) removing governmental constraints to housing development; and (5) promoting equal housing opportunities for Long Beach.

Pursuant to the City's adopted Housing Element (Program 3.3), this memorandum "conclude(s) research on rental escrow program, Franchise Tax Board Substandard Housing Program, and other alternative approaches," with the goal of reporting to the City Council by the end of 2014 on the feasibility, cost effectiveness and administrative burdens.

I. Rental Escrow Programs

The best method of presenting information on rental escrow programs is to discuss the Los Angeles version of the Rental Escrow Account Program (LA REAP) and provide a REAP-like analysis for Long Beach. In this manner, an equal compare and contrast scenario is possible. Current code enforcement programs, such as the Rental Housing Inspection Program (RHIP) and the standard referral process of reporting habitability issues, will be discussed.

Los Angeles REAP

Tenant's rights organizations, such as Housing Long Beach and Legal Aid of Los Angeles, have requested that the City adopt a program that resembles LA REAP. According to the stated purpose of this program, the LA REAP Ordinance reads, "It is the purpose of the provisions of this article to provide a just, equitable and practical method, to be cumulative to and in addition to, any other remedy available at law, to enforce the purposes of the Housing Code set forth in Section 161.102 and to encourage compliance by landlords with respect to the maintenance and repair of resident building, structures, premises and portions of those buildings, structures and premises."

Section 161.102 is found in the Los Angeles Municipal Code under the Los Angeles Housing Code (Attachment A – Article 2 Rent Escrow Account Program). LA REAP is outlined in the following bullet points and is managed by the Los Angeles Department of Housing and Development (LAHD):

- Applies to multi-unit residential properties (2+ units) that are:
 - The subject of one or more correction notices.
 - The period allowed by the correction notice, including any extensions, expired without compliance (120 days).
 - The cited violations affect the health or safety of the occupants.
- If unit is accepted into REAP, LAHD issues a written determination to landlord. Landlord can appeal this determination to the General Manager. Hearing Officers are assigned by the General Manager and work within the REAP program.
- The landlord, tenant or enforcement agency can appeal the General Manager's decision to an Appeals Board. A filing fee of \$150 is required.
- Tenants of properties placed in LA REAP program can be given a rent reduction determined by the LAHD (severity of the violations found is considered, and reductions can range from 10 percent to 20 percent of existing rent).
- An escrow account is opened and tenants in affected units are given the option to pay their reduced rent into the escrow account or to landlord. A monthly summary report is mailed to property owner of all tenant payments received through the escrow account.
- A notice that property is in the LA REAP program is recorded against the property title with the County Recorder's Office.
- A \$50 monthly administrative fee is collected by LAHD for each unit in the LA REAP program.
- A property owner, tenant, enforcement agency or creditor may submit an application to have funds released from the escrow account for repairs or to pay utilities. Tenant may request funds for relocation purposes. General Manager hearing is scheduled. Decision of hearing officer can be appealed to Appeals Board.
- To clear title, property must be removed from the program, no outstanding violations can exist, and all fees due to LAHD and others must be paid. Owner is then given the remaining funds. The owner must provide a W9 form for funds to be released. LA REAP staff will then recommend to the LA City Council to remove property from the LA REAP program. Owner may then begin collecting full rent.

LA REAP is not in the Code Enforcement division and a special LA REAP unit functions to handle the administrative part of the program. LA REAP is an intensive administrative program, i.e., creating and managing escrow accounts,

holding many office hearings, managing the repairs made, and appearing before the Los Angeles City Council as the final hearing body for removal from LA REAP.

Long Beach REAP-like Analysis

LA REAP purports full cost recovery based on the collection of \$50 per unit per month. In Long Beach, full cost recovery would be a minimum of \$196 per unit per month. The difference is likely based on economies of scale, as the City of Los Angeles has significantly more rental units than the City of Long Beach. In addition, the LA REAP \$50 rate does not consider indirect costs incurred by the City Attorney and Financial Management. Staff has spent considerable time and energy trying to determine the full cost of the LA REAP program, but cannot determine these indirect costs. In addition, despite public records requests, the City of Los Angeles is unable to provide that information, but does acknowledge that there are hidden costs to the program.

Staff has prepared an analysis of the programmatic steps above and applied it to the City of Long Beach (Attachment B – REAP Program Costs First Year of Operation). In the City of Long Beach, approximately 558 units might be considered eligible for enhanced code enforcement. A Long Beach-focused Rental Escrow Account Program would require 13 full-time employees as seen in the attachment. Although staff has not been able to acquire a final analysis of Los Angeles indirect costs, Attachment B does capture direct and indirect costs associated with the potential of creating a LB REAP program. This analysis assumes that landlords will take advantage of the appeals process. Based on a total cost of \$2,235,381, each unit in REAP would pay \$334.00 per month in the first year. For all ensuing years, one-time setup costs would not be incurred, and each unit in REAP would cost \$273.00 per month.

II. Proposed Rental Housing Inspection Program (RHIP)

Since 1966, the City's Health and Human Services Department has operated a proactive inspection program for properties consisting of four or more residential rental units. This program was designed to ensure that the City's rental housing comply with standards for health, safety, and welfare of the public in compliance with California Health and Safety Code Section 17920. This proactive program incorporates annual inspection fees to help offset the costs of enforcement as provided for in California Health and Safety Code Section 17951. In FY13, this proactive inspection program was transferred to the Code Enforcement Division in Development Services as part of the City's Government Reform efforts. It was noted at that time that this proactive inspection program was not codified. As such, staff has prepared the outline of a draft RHIP ordinance that, if adopted, will reside in Title 18 of the Long Beach Municipal Code. It is anticipated that the draft ordinance will be presented to the City Council in the next few weeks.

The proposed draft RHIP ordinance codifies the existing proactive inspection process. It also provides additional components to the process to provide better communication with property owners and tenants. These components are as follows:

- Notification to property owners and tenants prior to City staff conducting a proactive inspection.
- Development of a Tenant/Landlord Rights and Responsibilities brochure to be provided to tenants by the landlord. This brochure includes language advising that tenants are allowed to exercise their legal right, such as requesting habitability repairs, without the threat of eviction.
- Modification to the inspection process when responding to complaints so that no one unit is singled out.
- Increased fines for properties which are not brought into compliance.

III. State of California Franchise Tax Board Substandard Housing Program

The State Franchise Tax Board allows State and local agencies the ability to issue a determination that a property is substandard and refer that determination to the Tax Board. A determination disallows income tax deductions for interest, taxes, amortization, and depreciation for rental units determined to be substandard.

The California General Fund transfers tax revenues generated from the disallowed income tax deductions to the local Code Enforcement Rehabilitation Fund. The Franchise Tax Board allocates and disburses funds to the cities and counties that generate the notice of substandard housing.

Substandard housing means occupied dwellings from which the taxpayer derives rental income or unoccupied or abandoned dwellings that meet both criteria listed below:

- 1a) Occupied rental dwellings that violate State law or local codes dealing with health, safety or building.

OR

- 1b) Dwellings that are unoccupied or abandoned for at least 90 days and have been cited for housing conditions that constitute a serious violation of State law or local codes dealing with health, safety or building, and constitute a threat to public health and safety.

AND

- 2a) After written notice of violation by the regulatory agency, the housing has not been brought to a condition of compliance within 6 months after the date of notice.

OR

- 2b) Good faith efforts for compliance have not been commenced as determined by the regulatory agency.

If a property meets the requirements above, the City would prepare a Tax Board designated form and mail to the taxpayer (property owner), and advise the taxpayer of the agency's intent to notify the Franchise Tax Board of the noncompliance within 10 days unless an appeal is filed, where the appeal may be filed and a general description of the tax consequences of the filing. Appeals shall be made to the same body and in the same manner as appeals from other actions of the regulatory agency. If no appeal is made within 10 days, or after disposition of the appeal is sustained, the regulatory agency shall notify the Franchise Tax Board of the noncompliance. The local agency must also record a copy of the notice of noncompliance in the office of the recorder for the county.

Once a property is brought into compliance, the local agency would prepare a Tax Board designated form advising of compliance. The tax code has requirements that the local agency will report this activity to the "appropriate legislative body" each July 1.

Attached is a cost analysis for this program (Attachment C – REAP Program Costs State Franchise Tax Board Substandard Program). The administrative cost for this program is estimated at approximately \$230 per unit. Administrative citations are the costs that will be applied to the tax roll.

Barriers to Implementing a LB REAP-like Program

The City Attorney recently opined that the City of Long Beach currently lacks the rent control measures necessary to enforce a similar program (Attachment D – City Attorney Rent Escrow Account Program Review). This is primarily related to the tenant protections contained within the LA REAP, which disallow tenant evictions while the unit is in LA REAP, prohibits eviction for six months after the unit has been removed from the program, includes the prohibition of the landlord to raise the rent on a unit, and enacts rent reduction and escrow impounds for a unit. All of these aspects of tenant protections within the LA REAP use rent control as their basis. Absent a rent control ordinance in the City of Long Beach, there is no ability for the City to impose these financial constraints on a private landlord.

Discussion

The need for rental habitability ordinances and associated programs is to ensure that tenants have clean and safe places to live and that the City maintains a quality stock of housing options. This is stated in the Los Angeles purpose for the REAP Ordinance and in the proposed Long Beach Rental Housing Inspection Program ordinance. The City currently has several programs that address this purpose, and data indicates that 90 percent of code complaints are resolved in 120 days or less. In the case of the remaining 10 percent, landlords are considered to be delinquent, are charged additional administrative charges and are subject to prosecution by the City Prosecutor. Typically, four landlords a year are referred to the City Prosecutor.

The key to measuring the success of a code enforcement program is the compliance rate, the timing of compliance, and the cost of implementing the programs. In this case, the Code Enforcement Division attains an excellent compliance rate of 90 percent within 120 days and accomplishes this within current staffing levels.

There are approximately 76,049 rental units that fall under the purview of the RHIP. Of these, approximately 558 of the units inspected have habitability issues. That means that .007 percent of Long Beach units inspected have issues that remain unresolved after 120 days. This is a very small number and does not warrant an expensive new program, like REAP, to be added to the City's regulations related to housing habitability.

Staff's review of LA REAP has determined that a similar program in Long Beach would not ensure that the outlying 10 percent of landlord-tenant issues would be resolved in a timely manner. In fact, according to LA REAP staff, a unit stays in the program for an average of 17 months. This is at least five months longer than current Long Beach Code Enforcement compliance rates. Staff finds this compliance rate unacceptable and a significant detriment to the REAP program.

Additionally, it is important to note that the escrow component of a REAP-like program in Long Beach will not focus resources on the barriers to addressing the remaining 10 percent of problem locations. Instead, it will simply create a 17-month, on average, administrative process that penalizes owners and does little to directly impact and improve the tenant's quality of life. At this juncture, staff believes tenants would be better served by building upon the success of our program and not to add, and attempt to implement, an additional bureaucratic layer, which lacks the financial feasibility that exists in the LA housing market due to its volume, and which will not directly benefit the quality of life of Long Beach residents.

However, staff does believe there are components of LA REAP that would enhance/strengthen our enforcement efforts to address the remaining 10 percent of problem locations. LA Reap “currently has five outreach contractors that are assigned to educate tenants about the Rent Escrow Account Program (REAP), encourage participation, and one contractor assigned to assist the landlords with outreach services to expedite the compliance process.” Currently, we understand that our local non-profit stakeholders, i.e., Housing Long Beach and Legal Aid, who work directly with, and advocate on behalf of, the remaining 10 percent of tenants, have identified that there are a range of housing issues which remain for us to address, and that their clients have indicated a level of difficulty in working with or engaging with City enforcement efforts. The success of these groups in working with these tenants is that they are able to explain the City processes in regards to code enforcement and habitability issues, and in addition, Legal Aid helps tenants in court with eviction proceedings. Their success highlights the City’s need to focus on an education and outreach campaign similar to that of the LA REAP program.

Recognizing that one of the largest barriers to our ability to succeed on enforcement efforts in the remaining pool of complaints has been our inability to explain the City processes in regards to code enforcement and habitability issues, and that the staff must find a way to reach and impact the quality of life of the remaining 10 percent of tenants who fall through our current enforcement efforts, staff will be recommending that the City Council consider annually funding an education and outreach campaign in the amount of \$75,000, to be issued pursuant to an RFQ, to fund outreach and coordinating agencies. While we identify and fund appropriate outreach and education agencies, staff proposes to concurrently work with the Apartment Owners’ Association to further educate their members. Staff strongly believes the outreach conducted by these partnerships will foster a far more productive outcome than a REAP-like escrow account program in Long Beach.

City staff has met with both the tenants’ rights groups and the Apartment Owners’ Association to discuss the RHIP and LA REAP. Both stakeholder groups generally agree that the RHIP provides an effective tool in gaining compliance and providing a safe and healthy environment for the tenants of the City. Both groups have also provided comments to City staff on the proposed draft RHIP ordinance, many of which are being incorporated.

Recommendation

Based on the City Attorney’s opinion, the significant administrative and financial burden to adopting and implementing a REAP-like escrow program for minimal enhancements in compliance measures, and current compliance rates related to the City’s existing code enforcement activities, staff does not recommend the adoption of a REAP-like escrow program and, instead, recommends adopting a RHIP ordinance and the Tax Board’s Substandard Housing Program in

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conjunction with funding an education and outreach campaign. These actions will provide additional tools for dealing with enforcing standard habitability conditions, and will focus the City's limited resources on programs that have been 90 percent successful and prevent adopting an unfunded mandate.

For further information regarding RHIP, please contact Angela Reynolds, Deputy Director of Development, at ext. 8-6369.

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Attachment A: Article 2 Rent Escrow Account Program

Attachment B: REAP Program Costs First Year of Operation

Attachment C: REAP Program Costs State Franchise Tax Board Substandard Program

Attachment D: City Attorney Rent Escrow Account Program Review

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