



Unreinforced Masonry Policy Committee Meeting

Meeting Summary

City of Seattle, Department of Planning and Development

Seattle Municipal Tower, Room 4050, 700 5th Avenue, Seattle, WA 98104

Thursday, October 25, 2012 – 8:30 a.m. to 10:20 a.m.

Attendance

Committee Members

- | | |
|--|---|
| <input type="checkbox"/> Lynda Carey, Bellwether Housing | <input type="checkbox"/> Frank Buchanan |
| <input type="checkbox"/> Art Frankel, USGS | <input type="checkbox"/> Tom Corcoran |
| <input type="checkbox"/> Bob Freitag, University of Washington | <input type="checkbox"/> Charles Davis |
| <input type="checkbox"/> David Gonzalez, Degenkolb Engineers | <input type="checkbox"/> Dick Gemperle |
| <input type="checkbox"/> Mark Huppert, Preservation Green Lab | <input type="checkbox"/> Barrett Johnston |
| <input type="checkbox"/> Paul Mar, SCID Preservation and Development Authority | <input type="checkbox"/> Keith Moore |
| <input type="checkbox"/> Sean Martin, Rental Housing Association | <input type="checkbox"/> Kit O'Neill |
| <input type="checkbox"/> Rachel Minnery, Environmental Works | <input type="checkbox"/> Robert Wright |
| <input type="checkbox"/> Steve Moddemeyer, Collins Woerman | |
| <input type="checkbox"/> Michale Robinson, A.I.D. Development Group | |
| <input type="checkbox"/> Craig Weaver, USGS | |

Staff

- | |
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| <input type="checkbox"/> Landon Bosisio, EnviroIssues |
| <input type="checkbox"/> Rebecca Herzfeld, City Council Staff |
| <input type="checkbox"/> Sandy Howard, DPD |
| <input type="checkbox"/> Ardel Jala, DPD |
| <input type="checkbox"/> Erika Lund, Office of Emergency Management |
| <input type="checkbox"/> Angie Thomson, Facilitator, EnviroIssues |
| <input type="checkbox"/> Jill Vanneman, DPD |

Public

- | |
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| <input type="checkbox"/> Kathleen Albro |
| <input type="checkbox"/> Michael Boer |

Welcome and Introductions

After a round of introductions, Angie Thomson, EnviroIssues, recapped the discussion from the previous meeting and gave an overview of the agenda. Angie explained that this may be the last meeting of the policy committee meeting, unless more time is needed to discuss outstanding topics.

Sandy Howard, DPD, told the group that a summary of public comments received has been posted on the URM program website. Most comments pertained to the list of current Seattle URM's, how a URM can be removed from the list, and what the policy will likely mean for building owners. A few comments were made regarding the proposed thresholds of the policy.

Sandy referred to the client assistance memo (CAM) included in the handouts. This CAM provides information on DPD's code compliance guidelines and outlines the City's basic code regulations and protocol for code enforcement and complaint response. Overall, DPD currently has a 95% compliance rate. Craig Weaver, USGS, asked how long it takes to attain a 95% compliance level. Jill Vanneman, DPD, answered that depending on the number of violations a specific code can take anywhere from a few weeks to several years to achieve 95% compliance.

Sandy reviewed DPD's code enforcement process. She noted that with respect to deadlines, a time extension is possible if a property owner shows intent to comply. Although fees accrue over time, the total financial penalty a property owner owes is often settled outside of court through a negotiation process. Liens on a property and even jail time are also potential consequences after extended non-compliance. Sandy explained that a building owner is required to fix an unfit building if the cost of repair is less than 50% of the building's value. If the cost of repair is more than 50% of the building's value, the City maintains the right to demolish the building. Steve Moddemeyer, Collins Woerman, asked if the City uses eminent domain in cases of demolition. Jill Vannemann (DPD) answered that those cases are mostly decided in court, but the property owner retains their ownership of the property.

Draft Enforcement Measures

Assessment

Angie presented the committee's draft list of enforcement measures, starting with the assessment level. If an owner does not comply with the timeline for the assessment, a notice of violation is given, followed by a \$500 fine per quarter. In addition, the building would be posted on the City's website as non-compliant and no new permits would be granted for the building. If the owner continues to be non-compliant, the City would conduct the assessment and bill the property owner for the cost of the work.

Craig asked if these enforcement measures would apply to the building or to the owner. After discussion, the committee agreed the measures should only apply to the building, not an owner or ownership group. Angie explained that a job-order contract (JOC) program for the assessments would standardize the process and control costs. Mark Huppert, Preservation Green Lab, asked if there would be a request for proposals (RFP) to generate a City-approved roster of engineers. Angie said yes, noting that URM building owners would have the option of choosing their own engineer to conduct the assessment or use someone from the City's list. Angie asked if the City should have three separate rosters of approved contractors – one each for assessment, design, and construction. Rebecca Herzfeld, City Council Staff, said she liked this idea, especially because the City may be conducting its own assessments as part of the policy's enforcement and will need an approved list of contractors.

Mark noted that the problem with the policy's enforcement will not be levying the fines, but collecting them. A critical-risk building could owe over \$1 million after 7 years of non-compliance. The fines will be a funding mechanism for the policy, particularly because this could be a conflict of interest. Rachel Minnery, Environmental Works, suggested that the fines should change as the owner steps through the process. Kathleen Albro, URM building owner, said a large fine is needed to penalize those who choose

to not comply with the retrofit program. Tools such as a City liaison for each project are being provided to improve communication and compliance. Owners must understand the risk of non-compliance. Jill responded that a penalty may be important for compliance, but for many property owners a retrofit is not financially feasible, so a large fine may not make a difference. She added that a \$500 per quarter fine sounds reasonable.

Mark pointed out that if building owners cannot comply with the policy, the policy should encourage the sale of URM buildings to those who can retrofit them. Sandy added that if a lien is placed on a building, the new owner can satisfy that lien through the purchase. Charles Davis, Washington Federal, asked why owners would struggle to obtain financing for a retrofit. Lynda Carey, Bellwether Housing, answered that her organization has maxed out the number of loans they can acquire for certain buildings. No bank would allow the organization to take on more debt.

Bob Freitag, University of Washington, suggested the fines be dropped if an owner ultimately complies. Angie responded that during earlier discussions the committee noted that waiving the fines might dilute the effectiveness of the enforcement policy. Robert Wright, URM building owner, asked why a fine should be levied if a building is eventually retrofitted. Rachel stated that a potential purchaser of a URM building that has not conducted an assessment should be made aware of the building's non-compliance. After discussion, the committee agreed that a URM building's progress through the compliance timeline should be upheld, even if the building's ownership changes hands.

Steve mentioned that the point of the policy isn't to add to the City's coffers, but to seismically retrofit unsafe URM buildings. Sizable fines are needed to act as leverage. Robert noted that a building owner who doesn't comply will likely be penalized, but the biggest hurdle to compliance isn't the assessment stage but the retrofit itself. Kathleen suggested that if the City is eventually required to conduct a building's assessment themselves, they should charge more than the assessment's market rate. Angie noted that the City would choose a contractor from its approved assessment roster and charge the non-compliant owner with the price of the assessment plus administrative costs.

Art Frankel, USGS, asked how owners will know what risk category and compliance timeline applies to their building. Angie responded that the notification letter to URM building owners will classify each building into one of the three risk categories. Owners will then have the opportunity to adjust their building's category, depending on the results of the assessment. Lynda pointed out that there are also URM buildings in Seattle which are not on the City's list and will not receive a notification letter. Frank Buchanan, Makensay Real Estate, asked if an owner completes their assessment, will they still have the additional timeframe or does the compliance timeline start immediately for the next step. If an owner can use all of the allocated time, it could be an incentive for early participation in the retrofit program. Angie answered that at the committee's suggestion, an owner would have the remaining time before moving to the next step's compliance timeline.

Permit Application

Angie reviewed the permit application compliance measures. Enforcement would include a notice of violation, a \$1,000 fine per quarter, and a public posting of the building to the City's online database.

Rachel asked about the tools given to encourage compliance, specifically the two free hours of pre-submittal permit coaching. Sandy answered that DPD staff could help owners through the technical aspects of the permit submittal process and retrofit requirements.

Steve asked if the previously discussed financial hardship clause would apply to those who do not comply with each compliance milestone. Angie answered that the financial hardship criteria applies to the cost of a seismic retrofit and the owner's ability to implement the retrofit. Bob stated that the policy is a life safety issue, so financial hardship criteria should not apply. He noted that building owners cannot use financial hardship as a basis to not update their building according to the City's fire code and added that the URM policy should be no different. Mark reminded the group that an A/E (architectural and engineering) grant is a potential funding mechanism for those who do have a financial hardship and may not be able to otherwise comply with the timeline.

Ardel Jala, DPD, suggested the City talk to the engineering community about the future requirements of the policy. Frank stated that an owner may not understand the need for the policy if their building is empty or unoccupied and if a retrofit does not make financial sense. Rachel suggested the assessment be used to see if a building poses a risk to infrastructure and people around it. Bob proposed a new "monument" risk category be added to account for buildings that are vacant or unused. Angie answered that the committee decided earlier that all URM buildings, regardless of use, carry some degree of risk to an earthquake event.

Permit Approval

Angie reviewed the permit approval step. Fines would be \$1,000 per quarter and any incentives, such as waiving permit fees, would expire. Craig asked if compliance with this step is within the owner's control, and Angie responded that while permit approval is primarily controlled by DPD, the process requires an ongoing conversation with building owners. Tom Corcoran, Integrus Architecture, noted that the assessment classifies buildings into risk categories as a first step. He asked at what step a technical assessment of the building would be due. Rachel answered that the original assessment should identify what upgrades are necessary for the building. Steve added that a detailed technical assessment is needed before an owner can apply for a permit.

Bob asked if the City could use eminent domain to acquire, restructure, and resell a building if necessary. Mark stated that it has been done in Washington State and is a possible option for the City, but not without a legal process. Steve wondered if once an owner is non-compliant, would the fines date back to the last outstanding violation. Michale Robinson, A.I.D. Development Group, suggested the fines be raised to \$500 per day for every step in the compliance timeline. A large financial penalty would force the owner to make a decision on their building. Lynda said while she does not necessarily agree with such high fines, she does support a consistent fine structure across the board. Mark added that most buildings will have gone through at least one real estate cycle during this policy's compliance timeline, allowing for potential market solutions. A fine of \$500 a day seems unnecessarily high.

Rachel noted the policy's penalties do not apply until a building owner is non-compliant. She suggested the City post a placard or sign outside of the building indicating that the building is seismically unsafe if

the owner is non-compliant after the permit approval and work completion steps. Lynda agreed, saying that a posted sign, similar to the “U” outside of URM buildings in Portland, would be a powerful incentive.

Dick Gemperle, URM building owner, said he owns a building in accordance with an LLC (Limited Liability Company). If the company receives a retrofit cost estimate that is beyond their means, the banks will likely refuse a first or second loan and rents can’t be raised beyond market prices. In a subsequent email, Dick gave the following example:

Assume that:

- 1. A medium-sized URM apartment building is owned by an LLC. This LLC has no other assets.*
- 2. The cost of the “Bolts Plus” retrofit would be say \$300,000 (“Bolts Plus” sounds simple, but when you get into the details, it is not. For one thing, it would require vacant apartments and extensive demolition of plaster ceilings.)*
- 3. The building has a mortgage loan from a bank.*
 - A. The amount of the loan is the maximum that the building’s income will support*
 - B. Even if the loan wasn’t at the maximum, the loan terms wouldn’t permit a second lien (mortgage) on the property*
 - C. Seismic upgrades will not increase the value of the building, from a bank’s perspective, because the value is determined by the net operating income, and seismic upgrades would not by themselves permit the owner to charge higher rent*
 - D. Refinancing at a higher loan balance wouldn’t be feasible because the net operating income wouldn’t change. Not to mention the added costs of refinancing.*

“Therefore, no matter how willing the owner is to cooperate, it just isn’t fiscally possible for him or her to do so. How rich or poor the individual members of the LLC is irrelevant, since it is the LLC that owns the building.

“If most of the affected buildings are typical of this example, as I suspect they are, the whole program will fail.

“Looking at the funding options the committee has identified, it appears that the only one that would be almost guaranteed to work would be public funding of the upgrades (the New Zealand Plan).

“Having a program that works meets the goal of public safety. A program that doesn’t work, no matter how high the fines, does not meet that goal.

“This has the added advantage of being fair: the group who would benefit by the upgrades, namely the general public, would be the group paying for the upgrades.”

Mark noted that one potential funding mechanism for owners is property tax abatement, although the savings in taxes will not pay for all the retrofits. Frank proposed the City hold a public meeting so URM building owners and the public can ask questions of DPD staff and committee members.

Angie asked the committee for their recommendations on the compliance timeline's fine structure. The committee agreed that while they were making some recommendations, the ultimate decision on the fine structure should be made in accordance with other City of Seattle policies. Mark proposed moving the property lien and block on new permit penalties to the work completion step. Steve noted that a priority should be placed on expediting the assessment step, as it will help convey the importance of the policy for protecting life safety.

Demolition of URM Buildings

Angie clarified with the group that while the demolition of URM buildings is a potential tool, it is the intent of the policy to minimize the demolition of buildings to the extent possible. Michale stated that while demolition should only be used as a last resort, it is necessary as an option, particularly if a building continues to be non-compliant. Mark noted that 25% of URM buildings in California used demolition as a means of compliance. He warned that Preservation Green Lab is completely opposed to this strategy. The policy will need to be coupled with private sector incentives to prevent demolition. Paul Mar, SCID Preservation and Development Authority, said buildings in historical districts cannot be demolished without approval from the federal government.

Wrap Up and Next Steps

Mark stated that most owners want certainty from the policy and need to know what specifically applies to them and what steps they need to take to implement the policy. He cautioned that the Seattle's activist culture will be concerned if the policy contains any vagueness about how this policy will affect the city's URM buildings. The policy must be clear about its likely economic impact to the private sector, the value of buildings from a historic and cultural perspective, and any incentives available to make the policy fair for the private sector.

Angie reviewed the committee's next steps. A Wiki site will be set up for committee members to read and comment on a final report of the committee's recommendations. The report will then be reviewed by DPD and sent to City Council for approval. Rebecca noted that the economic impact analysis to the private sector may be funded by the Council. The committee agreed that the final report's release should be delayed to include the analysis' findings. The City will also be conducting outreach on the policy in the coming months to specific neighborhoods and community groups.

Action Items for DPD:

- Send a link to the Bolts Plus technical standard to meeting attendees.

Angie thanked committee members and meeting attendees for their participation.