



Office of the City Manager

ACTION CALENDAR
November 19, 2013

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning Department

Subject: Ordinance to Require the Retrofit of Soft, Weak or Open Front Buildings;
BMC Chapter 19.39

RECOMMENDATION

Adopt first reading of an Ordinance amending Chapter 19.39 of the Berkeley Municipal Code adopting mandatory seismic retrofit requirements for wood-frame buildings with five or more residential units containing soft, weak or open front stories.

SUMMARY

Phase I of Berkeley's Soft Story Program required owners of soft, weak or open front ("SWOF") buildings identified by the 1996 survey to submit seismic evaluation reports and to post notice on the buildings. The proposed mandatory retrofit requirements are the second phase of the Soft Story Program. Key revisions to the existing regulations include:

- Engineering criteria for retrofit, developed with recommendations from a Structural Advisory Committee;
- Clarification that pursuant to Health and Safety Code Section 19161(a)(2) the program only applies to wood-frame SWOF buildings constructed before January 1, 1978;
- A compliance schedule, allowing three years to submit plans and an additional two years to complete the retrofit;
- Criteria for accelerating the compliance schedule; and
- A process for hardship exceptions to extend the compliance schedule.

There was an extensive public process with outreach to owners, tenants, and commissions, including two public meetings and six meetings with four commissions.

FISCAL IMPACTS OF RECOMMENDATION

The primary cost to require mandatory seismic retrofit of soft story buildings is an estimated one-half FTE for Program Administration, funded from the Permit Service Center Enterprise Fund (833). A Community Development Specialist III was added in the Planning Department in July 2013 to assist with this and other programs. Existing staff will absorb other responsibilities, including preliminary meetings with applicants, review of building permit applications for retrofit, additional outreach, and enforcement.

In addition, engineering expertise to develop technical amendments and practical guidelines for the engineering standards is expected to have a one-time City cost of up to \$30,000 (budget code 833 8602 463 3038).

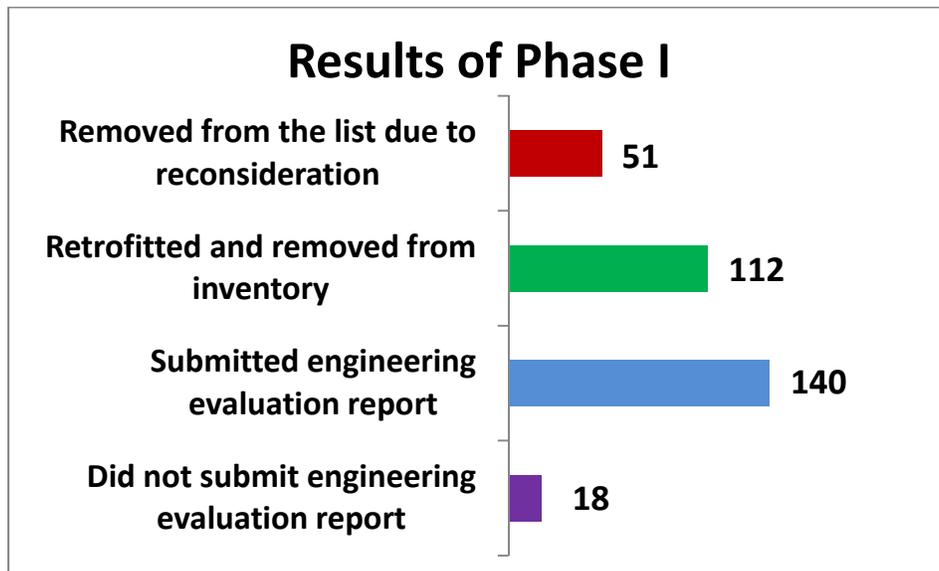
Efforts to reduce disaster risk have been estimated by the World Bank to return 7 to 1 on investment, meaning that for each dollar invested in emergency preparedness, building codes or resilience building in disaster-prone areas, \$7 in emergency response is saved.

CURRENT SITUATION AND ITS EFFECTS

In 2005, the City of Berkeley adopted an ordinance to establish an inventory of potentially hazardous wood-frame buildings containing soft, weak or open front conditions with five or more residential units. Soft story buildings are characterized as wood-frame buildings with more than one story, typically with extensive ground story windows, garage doors, or open-air spaces such as parking with little or no enclosing solid wall, that lead to a relatively soft or weak lateral load resisting system in the lower story.

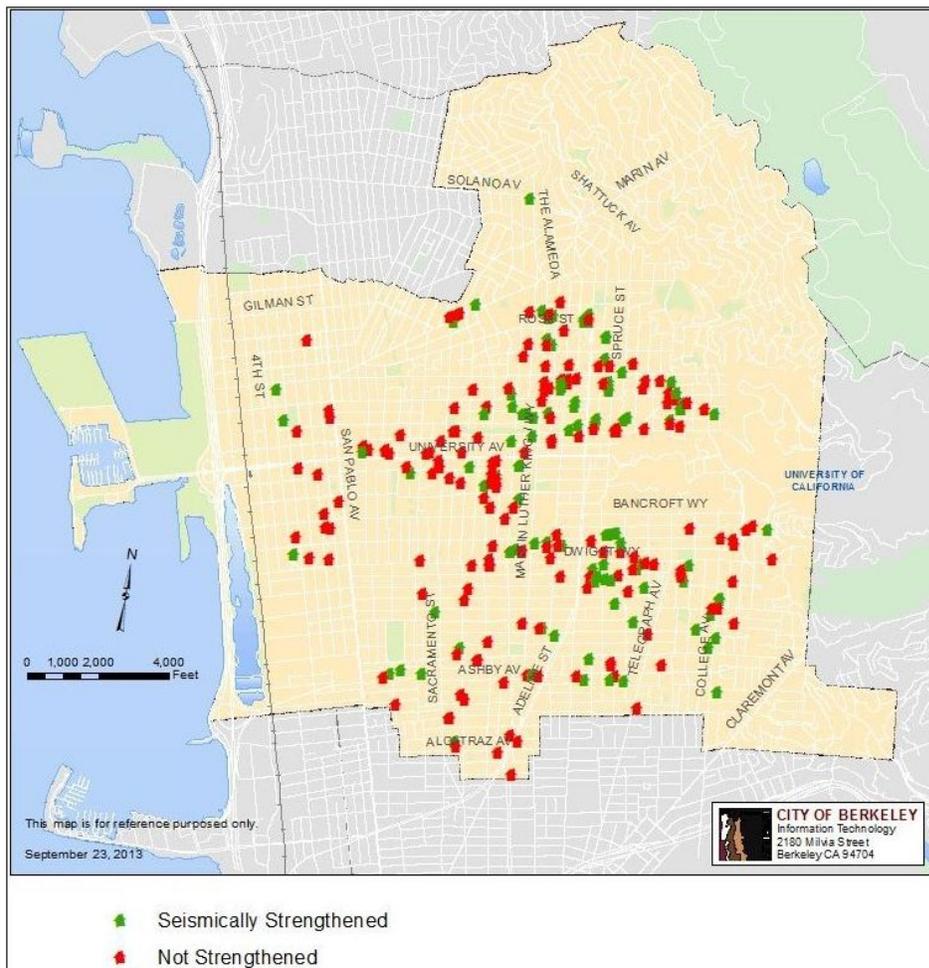
The 2005 ordinance required property owners to submit a seismic engineering evaluation report analyzing the ability of buildings to resist earthquake forces, identifying weaknesses and describing work to remedy those weaknesses. The ordinance also required owners to notify tenants that the building was a soft story and post an earthquake warning notice at the building entrance. It did not require owners to retrofit.

The initial wood-frame SWOF inventory included 321 buildings. As shown in the chart below, of the 321 buildings on the inventory, 51 were removed from the list due to reconsideration, 112 retrofitted, 140 complied with the Phase I ordinance building assessment requirement and submitted an engineering evaluation report and 18 did not submit an evaluation report. Buildings removed from the list either proved they did not have a soft story condition, had fewer than five residential units, or were a hotel or commercial building, unaffected by the ordinance. There are 158 buildings remaining on the inventory that will need to be retrofitted in Phase II. These buildings contain 1,611 residential units. Building permit applications have already been submitted for 14 of these buildings.



The map below shows the location of soft story buildings in Berkeley, identifying retrofitted buildings and those yet to retrofit.

Map of SWOF Buildings



BACKGROUND

Development of the Phase II Ordinance: On July 10, 2012, the City Council asked staff to develop amendments to the BMC Chapter 19.39 to require owners of multi-unit residential buildings with five or more units with soft, weak or open front stories to retrofit their buildings. In August 2012 the City's Building Official convened a volunteer structural advisory committee tasked to review and recommend structural standards to be used for the retrofits. On March 18, 2013 the Structural Advisory Committee issued its recommendations, which were presented to the "4 x 4 Committee" (four members of the City Council and four members of the Rent Stabilization Board) on March 25 and to the Disaster and Fire Safety Commission on April 24, 2013.

Concurrently, staff worked on amendments to BMC Chapter 19.39 to require mandatory seismic retrofitting of potentially hazardous SWOF buildings. On July 3, 2013 the City Council was updated on progress with the development of the mandatory ordinance.

Additional information, including the inventory of buildings, Frequently Asked Questions, and other background is available at the following link:

<http://cityofberkeley.info/softstory/>

Ordinance Amendments/Phase II Requirements: BMC Chapter 19.39, which was adopted in 2005 and required submittal of seismic evaluation reports, tenant notification and posting of warning signage, is revised to remove out-dated language and to implement the Phase II requirement for mandatory seismic retrofitting. A copy of the ordinance showing the changes in tracking is attached. The substantive changes are summarized below.

Engineering Criteria (Section 19.39.100): The Phase II regulations provide several options for engineering criteria for retrofits. While the ordinance affects a limited number of buildings with soft, weak or open front conditions, these buildings include a significant diversity in construction methods and materials, and various irregularities. This makes it difficult to apply a one-size-fits-all engineering standard to the whole group. Extensive consultations with the structural advisory panel resulted in the inclusion of the following engineering criteria:

- The 2012 edition of the International Existing Building Code (IEBC) Appendix Chapter A-4
- American Society of Civil Engineers (ASCE) 41-06, Seismic Rehabilitation of Existing Buildings
- ASCE 41-13 Seismic Evaluation and Rehabilitation of Existing Buildings
- FEMA P-807 Seismic Evaluation and Retrofit of Multi-unit Wood-Frame Buildings with Weak First Stories

In addition, owners that submitted Seismic Engineering Evaluation Reports as required by Phase I may request approval from the Building Official to use the 2003 edition of IEBC Appendix Chapter A-4.

Compliance Schedule (Section 19.39.110): The Phase II regulations require property owners to submit a building permit application to retrofit their building no later than three years from the effective date of the ordinance, or no later than December 31, 2016, whichever occurs first. Retrofits must be completed no later than two years after submittal of the building permit application. The ordinance also requires these deadlines to be accelerated to six months and 1 ½ years respectively in certain situations such as major remodeling, vacancy, refinancing, or transfer of title to a new owner.

Hardship Exceptions (Section 19.39.110C): An extension of one year may be granted as a hardship exception if approved by the City Manager. Requests for an extension must be accompanied by documentation of the reasons additional time is needed, a written plan for proceeding with the retrofit and an agreement to seek all available financing. The ordinance states that an applicant must provide any information requested by the City Manager to support claims of financial hardship.

Owner and Tenant Obligations (Section 19.39.060): The current owner/tenant obligations are strengthened by adding more explicit requirements for the owners to carry out the retrofit, to provide notice to prospective tenants and notice to tenants regarding construction. The requirement for the owner to provide notice of a building's soft story status has been strengthened to allow the Rent Board to provide such notice if desired, and to allow a private right of action. Appendix A, Tenant Notification Form, previously included within the body of the ordinance, has been removed and replaced with a reference to the required form that will be provided by staff. This will allow more detailed information regarding ordinance requirements and tenant rights, which can be revised to remain current as needed. A draft version of an expanded form is included as Attachment 5.

Enforcement (Section 19.39.160): The Enforcement Section has been expanded to state that any of the following allow the Building Official to declare a public nuisance and initiate abatement pursuant to the procedures set forth in BMC Chapter 1.24. Failure to:

- file the required Seismic Engineering Evaluation Report ,
- comply with tenant notification requirements,
- perform the required seismic retrofit work, or
- comply with any order of the Building Official pursuant to this ordinance

Municipal Code enforcement options include but are not limited to issuing citations, placing liens, abatement, and court appointed receivership.

Other Non-Substantive Amendments: The following additional changes have been made to Chapter 19.39.

- A number of findings were added to Section 19.30.010.
- Sections 19.39.030 and 19.39.070 regarding the Phase I requirement for submittal of seismic engineering evaluation reports have been shortened and moved towards the end of the ordinance for reference purposes and renumbered

as Sections 19.39.150 and 19.39.140 respectively. Section 19.39.090, which listed the former compliance schedule for the previously required Phase I engineering evaluation reports, has been deleted to avoid confusion with the Phase II compliance schedule for completion of seismic retrofits.

- Other minor wording and editorial corrections.

Public Outreach and Comments: A draft ordinance was made available for public review in early July following the update to City Council. Notices of the ordinance and a public meeting were provided to affected property owners, tenants and commission members. A public meeting was held on July 25 to introduce and take comments on the proposed ordinance and its implementation. The City also issued a press release.

A detailed summary of public comment is included as Attachment 3, along with a response to each issue. Most comments related to implementation.

Highlights of Public Comments, July 25, 2013

- ❖ Landlords
 - “Too many roadblocks when applying for a building permit.”
 - “Obtaining approval to eliminate parking places for a retrofit is difficult.”
 - “Requirement to install a fire alarm to get a building permit approved for a retrofit is onerous.”
 - Would like to be allowed to increase rents to support retrofit costs
 - Expressed the need for a loan program
- ❖ Tenant concerns
 - Living in buildings that have not been retrofitted
 - Facing rental increases caused by retrofit costs
 - Facing potential relocation

A second public meeting was held on October 10 at Alumni Hall, co-sponsored by the ASUC Office of the External Affairs Vice President, as a way to engage students, since many SWOF buildings house students. Notices were mailed to all owners and tenants of SWOF buildings on the inventory.

Highlights of Public Comments, October 10, 2013

- The City should provide standard language to owners to include in a lease addendum notifying new tenants of the building’s SWOF condition
- Require hotels, motels and commercial buildings to post earthquake warning signs
- Offer financing, especially where there is hardship
- Make information about the program as clear and accessible as possible
- The City to maintain and make available to public the updated list of buildings on the soft-story inventory
- Penalty system for noncompliance should be of very last resort and should be reasonable

Commission Review and Comments: The following Commissions reviewed the draft regulations:

Disaster and Fire Safety Commission
Rent Stabilization Board (RSB)
Planning Commission (PC)
Housing Advisory Commission (HAC)

The Disaster and Fire Safety Commission unanimously passed a motion “to recommend to City Council approval of the Mandatory Retrofit Ordinance for Soft Weak or Open Front Buildings as presented by staff” at their August 7 meeting.

The Planning Commission also unanimously passed a motion “to support the ordinance to require the mandatory retrofit of soft story buildings” presented by staff at their September 4 meeting.

The Rent Stabilization Board, following staff presentation, discussed the draft recommendations at their August 26 and September 16 meetings. The Rent Stabilization Board supported the mandatory retrofit requirements and provided recommendations for changes to the ordinance as well as recommendations for implementation actions to the City Council. This document, included as Attachment 4, is briefly summarized and responded to below.

The Housing Advisory Commission, following staff presentation, discussed the ordinance at their September 12 and October 3 meetings. The Commission made a motion with specific recommendations regarding changes to the ordinance. The HAC comments are similar to those made by the Rent Stabilization Board and are further discussed below.

Revisions to Ordinance Made in Response to Comments from Public and Commissions: This section briefly describes changes to the ordinance that were made in response to comments from the public or Commissions.

- Acceleration of Deadlines (Section 19.39.110B): This section has been amended to exclude financing used for “structural and maintenance related repairs” as a trigger for accelerating the retrofit deadlines.
- Hardship Exceptions (Section 19.39.110C): This section has been modified to limit the number of one-year extensions granted to the same property owner by the City Manager to two. The RSB recommended that subsequent extensions must be approved by the City Council; the HAC recommended that the HAC consider subsequent extension requests. The draft ordinance assigns this responsibility to the HAC. In addition, the section has been modified to allow the City Manager to request any additional information regarding an applicant’s financial situation in determining whether to grant an extension.
- “Private right of action” (Section 19.39.060A.4): HAC recommended to replace the word “plaintiff(s)” with “party(ies)”: This change has been made.

Response to Additional Comments: The detailed comments from the Rent Board and the HAC, attached, are briefly summarized and responded to below.

Response to Comments from Rent Board and HAC

<u>Issue</u>	<u>Staff Response</u>
Add more information to the Notice to Tenants	Wording has been added as suggested by the Rent Board. The form has been moved out of the Ordinance for additional flexibility.
Hardship Exemptions - Require proof of all assets in U.S.A. - Prohibit hardship exemptions for LLC's or other corporate structures	Language has been added that City Manager can ask for any other information needed (Section 19.39.110D.3 Item a.4.
Expand wording on Property Signage to prohibit removal until retrofit is completed & require a plaque or sign reflect completed work.	Adding wording prohibiting sign removal is not recommended because Section 19.39.060A.2 already requires that the signs remain in place until the building is removed from the inventory. In addition, new signs were recently provided to all properties on the inventory. A requirement to add a plaque following a retrofit is not recommended because a soft story retrofit is not necessarily a full-building retrofit; a plaque may imply a greater level of safety than actually achieved.
Require that the property owner provide the same warning language in lease agreements for new tenancies as is currently required for signage.	Section 19.39.060A.1 was amended to require notification of "each prospective tenant prior to a change of tenancy that the building is included on the inventory." The ordinance already specified that owners are required to provide each new tenant with a notice that the building is on the soft story inventory and to send a copy of the notice to the City.

The RSB and HAC made a number of additional recommendations regarding implementation of Phase II. In brief, they recommend:

- The City Council make it clear that life safety, not retaining parking, is the priority in situations where the two conflict.
- Amending the Relocation Ordinance to make properties that are not in compliance with both Phase 1 and Phase 2 ineligible for the natural disaster exemption.
- Removing financial barriers by waiving permit fees for owners who demonstrate financial hardship, establishing a loan program, entering into a financing Joint Powers Agreement with other cities and allowing a Transfer Tax Rebate for work performed more than a year after purchase, and
- Developing strong enforcement procedures.

Staff can discuss these recommendations with the City Council as requested; however, staff and commissions recommend adoption of the ordinance not be delayed. A few comments follow.

Financial Barriers: A number of property owners, property managers, the HAC, and the Rent Stabilization Board requested the City establish a financing mechanism and make loans to property owners to finance seismic retrofits. They expressed concern some property owners may be unable to secure financing to pay for retrofits and consequently, may not comply. Staff recommends this item be deferred for consideration and direction by the City Council. Staff will have more knowledge on this topic once the ordinance is in effect and we begin working with applicants. Regarding possible fee waivers, this would also need further discussion to consider the source of revenue replacement, technical issues with separating permit fees for retrofit work from other concurrent construction, and consideration of permit fee refunds to owners who took a proactive action and voluntarily retrofitted.

Enforcement: Both the HAC and the Rent Stabilization Board discussed the importance of enforcement, and suggested that additional language be provided in the ordinance to reiterate the enforcement mechanisms. The ordinance stipulates that buildings whose owners fail to file the required Seismic Engineering Evaluation Report, comply with notification requirements, or fail to perform the required seismic retrofit are declared to be a public nuisance and may be abated pursuant to the procedures set forth in BMC Chapter 1.24. Per the BMC Chapter 1.28, the City may also issue administrative citations and lien properties to address any violation of the Code.

Following a recent relocation of the Rental Housing Safety Inspection Program and Housing Code Enforcement to the Building and Safety Division, staff has initiated enforcement of the warning signage requirements. New signs were produced and mailed to all property owners with soft story buildings in August, along with a letter that inspections would begin in October. If signs are not posted, a \$500 citation will be issued and re-inspection fees will be charged until there is compliance.

RATIONALE FOR RECOMMENDATION

This ordinance implements Policy S-20 from the Disaster Preparedness and Safety Element of the General Plan, adopted in 2002, regarding the Mitigation of Potentially Hazardous Buildings. Tenant safety will be improved because retrofits will increase the likelihood that tenants will be able to exit their buildings safely in the event of an earthquake. While there is no guarantee buildings will be habitable after a strong earthquake, it is nonetheless likely that more of Berkeley's housing stock will be preserved, preventing the loss of residential units including rent-controlled units.

ALTERNATIVE ACTIONS CONSIDERED

An alternative action considered including additional buildings such as transient housing, residential buildings with fewer than five units and commercial buildings with a soft, weak or open front condition. Because this would delay passage of the ordinance and require substantial additional staff and financial resources to implement, these building types have not been included, but may be addressed in the future.

CONTACT PERSON

Alex Roshal, Building Official, Planning, 981-7445

Eric Angstadt, Planning Director, 981-7401

Attachments:

- 1: Ordinance showing proposed changes in tracking
- 2: Ordinance amending Chapter 19.39 to the Berkeley Municipal Code adopting mandatory seismic retrofit requirements for wood-frame buildings containing soft, weak or open front stories.
- 3: Summary of Public Comment and Responses
4. Rent Board Recommendations
- 5: Draft Form: Notice to Tenants

ORDINANCE NO. –N.S.

AMENDING CHAPTER 19.39 OF THE BERKELEY MUNICIPAL CODE ADOPTING MANDATORY SEISMIC RETROFIT REQUIREMENTS FOR WOOD-FRAME BUILDINGS CONTAINING SOFT, WEAK OR OPEN FRONT STORIES WITH FIVE OR MORE DWELLING UNITS.

BE IT ORDAINED by the City Council of the City of Berkeley as follows:

Section 1. That Chapter 19.39 in the Berkeley Municipal Code is amended to read as follows:

Chapter 19.39

POTENTIALLY HAZARDOUS BUILDINGS CONTAINING SOFT, WEAK, OR OPEN FRONT STORIES

Sections:

19.39.010 Title, findings, and purpose.

19.39.020 Scope and applicability.

19.39.030 Reserved. Adoption and modifications of Chapter A4 of the 2003 IEBC.

19.39.040 Establishment of the Inventory of Potentially Hazardous Buildings with Soft, Weak or Open Front Conditions Story Buildings.

19.39.050 Notice to owners and administration.

19.39.060 Owner and tenant obligations.

19.39.070 Reserved. Analysis of structural seismic adequacy.

19.39.080 Removal of building from the inventory.

19.39.090 Reserved. Compliance schedule for submittal of seismic analysis.

19.39.100 Adoption of engineering criteria for seismic retrofits submitted after January 1, 2014.

19.39.110 Compliance schedule for completion of seismic retrofits.

19.39.120 Automatic gas shut-off valves in retrofitted buildings.

19.39.130 Fifteen-year exemption for retrofitted buildings.

19.39.140 Seismic engineering evaluation report (Required for buildings on the SWOF inventory prior to January 1, 2014).

19.39.150 Adoption and modifications of Chapter A4 of the 2003 IEBC for seismic engineering evaluation reports submitted prior to January 1, 2014.

19.39.160 Public nuisance.

19.39.170 Remedies cumulative.

19.39.180 Severability.

19.39.010 Title, findings, and purpose.

A. This Chapter shall be known as the "Soft Story Ordinance."

B. The Council finds as follows:

1. A survey of Berkeley buildings in 1996 identified nearly 400 wood frame buildings with five or more units with a ground level containing large openings such as storefronts, garages, or tuck-under parking.
2. The openings on the ground floor of such buildings can create a ~~weak or soft, story soft, weak or open front condition.~~
3. Buildings with soft, weak, or open front ground stories are recognized by engineers and other seismic safety experts as having the potential for sustaining serious damage including collapse in the event of strong earthquakes.
4. Earthquakes in California and elsewhere have demonstrated such damage, injuring and killing people, displacing residents, and causing severe economic loss and disruption to communities.
5. The City of Berkeley conducted an assessment project in 2001 that identified approximately 5,000 residential units in buildings that may have such stories.
6. A sidewalk assessment was done of 150 identified buildings by professional engineers and found that 46% have severe or considerable vulnerability to damage in a major earthquake and that another 49% had moderate vulnerability.
7. Advances in the design of construction and retrofit of structures to better withstand seismic forces have occurred since such buildings were constructed and resulted in new requirements in current codes.
8. The establishment of an inventory and notification to owners and residents is a necessary first step in developing a mitigation program and will provide the basis for obtaining input from affected parties for such a program.
9. Although the general vulnerability of such buildings is known, determining the seismic adequacy of each of the structures and the appropriate elements of a retrofit to remedy vulnerabilities requires a detailed evaluation by an approved licensed engineering design professional.

10. Such an evaluation is also necessary for the City Council and staff to identify more fully the risks to the City and its inhabitants and to determine the feasibility of programs to address the vulnerabilities.
11. Model codes have been developed for analyzing and retrofitting such structures to provide for risk reduction with less design effort, construction cost, and tenant disruption than the ~~Uniform~~ California Building Code.
12. While these codes are not intended to provide structural performance equivalent to that provided by new construction built to the current Building Code, they identify and provide for improving the structure's more vulnerable portions and, ~~if identified~~ improvements to the identified vulnerabilities are made, can be expected to substantially reduce the likelihood of excessive building drift or collapse and substantially lessen the loss of human life.
13. In 2005, Health and Safety Code Sections 19162 and 19163 were amended to expressly authorize cities to adopt ordinances requiring building owners to comply with a national recognized model code relating to the retrofit of existing buildings or substantially equivalent standards.
14. Pursuant to Health and Safety Code Section 19160 (m), the current nationally recognized model code for the retrofit of existing buildings with soft, weak or open front walls is Appendix Chapter A4 of the International Existing Building Code as published by the International Code Council. However, it is not the intent of the Legislature, if other model codes relating to retrofit of existing buildings are developed, to limit the local government to adopting a particular code.
15. Pursuant to Health and Safety Code Section 19162(d), "seismic retrofit means either structural strengthening or providing the means necessary to modify the seismic response that would otherwise be expected by an existing building during an earthquake, to significantly reduce hazards to life and safety while also providing for the substantial safe ingress and egress of the building occupants immediately after an earthquake".
16. Health and Safety Code Section 19161(a)(2) has set January 1, 1978 as a benchmark date for characterizing wood-frame, multi-unit residential buildings with soft, weak or open-front wall lines. Under the Health and Safety Code, buildings constructed after January 1, 1978 are considered to have been designed to meet acceptable seismic standards.
17. The date of January 1, 1978 supersedes the date of the adoption of the 1997 Uniform Building Code as amended by the State of California that was previously used by the City of Berkeley to distinguish obsolete structural designs from acceptable structures of this building type.
18. The City Council has determined that it is essential for the safety of its residents to make this Chapter's seismic hazard mitigation standards mandatory for

multi-unit residential buildings falling within the scope and applicability of this ordinance as set forth below and to require that these buildings be retrofitted to comply with the adopted standards within the timetable set forth herein.

C. The purposes of this Chapter ~~is~~ are to protect the public health, safety and welfare, to alert the general public and the owners and residents of certain types of existing multi-unit residential buildings to the vulnerability of such buildings in strong earthquakes, to determine the specific seismic vulnerabilities and necessary improvements for each such building, to inform decision making about needed mitigation measures, ~~and~~ to promote such efforts, and to require buildings to be retrofitted to comply to the standards as established herein.

D. This Chapter requires the establishment of an inventory of potentially hazardous buildings that contain a soft, weak or open front condition ~~story~~ on the ground floor and that have at least five residential units, provides for notification to the owners, residents and users of such buildings, adopts the International Existing Building Code, ~~and~~ requires owners to provide an analysis of their building's seismic adequacy, and requires owners to perform retrofit work to comply with the standards established herein.

19.39.020 Scope and applicability.

A. The provisions of this Chapter shall apply to all existing wood frame multi-unit residential buildings that contain five or more dwelling units, as defined in BMC Title 23 ~~the City of Berkeley zoning ordinance~~, and that were designed under a building permit applied for before the adoption of the ~~1997 Uniform Building Code~~ January 1, 1978, where:

1. The Ground Floor, whether itself constructed of wood or other materials, of the wood frame structure contains parking or other similar open floor or basement space that causes Soft, Weak, or Open-Front Wall lines and there exists one or more levels above, or;
2. The walls of any story or basement of wood construction are laterally braced with Nonconforming Structural Materials as defined in this IEBC Chapter A4 and there exists two or more floor levels above.

Such buildings are referred to in this Chapter as potentially hazardous buildings with "soft, weak, or open front" conditions or "SWOF".

B. Potentially hazardous SWOF buildings listed on national, state or local historical registers shall also comply with the provisions of this Chapter. At the Building Official's discretion, modifications to the IEBC reasonably equivalent alternatives to the structural standards established in this Chapter may be permitted when such modifications alternatives are consistent with the provisions of the State Historical Building Code.

19.39.030 Reserved. Adoption and modifications of Chapter A4 of the 2003 IEBC.

A. ~~Chapter A4 of the 2003 International Existing Building Code ("IEBC"), as published by the International Code Council is hereby adopted and made a part of this chapter as~~

~~though fully set forth herein, subject to modifications set forth in this chapter. For purposes of this chapter, the standards in the IEBC shall be used for the analysis of seismic weakness and to formulate the elements of work required to remedy any identified weaknesses; but the submittal of an application for a building permit or the actual retrofit of a building is not required. For the purposes of this chapter, the non-wood frame ground floor of a designated building shall also be analyzed.~~

~~B. The Building Official shall provide guidelines delineating the standards for the use of Chapter A4, including amendments for buildings with concrete podium and non-wood-frame ground floors, and for filing the report required by this ordinance. The guidelines shall provide details for items required in the report, procedures to be followed, and a framework for both the assembly of the required information by the professional and for the evaluation of the report by the City.~~

~~C. To provide standards for the analysis of a non-wood frame ground floor, the American Society of Civil Engineers (ASCE) Standard 31 - "Seismic Evaluation of Existing Buildings", 2003 Edition, is hereby adopted by reference.~~

~~D. Chapter A4 of the 2003 International Existing Building Code is amended as follows~~

~~1. Section A403.2 Scope of Analysis is amended to add the following: If the wood structure is constructed over a concrete or concrete block masonry wall or frame podium, the adequacy of the lateral system of the podium shall be verified per section A403.12.~~

~~2. Section A403 is amended to add a new section as follows: A403.12: Verify Adequacy of the Lateral System of the Podium Base. Provide an evaluation of the podium level of the structure following the requirements of ASCE Standard 31 - "Seismic Evaluation of Existing Buildings", 2003 Edition. The podium structure is to be evaluated with the ASCE 31 Screening Phase (Tier 1) per ASCE 31 Section 3.0. For each Non-Compliant (NC) item on the ASCE 31 Screening Phase (Tier 1) Structural Checklist provide an analysis following the requirements of the Tier 2 of ASCE 31 Section 4. Establish a strengthening plan to mitigate the remaining Non-Compliant (NC) items from the Tier 2 analysis.~~

~~E. Terms in capital case used in this chapter are as defined in Chapter A4 of the IEBC and in ASCE Standard 31, unless otherwise defined in this chapter.~~

19.39.040 Establishment of the Inventory of Potentially Hazardous Soft-Story Buildings with Soft, Weak or Open Front Conditions.

Multi-unit wood frame residential buildings with five or more dwelling units identified by the 1996 survey conducted by the City as containing a Soft, Weak, or Open Front Ground Floor shall be placed on the Inventory of Potentially Hazardous Soft-Story SWOF Buildings. ~~Such buildings are designated soft story buildings.~~ The inventory shall be maintained and revised as necessary by the Building Official. A copy shall be available for inspection in the office of the Building Official ~~and in the Office of the City Clerk.~~

19.39.050 Notice to owners and administration.

A. Contents of Notice and Order. When the Building Official determines that a building is within the scope of this Chapter, the Building Official shall issue a notice and order as provided herein. The notice and order shall specify that the building has been determined by the Building Official to be within the scope of this Chapter, placed on the

inventory, and, therefore, is required to meet the ~~seismic analysis and other~~ provisions of this Chapter unless removed on appeal. The notice and order shall specify the building type classification, if known, and shall set forth the owner's obligations under this Chapter, the time limits for compliance, and appeal rights. The Building Official's determination shall be final at the end of 180 days unless a timely request for reconsideration is filed as provided below.

B. Service of Notice and Order. The notice and order shall be in writing and may be given either by personal delivery thereof to the owner or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the owner of the property as shown on the last equalized assessment roll of the county, or as known to the Building Official, as well as to the following, if known: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record ~~in or to~~ the building or the land on which it is located. The failure to serve any person required herein to receive service shall not invalidate any proceeding hereunder as to any person duly served or relieve any such person from any duty or obligation imposed by the provisions of this Section.

C. Appeal to Building Official. Any person entitled to service of notice under the preceding subdivision may request the Building Official to reconsider a determination to include a building on the inventory by submitting information that the building's ground floor is not soft, weak, or open as defined by the applicable standard, that the building has been substantially reconstructed in accordance with the 199776 or later Uniform Building Code, or that the building has been retrofitted in compliance with Article ~~41~~ 5 of the current Berkeley Building Code or the IEBC. The request for reconsideration shall be filed within 180 days from the date of the service of such notice and order of the Building Official.

D. Appeal to Housing Advisory Commission. Any person entitled to service of notice under the preceding subdivision who disagrees with the decision of the Building Official on reconsideration pursuant to that subdivision may appeal within 30 days of the date of notice of the Building Official's decision ~~on reconsideration~~ to the Housing Advisory Commission (HAC) as provided for in BMC Chapter 19.44. For purposes of this Chapter, the appeal shall be set for hearing at the next regular HAC meeting more than 20 days, but not more than 60 days, from the date of filing of the appeal, provided that the Commission may set the hearing at a different time for good cause.

E. Recordation. Once the Building Official's determination is final, the Building Official shall file with the Office of the County Recorder a certificate stating that the subject building is within the scope of this Chapter, unless the property has been removed from the inventory. The certificate shall also state that the owner thereof has been ordered to conduct a structural analysis of the building in compliance with this Chapter. When a building is removed from the inventory, the Building Official shall promptly file with the Office of the County Recorder a certificate so stating.

F. Costs of Additional Compliance Actions. In addition to any penalties authorized by the Berkeley Municipal Code, an owner who fails to comply with the provisions of this

Chapter may be charged reasonable fees, as adopted by City Council resolution, to compensate for staff time spent to bring the building into compliance.

19.39.060 Owner and tenant obligations.

A. Obligation of Owners to Notify Tenants and Post Notice regarding the status of the building. Once the Building Official's determination is final, owners of buildings on this inventory shall do the following:

1. Within 30 days, notify each tenant in writing, using the Notice to Tenants form provided by the Building and Safety Division in Appendix A below, and notify each ~~prospective~~new tenant ~~prior to~~a change of tenancy, that the building is included on the inventory. Thereafter, the Rent Stabilization Board may provide such notice on an annual basis.

2. Post in a conspicuous place within five feet of each main entrance of the building, and maintain until the building is removed from the inventory, a clearly visible warning sign not less than 8" by 10" with the following statement, with the first two words printed in 50-point bold type and the remaining words in at least 30-point type:

"Earthquake Warning. This is a ~~soft story~~ building with a soft, weak, or open front ground floor. You may not be safe inside or near such buildings during an earthquake."

3. Mail, within 30 days of initial service, a copy of each tenant notification form in compliance with this Section and a completed proof of service addressed to: Soft Story Program Building Mitigation Manager, Building and Safety Division, 2120 Milvia Street, Berkeley, CA 94704. Any tenant's name so provided shall be used by the City only for purposes of confirmation ~~and shall be rendered illegible in the filed document.~~

4. Private right of action - Any person aggrieved by an owner's failure to comply with the requirements of Section 19.39.060.A may bring a civil action against the owner for all appropriate relief. In any such action, the prevailing party(ies) shall be entitled to reasonable attorneys' fees in addition to other costs, and in addition to any liability for damages imposed by law.

B. Obligation of Owners to carry out the retrofit:

1. The owners of potentially hazardous SWOF buildings shall apply for and obtain building permits for seismic retrofitting within the time frame specified in the compliance schedule set out in this Chapter.

2. The owners of potentially hazardous SWOF buildings shall seismically upgrade the buildings within the time frame specified in the compliance schedule specified in this Chapter to the standard required in this Chapter, or an alternative standard which is in accordance with the City's Building Code and is accepted by the Building Official in writing.

C. Obligation of Owners to Notify Tenants regarding the retrofit.

1. The owners of potentially hazardous SWOF buildings shall notify each tenant in writing of the planned schedule for seismic retrofitting pursuant to this Chapter, at least thirty (30) days in advance of the first planned construction. Such notice shall include any reasonably anticipated major disruption or reduction in service provided to the tenants.
2. The owners of potentially hazardous SWOF buildings shall notify each tenant in writing of any relocation by the tenant that will be reasonably necessitated by mandatory seismic retrofit as provided for in BMC Section 13.84.040.
3. The owners of potentially hazardous SWOF buildings shall notify each tenant that he/she may be eligible for financial assistance to offset the cost of the relocation as provided for in BMC Chapter 13.84 and shall provide a copy of that Chapter to each tenant.

D. Obligations of Tenants to Cooperate. Each tenant of a building on the inventory potentially hazardous SWOF building shall cooperate with the owner and the owner's agents, including but not limited to engineers, contractors, and inspectors, to accomplish the required analysis and retrofit. In so doing, tenants shall allow reasonable access to the building and their unit or space as needed and as permitted by California Civil Code Section 1954.

Appendix A

~~Notice to Tenants re: Soft Story Potentially Hazardous SWOF Building~~

~~This is to notify you that the building at _____, Berkeley, California is on the City of Berkeley's Inventory of Potentially Hazardous Soft Story Buildings containing a Soft, Weak, or Open Front Ground Floor and may constitute a severe threat to life safety in the event of an earthquake of moderate to high magnitude.~~

~~This notice is required by Berkeley Municipal Code (BMC) Chapter 19.39. This Chapter also requires that the building be analyzed by a civil or structural to determine its seismic vulnerability.~~

~~For purposes of the program, soft story buildings with soft, weak or open fronts are those buildings constructed prior to 1997 January 1, 1978, containing at least five residential units and typically having tuck-under parking or a storefront on the first floor.~~

~~If you have any questions about the law, please contact _____ the project manager:~~

- by phone at _____,
- by e-mail at _____,
- by mail at _____.

For questions about this particular building, please contact:

(Name of owner or manager and how to contact)

(signature of owner) _____ (date) _____
 (print name)

Proof of service (Return signed copy to 2118 Milvia Street)

On _____ I delivered the above notice by:

Placing it in the mail of the United States Postal Service addressed as follows:

Personally delivering it to:

_____ at _____

(signature of server) _____ (date)

(print name)

19.39.070 Reserved. Analysis of structural seismic adequacy.

Within two years of the date of service of the notice of inclusion on the inventory, the owner of each building on the inventory shall submit an Initial Screening and a detailed seismic engineering evaluation report prepared by a qualified California licensed structural or civil engineer that: analyzes the structural ability of the building to resist the seismic effects of earthquakes and the extent to which the building meets the standards

~~for structural seismic adequacy as set forth in Chapter A4 of the 2003 IEBC as modified by this chapter, identifies any hazardous exterior design elements, describes the elements of work needed to remedy the identified weaknesses, and provides other relevant information as specified by the Building Official. This chapter does not require the retrofit of any building and does not require the submittal of plans of the type required with an application for a building permit. The seismic evaluation report review fee as set by City Council resolution shall apply. The purpose of the analysis is to investigate the structural systems of a building that resist forces imposed by earthquakes and to determine if any individual portion or combination of these systems is inadequate to prevent a collapse or partial collapse or other damage hazardous to life.~~

19.39.080 Removal of building from the inventory.

A building shall be removed from the inventory under the following circumstances:

- A. ~~A determination by the Building Official that the building does not contain a soft, weak or open front condition Weak, Soft, or Open Front Story and meets the applicable standards; or~~
- B. ~~The satisfactory completion of a seismic retrofit and appropriate inspections bringing the Soft, Weak, or Open Front Story of the building up to the requirements of the applicable standards of Chapter A4 of the 2003 IEBC established in Section 19.39.100; or~~
- C. ~~A determination by the Building Official or a decision on appeal that the building is not a potentially hazardous SWOF building with Soft, Weak, Or Open Front Stories; or~~
- D. ~~Lawful Demolition or destruction of the building.~~

19.39.090 Reserved.

~~19.39.090 Compliance schedule for submittal of seismic analysis~~

~~A. Deadlines. All owners of potentially hazardous soft story buildings shall submit the required analysis of structural seismic adequacy in accordance with this Chapter no later than two years from notice by the City of Berkeley.~~

~~B. Acceleration of Deadline. Notwithstanding subdivision A of this Section, this deadline shall be accelerated, and the owner shall submit the required analysis of structural seismic adequacy, whenever any one or more of the following occurs:~~

- ~~1. The Building Official determines that the building or any major portion thereof will be reoccupied after being vacant for six months or longer.~~
- ~~2. The building will undergo a remodel, alteration, addition or structural repairs valued at more than \$75,000, except for repairs found by the Building Official to be required for routine maintenance or emergency purposes or tenant~~

~~improvements that the Building Official finds are not structural, will not hinder the required analysis, and are paid for by that tenant for that tenant's use.~~

- ~~3. Title to the building is transferred in whole or part or the building is sold to a new owner or owners, except that changes in title due to inheritances or transfers between spouses or registered domestic partners shall not require compliance with this part.~~
- ~~4. Additional financing is obtained which is secured by a deed of trust or mortgage recorded on the title to the building. Financing secured solely to refinance existing debt against the property shall not be considered as additional financing for the purposes of this Chapter.~~
- ~~5. The use of the building changes such that Section 502 of the Berkeley Building Code (BMC Chapter 19.28) applies.~~
- ~~6. The building is identified by the Building Official as an Unsafe Building as defined in Section 203 of the Berkeley Building Code (BMC Chapter 19.28).~~

~~C. Extensions of Deadline. The City Manager or his/her designee may extend the deadline for the required analysis by up to six months, and prior to expiration of that extension may grant up to two additional extensions of up to six months each, if:~~

- ~~1. The owner submits to the City Manager a detailed written statement requesting the extension, explaining why it should be granted and clearly documenting the reasons therefore in accordance with the requirements of this part.~~
- ~~2. The owner agrees in writing to fully cooperate with the City in seeking all available financing, if the reason is lack of funds.~~

~~Extensions granted under this part shall not extend deadlines for correction of any other violations of any other ordinances.~~

~~D. Required Findings. In order to grant an extension, the City Manager must find that:~~

- ~~1. The building does not present an imminent threat to life safety of occupants or the public, based on a report from a California licensed structural or civil engineer;~~
- ~~2. The building owner has complied with the requirements of Sections 19.39.060 and 19.39.070.~~
- ~~3. The owner has demonstrated there are unique and exceptional circumstances that prevent compliance.~~

19.39.100 Adoption of engineering criteria for seismic retrofits submitted after January 1, 2014.

A. Potentially hazardous SWOF buildings shall be retrofitted in conformance with one of the following engineering criteria:

1. 2012 edition of the International Existing Building Code (IEBC) Appendix Chapter A-4; or
2. ASCE 41-06, Seismic Rehabilitation of Existing Buildings, using a performance objective of S-5 (Collapse Prevention) in the BSE-C earthquake; or
3. ASCE 41-13, Seismic Evaluation and Rehabilitation of Existing Buildings, using a performance objective of S-5 (Collapse Prevention) in the BSE-2E Earthquake; or
4. FEMA P-807, Seismic Evaluation and Retrofit of Multi-Unit Wood-Frame Buildings With Weak First Stories, as a pre-approved “substantially equivalent standard” under procedures of CBC Section 104.11 for Alternative Materials, Design and Methods of Construction, and with a retrofit objective as established by the Building Official; or
5. Subject to the project specific approval by the Building Official, the 2003 edition of the International Existing Building Code (IEBC) Appendix Chapter A-4, for buildings with Seismic Engineering Evaluation Reports submitted prior to January 1, 2014, that (i) include structural design calculations and construction documents demonstrating conformance to Chapter A4 of the 2003 IEBC; and (ii) are suitable for building permit submittal.

B. Work above the critical story: Regardless of which standard is selected, this Chapter does not require retrofit actions above the critical story (typically the ground story) and the floor diaphragm immediately above it.

C. The Building and Safety Division shall develop and publish Framework Guidelines calibrating, delineating and detailing technical requirements to be used for the retrofiting of buildings on the City of Berkeley inventory required to meet the engineering criteria established in Section 19.39.100.A.

19.39.110 Compliance schedule for completion of seismic retrofits.

A. Deadlines.

1. All owners of potentially hazardous SWOF buildings shall submit an application for a building permit to carry out the required retrofit in accordance with this Chapter no later than December 31, 2016.
2. The retrofit shall be completed no later than two years after submittal of the application for a building permit pursuant to Subsection 19.39.110.A.1.

B. Acceleration of Deadlines. Notwithstanding Subdivision A of this Section, the owners of potentially hazardous SWOF buildings shall submit an application for a

building permit to carry out the required retrofit in accordance with this Chapter within six months from the effective date of this Chapter and complete the retrofit no later than eighteen months after submittal of the application for a building permit whenever any one or more of the following occurs:

1. The Building Official determines that the building or any major portion thereof will be reoccupied after being vacant for six months or longer.
2. The building will undergo a remodel, alteration, addition or structural repairs valued at more than \$50,000 per unit, except for repairs found by the Building Official to be required for routine maintenance or in response to emergency situations.
3. Title to the building is transferred in whole or part or the building is sold to a new owner or owners, except when such transfer results from a change in title due to inheritance or transfers between spouses or registered domestic partners.
4. Additional financing is obtained which is secured by a deed of trust or mortgage recorded on the title to the building. Financing secured solely to refinance existing debt against the property or for structural and maintenance related repairs shall not be considered additional financing for the purposes of this Chapter.
5. The use of the building changes such that Section 3408 of the Berkeley Building Code (BMC Chapter 19.28) applies.
6. The building is declared to be an Unsafe Building as specified in Section 19.28.020 Subsection 116 of the Berkeley Building Code by the Building Official.

C. Hardship Exceptions. The City Manager or his or her designee may grant an exception to the requirements of this Section and extend the deadline for completing all or a part of required seismic retrofit work. An exception may initially extend the building permit application deadline or performance of some or all of required retrofit work by up to one year. The City Manager may grant one additional extension of up to one year to the same owner if a continued exception is justified in accordance with the requirements of this Section. However, any subsequent extension request by the same owner must be approved by the Housing Advisory Commission. Hardship exceptions shall only be granted where:

1. The owner submits to the City Manager a detailed written statement requesting an exception, explaining why an exception should be granted and clearly documenting the reasons for an exception in accordance with the requirements of this Section; and
2. The owner submits a written plan to the City Manager for proceeding with the retrofit work, with any exceptions granted, and agrees to fully cooperate with

the City in identifying all available financing for the seismic retrofit work and any related relocation.

Exceptions granted under this Section are limited to deadlines imposed pursuant to Section 19.39.110 only and shall not apply to any other corrections required by the City.

D. Required Findings. In order to grant an extension, the City Manager, or the Housing Advisory Commission upon a third request for an extension by the same owner, must find that:

1. The building does not present an imminent threat to the life or safety of occupants or the public, based on a report from a California licensed structural or civil engineer. The City may require partial or interim seismic retrofit work in order to grant an extension; and
2. The owner has complied with all other applicable requirements, including submitting an approved engineering evaluation report, tenant notification, and posting of earthquake warning signs; and
3. The owner demonstrates one or more of the following conditions:
 - a. Funds unavailable for the required seismic retrofit work. The owner shall provide the following information as required to determine financial hardship:
 1. Contractors' bids or a professional cost estimate of the seismic retrofit;
 2. Specific information on building's rents, operating expenses, existing debt, projected rents on the retrofitted building and any other information needed to analyze the ability of the building to support additional debt to perform the retrofit work; and
 3. Statements from lenders that they are unwilling to provide financing for the retrofit work. The City may require an owner to apply for any financing the City determines may be available for the retrofit work before making a determination of hardship.
 4. Any other information requested by the City Manager.
 - b. In order to qualify for necessary financing, very low-income residential tenants will be required to pay a higher rent and the increased monthly contract rent will be more than 30% of the tenants' household income and no subsidy is currently available to reduce the rent to 30% or less than the tenants' household income. For purposes of this part, very low-income residential tenants are households with incomes below 50 percent (50%) of area median income.

- c. There are unique and exceptional circumstances that prevent or hinder the performance of retrofit work.

19.39.120 Automatic gas shut-off valves in retrofitted buildings.

Approved automatic gas shut-off valves shall be installed in potentially hazardous SWOF buildings that contain gas piping for which a seismic retrofit permit is issued on or after January 1, 2014, regardless of the valuation of the retrofit work. The valves shall be listed by recognized testing agencies and shall be installed in compliance with the requirements specified in the Berkeley Plumbing Code (BMC Chapter 19.34).

19.39.130 Fifteen-year exemption for retrofitted buildings.

Any building, or any portion of a building that is identified under this Chapter as being a potentially hazardous ~~Soft, Weak, or Open Front Story~~ SWOF building and is retrofitted in compliance with the applicable standards or the City of Berkeley Building Code shall not, within a period of 15 years from the date the mandatory seismic retrofit requirement within this Chapter becomes effective, be identified as a potentially hazardous ~~SWOF~~ building ~~because of a Soft, Weak, or Open Front Story~~ pursuant to any local building standards adopted after the date of the building retrofit unless such building no longer meets the standards under which it was retrofitted.

19.39.140 Seismic engineering evaluation report (Required for buildings on the SWOF inventory prior to January 1, 2014).

For buildings placed on the inventory prior to January 1, 2014, within two years of the date of service of the notice of inclusion on the inventory, the owner of each building on the inventory shall submit an Initial Screening and a detailed seismic engineering evaluation report prepared by a qualified California licensed structural or civil engineer that: analyzes the structural ability of the building to resist the seismic effects of earthquakes and the extent to which the building meets the standards for structural seismic adequacy as set forth in Chapter A4 of the 2003 IEBC as modified by this Chapter, identifies any hazardous exterior design elements, describes the elements of work needed to remedy the identified weaknesses, and provides other relevant information as specified by the Building Official. The seismic evaluation report review fee as set by City Council resolution shall apply. The purpose of the analysis is to investigate the structural systems of a building that resist loads imposed by earthquakes and to determine if any individual portion or combination of these systems is inadequate to prevent a collapse or partial collapse or other damage hazardous to life.

19.39.150 Adoption and modifications of Chapter A4 of the 2003 IEBC for seismic engineering evaluation reports submitted prior to January 1, 2014.

A. Chapter A4 of the 2003 International Existing Building Code ("IEBC"), as published by the International Code Council or any amendments thereto as determined by the City of Berkeley Building Official is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to modifications set forth in this Chapter. For purposes of this Chapter, the standards in the IEBC shall be used for the analysis of seismic weakness and to formulate the elements of work required to remedy any identified weaknesses. For the purposes of this Chapter, the non-wood frame elements of the ground floor of a designated building shall also be analyzed.

B. The Building Official shall provide guidelines delineating the standards for the use of Chapter A4, including amendments for buildings with non-wood-frame ground floor elements, and for filing the report required by this ordinance. The guidelines shall provide details for items required in the report, procedures to be followed, and a framework for both the assembly of the required information by the professional and for the evaluation of the report by the City.

C. To provide standards for the analysis of non-wood frame ground floor elements, the American Society of Civil Engineers (ASCE) Standard 31 - "Seismic Evaluation of Existing Buildings", 2003 Edition, is hereby adopted by reference.

19.39.160 Public nuisance.

Any building for which the owner has failed ~~fails to~~ file the required ~~analysis of structural seismic adequacy~~ Seismic Engineering Evaluation Report in compliance with Section 19.39.070, or fails to comply with notification requirements in compliance with Section 19.39.060.A, or fails to perform the required seismic retrofit work in compliance with Sections 19.39.100 and 19.39.110, or fails to comply with any order of the Building Official pursuant to this Chapter, is hereby declared to be a public nuisance and may be abated pursuant to the procedures set forth in BMC Chapter 1.24.

19.39.170 Remedies cumulative.

Remedies provided by this Chapter are cumulative.

19.39.180 Severability.

If any Section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed this Chapter, and each Section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more Sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. –N.S.

AMENDING CHAPTER 19.39 OF THE BERKELEY MUNICIPAL CODE ADOPTING MANDATORY SEISMIC RETROFIT REQUIREMENTS FOR WOOD-FRAME BUILDINGS CONTAINING SOFT, WEAK OR OPEN FRONT STORIES WITH FIVE OR MORE DWELLING UNITS.

BE IT ORDAINED by the City Council of the City of Berkeley as follows:

Section 1. That Chapter 19.39 in the Berkeley Municipal Code is amended to read as follows:

Chapter 19.39

POTENTIALLY HAZARDOUS BUILDINGS CONTAINING SOFT, WEAK, OR OPEN FRONT STORIES

Sections:

- 19.39.010 Title, findings, and purpose.**
- 19.39.020 Scope and applicability.**
- 19.39.030 Reserved.**
- 19.39.040 Establishment of the Inventory of Potentially Hazardous Buildings with Soft, Weak or Open Front Conditions.**
- 19.39.050 Notice to owners and administration.**
- 19.39.060 Owner and tenant obligations.**
- 19.39.070 Reserved.**
- 19.39.080 Removal of building from the inventory.**
- 19.39.090 Reserved.**
- 19.39.100 Adoption of engineering criteria for seismic retrofits submitted after January 1, 2014.**
- 19.39.110 Compliance schedule for completion of seismic retrofits.**
- 19.39.120 Automatic gas shut-off valves in retrofitted buildings.**
- 19.39.130 Fifteen-year exemption for retrofitted buildings.**
- 19.39.140 Seismic engineering evaluation report (Required for buildings on the SWOF inventory prior to January 1, 2014).**
- 19.39.150 Adoption and modifications of Chapter A4 of the 2003 IEBC for seismic engineering evaluation reports submitted prior to January 1, 2014.**
- 19.39.160 Public nuisance.**

19.39.170 Remedies cumulative.

19.39.180 Severability.

19.39.010 Title, findings, and purpose.

A. This Chapter shall be known as the "Soft Story Ordinance."

B. The Council finds as follows:

1. A survey of Berkeley buildings in 1996 identified nearly 400 wood frame buildings with five or more units with a ground level containing large openings such as storefronts, garages, or tuck-under parking.
2. The openings on the ground floor of such buildings can create a soft, weak or open front condition.
3. Buildings with soft, weak, or open front ground stories are recognized by engineers and other seismic safety experts as having the potential for sustaining serious damage including collapse in the event of strong earthquakes.
4. Earthquakes in California and elsewhere have demonstrated such damage, injuring and killing people, displacing residents, and causing severe economic loss and disruption to communities.
5. The City of Berkeley conducted an assessment project in 2001 that identified approximately 5,000 residential units in buildings that may have such stories.
6. A sidewalk assessment was done of 150 identified buildings by professional engineers and found that 46% have severe or considerable vulnerability to damage in a major earthquake and that another 49% had moderate vulnerability.
7. Advances in the design of construction and retrofit of structures to better withstand seismic forces have occurred since such buildings were constructed and resulted in new requirements in current codes.
8. The establishment of an inventory and notification to owners and residents is a necessary first step in developing a mitigation program and will provide the basis for obtaining input from affected parties for such a program.
9. Although the general vulnerability of such buildings is known, determining the seismic adequacy of each of the structures and the appropriate elements of a retrofit to remedy vulnerabilities requires a detailed evaluation by an approved licensed engineering design professional.
10. Such an evaluation is also necessary for the City Council and staff to identify more fully the risks to the City and its inhabitants and to determine the feasibility of programs to address the vulnerabilities.

11. Model codes have been developed for analyzing and retrofitting such structures to provide for risk reduction with less design effort, construction cost, and tenant disruption than the California Building Code.
12. While these codes are not intended to provide structural performance equivalent to that provided by new construction built to the current Building Code, they identify and provide for improving the structure's more vulnerable portions and, if improvements to the identified vulnerabilities are made, can be expected to substantially reduce the likelihood of excessive building drift or collapse and substantially lessen the loss of human life.
13. In 2005, Health and Safety Code Sections 19162 and 19163 were amended to expressly authorize cities to adopt ordinances requiring building owners to comply with a national recognized model code relating to the retrofit of existing buildings or substantially equivalent standards.
14. Pursuant to Health and Safety Code Section 19160 (m), the current nationally recognized model code for the retrofit of existing buildings with soft, weak or open front walls is Appendix Chapter A4 of the International Existing Building Code as published by the International Code Council. However, it is not the intent of the Legislature, if other model codes relating to retrofit of existing buildings are developed, to limit the local government to adopting a particular code.
15. Pursuant to Health and Safety Code Section 19162(d), "seismic retrofit means either structural strengthening or providing the means necessary to modify the seismic response that would otherwise be expected by an existing building during an earthquake, to significantly reduce hazards to life and safety while also providing for the substantial safe ingress and egress of the building occupants immediately after an earthquake".
16. Health and Safety Code Section 19161(a)(2) has set January 1, 1978 as a benchmark date for characterizing wood-frame, multi-unit residential buildings with soft, weak or open-front wall lines. Under the Health and Safety Code, buildings constructed after January 1, 1978 are considered to have been designed to meet acceptable seismic standards.
17. The date of January 1, 1978 supersedes the date of the adoption of the 1997 Uniform Building Code as amended by the State of California that was previously used by the City of Berkeley to distinguish obsolete structural designs from acceptable structures of this building type.
18. The City Council has determined that it is essential for the safety of its residents to make this Chapter's seismic hazard mitigation standards mandatory for multi-unit residential buildings falling within the scope and applicability of this ordinance as set forth below and to require that these buildings be retrofitted to comply with the adopted standards within the timetable set forth herein.

C. The purposes of this Chapter are to protect the public health, safety and welfare, to alert the general public and the owners and residents of certain types of existing multi-unit residential buildings to the vulnerability of such buildings in strong earthquakes, to determine the specific seismic vulnerabilities and necessary improvements for each such building, to inform decision making about needed mitigation measures, to promote such efforts, and to require buildings to be retrofitted to comply to the standards as established herein.

D. This Chapter requires the establishment of an inventory of potentially hazardous buildings that contain a soft, weak or open front condition on the ground floor and that have at least five residential units, provides for notification to the owners, residents and users of such buildings, adopts the International Existing Building Code, requires owners to provide an analysis of their building's seismic adequacy, and requires owners to perform retrofit work to comply with the standards established herein.

19.39.020 Scope and applicability.

A. The provisions of this Chapter shall apply to all existing wood frame multi-unit residential buildings that contain five or more dwelling units, as defined in BMC Title 23, and that were designed under a building permit applied for before January 1, 1978, where:

1. The Ground Floor, whether itself constructed of wood or other materials, of the wood frame structure contains parking or other similar open floor or basement space that causes Soft, Weak, or Open-Front Wall lines and there exists one or more levels above, or;
2. The walls of any story or basement of wood construction are laterally braced with Nonconforming Structural Materials as defined in this IEBC Chapter A4 and there exist two or more floor levels above.

Such buildings are referred to in this Chapter as potentially hazardous buildings with "soft, weak, or open front" conditions or "SWOF".

B. Potentially hazardous SWOF buildings listed on national, state or local historical registers shall also comply with the provisions of this Chapter. At the Building Official's discretion, reasonably equivalent alternatives to the structural standards established in this Chapter may be permitted when such alternatives are consistent with the provisions of the State Historical Building Code.

19.39.030 Reserved.

19.39.040 Establishment of the Inventory of Potentially Hazardous Buildings with Soft, Weak or Open Front Conditions.

Multi-unit wood frame residential buildings with five or more dwelling units identified by the 1996 survey conducted by the City as containing a Soft, Weak, or Open Front Ground Floor shall be placed on the Inventory of Potentially Hazardous SWOF Buildings. The inventory shall be maintained and revised as necessary by the Building Official. A copy shall be available for inspection in the office of the Building Official.

19.39.050 Notice to owners and administration.

A. Contents of Notice and Order. When the Building Official determines that a building is within the scope of this Chapter, the Building Official shall issue a notice and order as provided herein. The notice and order shall specify that the building has been determined by the Building Official to be within the scope of this Chapter, placed on the inventory, and, therefore, is required to meet the provisions of this Chapter unless removed on appeal. The notice and order shall specify the building type classification, if known, and shall set forth the owner's obligations under this Chapter, the time limits for compliance, and appeal rights. The Building Official's determination shall be final at the end of 180 days unless a timely request for reconsideration is filed as provided below.

B. Service of Notice and Order. The notice and order shall be in writing and may be given either by personal delivery thereof to the owner or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the owner of the property as shown on the last equalized assessment roll of the county, or as known to the Building Official, as well as to the following, if known: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in the building or the land on which it is located. The failure to serve any person required herein to receive service shall not invalidate any proceeding hereunder as to any person duly served or relieve any such person from any duty or obligation imposed by the provisions of this Section.

C. Appeal to Building Official. Any person entitled to service of notice under the preceding subdivision may request the Building Official to reconsider a determination to include a building on the inventory by submitting information that the building's ground floor is not soft, weak, or open as defined by the applicable standard, that the building has been substantially reconstructed in accordance with the 1976 or later Uniform Building Code, or that the building has been retrofitted in compliance with Article 5 of the current Berkeley Building Code or the IEBC. The request for reconsideration shall be filed within 180 days from the date of the service of such notice and order of the Building Official.

D. Appeal to Housing Advisory Commission. Any person entitled to service of notice under the preceding subdivision who disagrees with the decision of the Building Official on reconsideration pursuant to that subdivision may appeal within 30 days of the date of notice of the Building Official's decision to the Housing Advisory Commission (HAC) as provided for in BMC Chapter 19.44. For purposes of this Chapter, the appeal shall be set for hearing at the next regular HAC meeting more than 20 days, but not more than 60 days, from the date of filing of the appeal, provided that the Commission may set the hearing at a different time for good cause.

E. Recordation. Once the Building Official's determination is final, the Building Official shall file with the Office of the County Recorder a certificate stating that the subject building is within the scope of this Chapter, unless the property has been removed from the inventory. The certificate shall also state that the owner thereof has been ordered to conduct a structural analysis of the building in compliance with this Chapter. When a

building is removed from the inventory, the Building Official shall promptly file with the Office of the County Recorder a certificate so stating.

F. Costs of Additional Compliance Actions. In addition to any penalties authorized by the Berkeley Municipal Code, an owner who fails to comply with the provisions of this Chapter may be charged reasonable fees, as adopted by City Council resolution, to compensate for staff time spent to bring the building into compliance.

19.39.060 Owner and tenant obligations.

A. Obligation of Owners to Notify Tenants and Post Notice regarding the status of the building. Once the Building Official's determination is final, owners of buildings on this inventory shall do the following:

1. Within 30 days, notify each tenant in writing, using the Notice to Tenants form provided by the Building and Safety Division, and notify each prospective tenant prior to a change of tenancy, that the building is included on the inventory. Thereafter, the Rent Stabilization Board may provide such notice on an annual basis.
2. Post in a conspicuous place within five feet of each main entrance of the building, and maintain until the building is removed from the inventory, a clearly visible warning sign not less than 8" by 10" with the following statement, with the first two words printed in 50-point bold type and the remaining words in at least 30-point type:

"Earthquake Warning. This is a building with a soft, weak, or open front ground floor. You may not be safe inside or near such buildings during an earthquake."

3. Mail, within 30 days of initial service, a copy of each tenant notification form in compliance with this Section and a completed proof of service addressed to: Soft Story Program, Building and Safety Division, 2120 Milvia Street, Berkeley, CA 94704. Any tenant's name so provided shall be used by the City only for purposes of confirmation.
4. Private right of action - Any person aggrieved by an owner's failure to comply with the requirements of Section 19.39.060.A may bring a civil action against the owner for all appropriate relief. In any such action, the prevailing party(ies) shall be entitled to reasonable attorneys' fees in addition to other costs, and in addition to any liability for damages imposed by law.

B. Obligation of Owners to carry out the retrofit:

1. The owners of potentially hazardous SWOF buildings shall apply for and obtain building permits for seismic retrofitting within the time frame specified in the compliance schedule set out in this Chapter.
2. The owners of potentially hazardous SWOF buildings shall seismically upgrade the buildings within the time frame specified in the compliance schedule

specified in this Chapter to the standard required in this Chapter, or an alternative standard which is in accordance with the City's Building Code and is accepted by the Building Official in writing.

C. Obligation of Owners to Notify Tenants regarding the retrofit.

1. The owners of potentially hazardous SWOF buildings shall notify each tenant in writing of the planned schedule for seismic retrofitting pursuant to this Chapter, at least thirty (30) days in advance of the first planned construction. Such notice shall include any reasonably anticipated major disruption or reduction in service provided to the tenants.
2. The owners of potentially hazardous SWOF buildings shall notify each tenant in writing of any relocation by the tenant that will be reasonably necessitated by mandatory seismic retrofit as provided for in BMC Section 13.84.040.
3. The owners of potentially hazardous SWOF buildings shall notify each tenant that he/she may be eligible for financial assistance to offset the cost of the relocation as provided for in BMC Chapter 13.84 and shall provide a copy of that Chapter to each tenant.

D. Obligations of Tenants to Cooperate. Each tenant of a potentially hazardous SWOF building shall cooperate with the owner and the owner's agents, including but not limited to engineers, contractors, and inspectors, to accomplish the required analysis and retrofit. In so doing, tenants shall allow reasonable access to the building and their unit or space as needed and as permitted by California Civil Code Section 1954.

19.39.070 Reserved.

19.39.080 Removal of building from the inventory.

A building shall be removed from the inventory under the following circumstances:

- A. A determination by the Building Official that the building does not contain a soft, weak or open front condition and meets the applicable standards; or
- B. The satisfactory completion of a seismic retrofit and appropriate inspections bringing the building up to the applicable standards established in Section 19.39.100; or
- C. A determination by the Building Official or a decision on appeal that the building is not a potentially hazardous SWOF building; or
- D. Demolition or destruction of the building.

19.39.090 Reserved.

19.39.100 Adoption of engineering criteria for seismic retrofits submitted after January 1, 2014.

A. Potentially hazardous SWOF buildings shall be retrofitted in conformance with one of the following engineering criteria:

1. 2012 edition of the International Existing Building Code (IEBC) Appendix Chapter A-4; or
2. ASCE 41-06, Seismic Rehabilitation of Existing Buildings, using a performance objective of S-5 (Collapse Prevention) in the BSE-C earthquake; or
3. ASCE 41-13, Seismic Evaluation and Rehabilitation of Existing Buildings, using a performance objective of S-5 (Collapse Prevention) in the BSE-2E Earthquake; or
4. FEMA P-807, Seismic Evaluation and Retrofit of Multi-Unit Wood-Frame Buildings With Weak First Stories, as a pre-approved “substantially equivalent standard” under procedures of CBC Section 104.11 for Alternative Materials, Design and Methods of Construction, and with a retrofit objective as established by the Building Official; or
5. Subject to the project specific approval by the Building Official, the 2003 edition of the International Existing Building Code (IEBC) Appendix Chapter A-4, for buildings with Seismic Engineering Evaluation Reports submitted prior to January 1, 2014, that (i) include structural design calculations and construction documents demonstrating conformance to Chapter A4 of the 2003 IEBC; and (ii) are suitable for building permit submittal.

B. Work above the critical story: Regardless of which standard is selected, this Chapter does not require retrofit actions above the critical story (typically the ground story) and the floor diaphragm immediately above it.

C. The Building and Safety Division shall develop and publish Framework Guidelines calibrating, delineating and detailing technical requirements to be used for the retrofitting of buildings on the City of Berkeley inventory required to meet the engineering criteria established in Section 19.39.100.A.

19.39.110 Compliance schedule for completion of seismic retrofits.

A. Deadlines.

1. All owners of potentially hazardous SWOF buildings shall submit an application for a building permit to carry out the required retrofit in accordance with this Chapter no later than December 31, 2016.
2. The retrofit shall be completed no later than two years after submittal of the application for a building permit pursuant to Subsection 19.39.110.A.1.

B. Acceleration of Deadlines. Notwithstanding Subdivision A of this Section, the owners of potentially hazardous SWOF buildings shall submit an application for a building permit to carry out the required retrofit in accordance with this Chapter within

six months from the effective date of this Chapter and complete the retrofit no later than eighteen months after submittal of the application for a building permit whenever any one or more of the following occurs:

1. The Building Official determines that the building or any major portion thereof will be reoccupied after being vacant for six months or longer.
2. The building will undergo a remodel, alteration, addition or structural repairs valued at more than \$50,000 per unit, except for repairs found by the Building Official to be required for routine maintenance or in response to emergency situations.
3. Title to the building is transferred in whole or part or the building is sold to a new owner or owners, except when such transfer results from a change in title due to inheritance or transfers between spouses or registered domestic partners.
4. Additional financing is obtained which is secured by a deed of trust or mortgage recorded on the title to the building. Financing secured solely to refinance existing debt against the property or for structural and maintenance related repairs shall not be considered additional financing for the purposes of this Chapter.
5. The use of the building changes such that Section 3408 of the Berkeley Building Code (BMC Chapter 19.28) applies.
6. The building is declared to be an Unsafe Building as specified in Section 19.28.020 Subsection 116 of the Berkeley Building Code by the Building Official.

C. Hardship Exceptions. The City Manager or his or her designee may grant an exception to the requirements of this Section and extend the deadline for completing all or a part of required seismic retrofit work. An exception may initially extend the building permit application deadline or performance of some or all of required retrofit work by up to one year. The City Manager may grant one additional extension of up to one year to the same owner if a continued exception is justified in accordance with the requirements of this Section. However, any subsequent extension request by the same owner must be approved by the Housing Advisory Commission. Hardship exceptions shall only be granted where:

1. The owner submits to the City Manager a detailed written statement requesting an exception, explaining why an exception should be granted and clearly documenting the reasons for an exception in accordance with the requirements of this Section; and
2. The owner submits a written plan to the City Manager for proceeding with the retrofit work, with any exceptions granted, and agrees to fully cooperate with

the City in identifying all available financing for the seismic retrofit work and any related relocation.

Exceptions granted under this Section are limited to deadlines imposed pursuant to Section 19.39.110 only and shall not apply to any other corrections required by the City.

D. Required Findings. In order to grant an extension, the City Manager, or the Housing Advisory Commission upon a third request for an extension by the same owner, must find that:

1. The building does not present an imminent threat to the life or safety of occupants or the public, based on a report from a California licensed structural or civil engineer. The City may require partial or interim seismic retrofit work in order to grant an extension; and
2. The owner has complied with all other applicable requirements, including submitting an approved engineering evaluation report, tenant notification, and posting of earthquake warning signs; and
3. The owner demonstrates one or more of the following conditions:
 - a. Funds are unavailable for the required seismic retrofit work. The owner shall provide the following information as required to determine financial hardship:
 1. Contractors' bids or a professional cost estimate of the seismic retrofit;
 2. Specific information on building's rents, operating expenses, existing debt, projected rents on the retrofitted building and any other information needed to analyze the ability of the building to support additional debt to perform the retrofit work; and
 3. Statements from lenders that they are unwilling to provide financing for the retrofit work. The City may require an owner to apply for any financing the City determines may be available for the retrofit work before making a determination of hardship.
 4. Any other information requested by the City Manager.
 - b. In order to qualify for necessary financing, very low-income residential tenants will be required to pay a higher rent and the increased monthly contract rent will be more than 30% of the tenants' household income and no subsidy is currently available to reduce the rent to 30% or less than the tenants' household income. For purposes of this part, very low-income residential tenants are households with incomes below 50 percent (50%) of area median income.

- c. There are unique and exceptional circumstances that prevent or hinder the performance of retrofit work.

19.39.120 Automatic gas shut-off valves in retrofitted buildings.

Approved automatic gas shut-off valves shall be installed in potentially hazardous SWOF buildings that contain gas piping for which a seismic retrofit permit is issued on or after January 1, 2014, regardless of the valuation of the retrofit work. The valves shall be listed by recognized testing agencies and shall be installed in compliance with the requirements specified in the Berkeley Plumbing Code (BMC Chapter 19.34).

19.39.130 Fifteen-year exemption for retrofitted buildings.

Any building, or any portion of a building that is identified under this Chapter as being a potentially hazardous SWOF building and is retrofitted in compliance with the applicable standards or the City of Berkeley Building Code shall not, within a period of 15 years from the date the mandatory seismic retrofit requirement within this Chapter becomes effective, be identified as a potentially hazardous SWOF building pursuant to any local building standards adopted after the date of the building retrofit unless such building no longer meets the standards under which it was retrofitted.

19.39.140 Seismic engineering evaluation report (Required for buildings on the SWOF inventory prior to January 1, 2014).

For buildings placed on the inventory prior to January 1, 2014, within two years of the date of service of the notice of inclusion on the inventory, the owner of each building on the inventory shall submit an Initial Screening and a detailed seismic engineering evaluation report prepared by a qualified California licensed structural or civil engineer that: analyzes the structural ability of the building to resist the seismic effects of earthquakes and the extent to which the building meets the standards for structural seismic adequacy as set forth in Chapter A4 of the 2003 IEBC as modified by this Chapter, identifies any hazardous exterior design elements, describes the elements of work needed to remedy the identified weaknesses, and provides other relevant information as specified by the Building Official. The seismic evaluation report review fee as set by City Council resolution shall apply. The purpose of the analysis is to investigate the structural systems of a building that resist loads imposed by earthquakes and to determine if any individual portion or combination of these systems is inadequate to prevent a collapse or partial collapse or other damage hazardous to life.

19.39.150 Adoption and modifications of Chapter A4 of the 2003 IEBC for seismic engineering evaluation reports submitted prior to January 1, 2014.

A. Chapter A4 of the 2003 International Existing Building Code ("IEBC"), as published by the International Code Council or any amendments thereto as determined by the City of Berkeley Building Official is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to modifications set forth in this Chapter. For purposes of this Chapter, the standards in the IEBC shall be used for the analysis of seismic weakness and to formulate the elements of work required to remedy any identified weaknesses. For the purposes of this Chapter, the non-wood frame elements of the ground floor of a designated building shall also be analyzed.

B. The Building Official shall provide guidelines delineating the standards for the use of Chapter A4, including amendments for buildings with non-wood-frame ground floor elements, and for filing the report required by this ordinance. The guidelines shall provide details for items required in the report, procedures to be followed, and a framework for both the assembly of the required information by the professional and for the evaluation of the report by the City.

C. To provide standards for the analysis of non-wood frame ground floor elements, the American Society of Civil Engineers (ASCE) Standard 31 - "Seismic Evaluation of Existing Buildings", 2003 Edition, is hereby adopted by reference.

19.39.160 Public nuisance.

Any building for which the owner has failed to file the required Seismic Engineering Evaluation Report , or fails to comply with notification requirements in compliance with Section 19.39.060.A, or fails to perform the required seismic retrofit work in compliance with Sections 19.39.100 and 19.39.110, or fails to comply with any order of the Building Official pursuant to this Chapter, is hereby declared to be a public nuisance and may be abated pursuant to the procedures set forth in BMC Chapter 1.24.

19.39.170 Remedies cumulative.

Remedies provided by this Chapter are cumulative.

19.39.180 Severability.

If any Section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed this Chapter, and each Section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more Sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Summary of Public Comments, July 25, 2013

Mandatory Retrofit Ordinance for Soft Weak or Open Front Buildings

OWNER CONCERNS

1) Building and Permitting Requirements

- a) **Permit Roadblocks:** When owners apply for permits to retrofit, they face plan review comments from multiple City departments (e.g., zoning, public works, fire, traffic, building & safety, etc). If the city really wants owners to retrofit, it should find a way to be more flexible with permit processing for owners who present a retrofit plan.
- b) **Fire alarms:** When applying for a permit for a seismic retrofit, owners have learned they must also install a fire alarm system that may cost an additional \$10-15,000. Currently, to obtain a building permit for soft story seismic upgrading, they are asked to provide a letter committing to install a fire alarm within three months, which is often financially difficult.
- c) **Accessibility:** Owners of buildings with commercial uses on the ground floor have discovered when applying for a building permit that doing construction triggers the requirement to make accessibility improvements. They would like these requirements waived when they come in to do a retrofit.
- d) **Permit expediting:** Can the permitting process for soft-story seismic retrofits be expedited? For apartment buildings housing students, it is particularly helpful if permits can be granted in time for construction to occur during the summer, when landlords may be able to keep units vacant to avoid the cost of relocating tenants in the event that relocation would be needed.
- e) **Fees:** Can permit fees for soft-story seismic retrofits be waived? Can permits be extended for free?
- f) **Customer Service:** Can City staff provide more direct assistance to the owners doing the retrofits, reviewing plans with them prior to submittal to explain what other work will be triggered by the retrofit work?

2) Zoning

- a) **Parking:** At times, retrofits (e.g., infilling garage openings with shear walls) may result in loss of parking spaces. The City makes it very difficult to get parking variances approved. Owners would also like to see more flexibility in allowing parking in the setback to replace lost parking.
- b) **Design Review:** If retrofit results in unattractive changes to existing façades, owners would like planners to allow this and not object.

3) Rent and Relocation

- a) **Rent increases:** Landlords would like to have the ability to pass a small rent increase to offset some of their retrofit costs. The perception of landlords is that the Rent Board will almost never allow rent increases. One property owner stated the Rent Board had only ever allowed a total of six rent increases for capital improvements.
- b) **Means testing:** Berkeley should introduce means testing of tenants like San Francisco has.
- c) **Relocation fees:** Could landlords be exempted from paying relocation fees for seismic retrofits?

4) Financing

- a) Could the City of Berkeley provide a loan program? Securing financing is difficult, especially if there are other loans. Some kind of fund should be created where building owners could get low-interest loans. It could either be created through the General Fund, community organizations or a bond measure. Most people that own buildings are not millionaires and it may be hard for them to afford this.

5) Other Concerns

- a) **Exclusion of Other Buildings:** The ordinance is not truly equitable because some buildings that are not “soft story” per se are still seismically vulnerable. Soft story commercial buildings, hotels and buildings with fewer than five units don’t have to comply and should also be encouraged to retrofit.
- b) **Building Survivability:** The building may still be destroyed during an earthquake despite the retrofit. There are no guarantees despite the huge investment of time and money. The ordinance focuses on life safety for tenants and increasing the likelihood tenants will be able to get out of the building safely after an earthquake. It does not ensure the building will be habitable after an earthquake.
- c) **Demolition:** Some owners would prefer to demolish their buildings and build a safer building. It is almost impossible to get a demolition approved when it could result in the loss of rent-controlled units.
- d) **Cost Estimates:** Cost estimates are very low and need to be re-evaluated.

TENANT CONCERNS

1. Landlords have not retrofitted
 - a. Some are negligent property owners who defer all building maintenance
 - b. Some tenants are considering moving to a building that is not soft story
2. Fears of rent increases they can’t afford or of being forced to move and having nowhere to go
3. The need to relocate during a retrofit could be very disruptive
4. How will retrofit plans be reviewed for effectiveness?
5. Landlord has not posted the required earthquake warning sign

Response to Public Comment, 8/21/13

How might the City of Berkeley respond to the concerns raised by the public in drafting the soft story ordinance and implementing the program?

1) Building and Permitting Requirements

- a) **Permit Roadblocks:** The Building and Safety Division will offer no-fee pre-application consultations with building owners, their architects and engineers once they have a preliminary design for a retrofit. These meetings with plan checkers, not to exceed one hour, can include a traffic engineer and a planner in instances where projects will require their review of parking or zoning issues.
- b) **Fire alarms:** Fire alarms, important for public safety, have been required for buildings with three or more stories or 16 or more residential units since 1996. The Fire Department's practice has been to request owners of multi-unit residential buildings that do not have an existing fire alarm system to commit to installing a new fire alarm system within 3 months of the building permit issuance. This practice has changed effective September 2013. Instead, plans will be stamped to notify applicants that they must install a fire alarm, but this will not delay issuance of a building permit.
- c) **Accessibility:** Accessibility improvements for existing buildings with commercial uses are required by state law since 1973 and mandated in the California Building Code since 1982. The requirements are retroactive to existing buildings undergoing alterations or structural repairs requiring issuance of a building permit. It is not possible for the City of Berkeley to waive these requirements. In Legal Opinion No. 94-1109, dated May 10, 1995, the Attorney General for the State of California concluded that seismic strengthening work in an existing building constitutes a "building alteration, structural repair or addition" for purposes of providing access to the building for disabled persons. Since these provisions were added almost 40 years ago many buildings with commercial uses have already been remodeled to be accessible. However, for those buildings which have not yet been upgraded for disabled access compliance, this still remains an issue. Even though compliance with disabled access requirements cannot be waived, the Building & Safety Division will consider hardship exemptions in those situations where the required accessibility work exceeds 20% of the cost of the seismic repairs.
- d) **Permit expediting:** In transitioning to an all new permitting module using more advanced software in early 2014, staff will consider offering a two-week turnaround for soft-story seismic retrofit permits and similar structural alteration projects intended for public safety rather than the usual three to four week turnaround time.
- e) **Fees:** Planning staff does not have the authority to waive permit fees. Waiving or reducing permit fees would require a resolution by the City Council and alternative funding.
- f) **Customer Service:** In July 2013, the Building and Safety Division reinstated a project manager position and hired Jenny McNulty as Program and Administration Manager for the soft-story retrofit program and other programs administered by the Building & Safety Division. Jenny will do outreach to owners and serve as the point person for soft story retrofit projects. She will coordinate with the departments involved in the permitting process and provide guidance to owners on an individual basis as needed.

2) Zoning

- a) **Parking:** The Zoning Ordinance provides flexibility regarding retention of off-street parking, however, the City must also consider the impact on the neighborhood. In general, the City seeks to retain the maximum number of parking spaces possible. Owners should explore design options to retain as much parking as possible, and provide documentation to the City if requesting that parking be eliminated or placed in a setback. See Berkeley Municipal Code section 23C.04.075 for more information. Where parking cannot be retained, the elimination of parking places can be approved provided the following is addressed:
- i) Parking spaces may be converted to substandard compact spaces if approved by the Traffic Engineer.
 - ii) Parking spaces may be relocated into a yard or other location by right to the extent necessary, as determined by the Zoning Officer.
 - iii) Required parking may be removed if the Traffic Engineer determines that reducing the size or relocating parking spaces cannot be achieved.
- b) **Design Review:** Planning Department staff will consider the importance of seismic retrofit work when design review is needed. There should be reasonable and inexpensive approaches that would satisfy the property owner and the City.

3) Rent and Relocation

Rent increases: The Rent Board has processed over 4000 “Landlord Petitions,” almost all of which request an increase in the rent to the sitting tenant; about half these petitions are for capital improvements. Under the Rent Stabilization Ordinance, owners are granted rent increases to ensure they receive a fair return. In a substantial majority of petitions, an increase has been granted. These are considered property-by-property, based upon the income and costs associated with maintaining the property. Vacancy decontrol allowed owners substantial rent increases at the time a rental unit turns over. In most cases the increased rent significantly exceeds the costs associated with maintaining the property. Under current Rent Board regulations, rent adjustments for capital improvements are offset by the amount of rent increases taken since vacancy decontrol that are above the amount provided for by the Annual General Adjustments. Therefore, only a small number of properties – those with all or most of the apartments occupied by long-term tenants in place since before 1999 – are likely to qualify for a rent increase based on the required retrofit. For over ten years, the Rent Board has expressed a willingness to consider revising the existing regulations once a SWOF ordinance is adopted provided increases are limited, there is a hardship provision and it does not have the effect of displacing tenants. When the Board first expressed this commitment in 2003, the citywide average rent for all units was \$1,007 per month. As of March 2013, the citywide average rent for all units was \$1,367. The average rent for new tenancies in 2013 was even higher. These are factors that will also be considered by the Board in determining what is a fair pass-through for retrofit related costs.

- a) **Means testing:** The idea of “means testing” has been raised by both tenants and owners during the extensive discussions on mandatory seismic improvements – each side feeling the other should be means tested. Berkeley’s Rent Stabilization Ordinance, adopted by the voters and approved by the US Supreme Court, does not allow for means testing.

Berkeley's Rent Stabilization Ordinance relies on a "Fair Return" on investment standard for determining when rent increases are warranted. This standard looks at both the operating expenses and income generated building-wide to determine if increases in rent are warranted for sitting tenants. The costs of any seismic retrofit, along with other improvements to the building, would be part of the Fair Return analysis. San Francisco does not presently have means testing as part of their seismic ordinance.

b) **Relocation fees:** In over ten years of discussion and review of proposed soft story legislation, engineers and building officials have repeatedly testified that it would be extremely unlikely and a "rare situation" that a tenant would need to be relocated to complete the required seismic work. In the overwhelming majority of cases, if the work is done properly, there is no need to displace the tenant during the retrofit project. Relocation may be necessary if there is additional, discretionary (i.e. a plumbing or electrical upgrade) work also being performed. Occasionally, while it is not required in order to perform the seismic work, the tenant or property owner may prefer that the unit/building be unoccupied. There are provisions in the current Relocation Ordinance that facilitate an owner and tenant reaching a mutually acceptable arrangement when relocation may be desirable but not necessary. As the Relocation Ordinance is currently written, there is no provision exempting payment for seismic retrofits. Council, however, has the power to amend that Ordinance, if it deems it appropriate to do so. Council would then determine who is in a better position to incur the expenses of relocation.

4) **Financing:** Initially, staff would like to assess the extent of the need for financing and determine how many owners are unable to secure bank loans and the amount of financing needed for their retrofits. The City of Berkeley may explore creating a loan program for mandatory retrofit projects, with rates sufficient to cover the expenses of operating the program; such action would require City Council approval.

5) Other Concerns

a) **Exclusion of Other Buildings:** Realistically, the Building and Safety Division staff cannot effectively administer a program to address the risks in all building types at once. Soft story buildings with five or more residential units have been identified as among the most vulnerable buildings in the event of an earthquake with a likelihood of damage affecting a significant number of residents. In the future, a task force could be created to address vulnerability of residential buildings with less than five units, transient facilities such as hotels, non-residential buildings, etc.

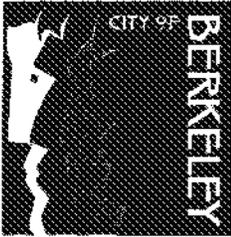
b) **Building Survivability:** The proposed regulations are an attempt to greatly reduce the risk to building and occupants as a result of a major earthquake and to increase the likelihood that occupants will be able to exit the building even if damaged. This does not mean the building will suffer no damage nor does it mean that extensive work on the building will not be required after the earthquake. The primary focus of building code provisions dealing with earthquake retrofits is on life safety not on limiting economic loss. Individual building performance would be based on the local ground accelerations, strength, duration and direction shaking experienced at specific locations, individual construction characteristics, site-specific soil conditions, building material conditions and other factors. Since the retrofit standards for existing buildings are lower than required for new construction, the

likelihood of significant damage is greater when the retrofit is designed to the minimum levels required by the ordinance. Building owners who wish to strengthen their building to a higher standard and achieve a better performance are encouraged to do so and the ordinance provides alternative standards specifically to achieve these objectives.

- c) **Demolition:** Demolition of existing residential units is a significant policy issue, which is not planned to be considered at this time.
- d) **Cost Estimates:** Cost estimates cannot be accurately determined without looking at the specifics of an individual property. The cost estimates provided in the FAQ's were based on the permit valuations, used in computing the building permit fees, of Berkeley soft-story retrofits performed in 2009. The actual construction costs may differ significantly from the declared valuations.

TENANT CONCERNS

- 6. **Landlords have not retrofitted:** The ordinance is making it mandatory to retrofit so owners will do so.
- 7. **Fears of rent increases they can't afford or of being forced to move:** As noted above, given the large rent increases caused by vacancy decontrol, there are very few buildings that would qualify for substantial rent increases under the current Board regulations. While the Board has agreed to consider revising the current regulations it has expressed a commitment that any rent increase would be limited and have hardship provisions to prevent the displacement of sitting tenants.
- 8. **Disruption of relocation:** It is true that both construction and relocation can be disruptive. However, full relocation will rarely be necessary in order to perform the required work. Tenants may wish to be away from their unit during the day while retrofitting is being performed, but in most cases it will not be necessary to completely relocate from the unit/building. The owner and the tenant may find it mutually agreeable to temporarily relocate while the work is being performed. The Rent Board has a mediation service and would be willing to work with the parties to see if an agreement could be reached, provided both sides voluntarily participate.
- 9. **How will retrofit plans be reviewed for effectiveness?** The Building and Safety Division will review plans submitted during the building permit application process and ensure the retrofit meets the standards required to be removed from the soft story inventory. Inspectors will inspect the work to ensure it is completed according to plan.
- 10. **Landlord not posting earthquake warning signs:** The Building and Safety Division has printed signs with an adhesive backing and mailed them to property owners, notifying them their property will be inspected after October 1st to ensure compliance. If the signs are not posted, owners will be issued an administrative citation in the amount of \$500.



Rent Stabilization Board

Date: September 30, 2013

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

From: *LK* 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

Information from the Rent Stabilization Board

Summary of the requirements of Phase I and Phase II of the Soft Story Ordinance

In an effort to increase tenant safety, in 2005 the City of Berkeley adopted Phase 1 of the Soft Story Ordinance, which required properties with 5 or more units containing soft, weak, or open front ground floor stories to complete an engineering evaluation report including a description of the work needed to remedy any identified structural weakness. The City of Berkeley identified over 300 properties that met these requirements and placed them on the Soft Story Inventory. In addition to evaluating their building, property owners were required to notify their tenants the building was a soft story and to install an earthquake warning sign indicating that it may not be safe during an earthquake. These signs may only be removed after the property has been retrofitted.

In December 2013 the City of Berkeley adopted Phase 2 of the Soft Story Ordinance, which requires owners of properties on the Soft Story Inventory to submit a building permit application to retrofit the building no later than three years from ordinance approval, but no later than December 31, 2016, whichever occurs first. The seismic retrofit must be completed no later than two years after submittal of the building permit application.

Tenants' right to return to the property if relocated

Since the City is only requiring owners to retrofit the ground floor where the soft story condition exists, it is unlikely tenants would need to be temporarily relocated. If a tenant were required to move out of their unit while construction work occurred to complete a mandatory seismic retrofit, the City of Berkeley Relocation Ordinance would apply. The Relocation Ordinance requires property owners make certain relocation payments to offset the additional costs incurred by tenants as a result of a temporary relocation and to allow tenants to move back once the required retrofit work is complete. If asked to move out, you should contact the Rent Stabilization Board for more information. The Rent Stabilization Board can be reached by phone at (510) 981-RENT or by email at rent@cityofberkeley.info.

Tenants' private right of action

If you are negatively impacted by a property owner's failure to comply with the tenant notification requirements of the Soft Story Ordinance (BMC Section 19.39.060.A), you may bring a civil action against this property owner for all appropriate relief. In any such action, the prevailing party(ies) shall be entitled to reasonable attorneys' fees in addition to other costs, and in addition to any liability for damages imposed by law.

Rules, rights and regulations if the seismic work results in the loss of services

Should a tenant experience a temporary or permanent loss of or reduction in service or space due to necessary soft story retrofit work, a tenant may be entitled to a rent reduction according to the rules enumerated in Rent Board Regulation 1269. This may include loss of parking, yard space, common area space and possible reduction in interior space. A tenant would be required to petition the Board for a rent reduction for loss or decrease in services experienced. If you think you may experience any loss or reduction in service you should contact a Rent Board Housing Counselor for more information. You can contact a Rent Board Housing Counselor by phone at 510-981-RENT (510-981-7368) or by email at rent@cityofberkeley.info.