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RECEIVED AT
COUNCIL MEETING OF:
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OFFICE OF THE CITY CLERK
CITY OF BERKELEY

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October 25, 2005

**VIA FACSIMILE
AND HAND DELIVERY**

Mayor Tom Bates
Honorable City Council Members
Council Chambers
2134 Martin Luther King, Jr. Way
Berkeley, CA 94704

Re: Proposed Ordinance to Create an Inventory of Soft Story Buildings

Mayor Bates and Honorable City Council Members:

This firm represents Munger Properties LLC, owner of the Granada Building, located on the corner of Bancroft and Telegraph Avenues. Although this firm did not receive notice of this meeting or a copy of the draft ordinance despite our repeated requests for notification on public hearings related to soft story ordinances, we have nevertheless briefly reviewed a copy of the City of Berkeley's draft ordinance to "Establish an Inventory of Potentially Hazardous Buildings Containing Soft, Weak, or Open Front Stories and to Adopt Chapter A4 of the 2003 International Existing Building Code with Amendments" (the "Draft Ordinance"). As proposed, the Draft Ordinance will result in numerous unintended consequences, including, but not limited to, the following:

- Once listed on this "Inventory" (without the benefit of a site-specific engineering report), building owners will be immediately and detrimentally impacted, and may face insurance premium increases or potential policy cancellation, and potential default on terms included in mortgages and deeds of trust (especially in the instance where the "Inventory" is recorded against the property);
- The building owner is required to provide notice to each tenant that the building is included on the "Inventory," and is then required to provide copies of those notices to the City, creating privacy issues with respect to a tenant's name and address; and

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- For mixed use buildings with commercial tenants, an owner may be in violation of the terms of a lease.

First, the "Inventory" was created as part of a sidewalk survey that was conducted nearly 10 years ago. The survey did not include the physical inspection of each building, but rather categorized buildings based on their exterior features. While the survey may be a close approximation of the current status of the soft-story structures in the City of Berkeley, it should not be the basis of requiring tenant notices and recordation against the properties.

Second, notice and recordation of the "Inventory" without an opportunity to inspect and cure will result in an immediate detriments to owners, including a likely increase in insurance premiums and a potential default on mortgages or deeds of trust. Insurance policies and mortgages often provide for the immediate notification of recorded notices against a piece of property, with a potential for default in the event that such notice is not given. The result of such notice, however, is the potential for increased insurance premiums and default on the terms of a loan.

Third, the Draft Ordinance requires that a building owner provide notice to each tenant of the building's "Inventory" status, and then requires that owner disclose those notices to the City. Such disclosure requires that an owner provide the City with a tenant's personal information (including name and address) without the tenant's permission, leading to potential claims for invasion of privacy rights and improper disclosure of private information.

Fourth, the Draft Ordinance requires an owner to notice tenants, post certain documents in the building and complete inspections of the premises. Certain provisions may require an owner to act in conflict with express terms of a lease agreement.

These issues are not without simple cures. Munger Properties respectfully requests that the City consider the following changes to the Draft Ordinance as a means of preventing the aforementioned, unintended negative consequences that could be potentially devastating to a building owner:

1. The City should update its existing "Inventory";
2. The City should structure the Draft Ordinance such that an "Inventory" is adopted for the purpose of noticing only building owners of the potential hazard associated with their soft story structure;
3. The City should require all owners of buildings on the "Inventory" to complete the seismic engineering analysis within two years;

4. If an owner fails to complete the seismic engineering analysis within the two year period, the City could then record a certificate against the property and institute enforcement measures against the owner;
5. After the seismic engineering analysis is complete, and if the seismic engineering analysis requires structural modifications to the building, the owner would be required to notice the building tenants, and complete a statement of compliance for the City, attesting to the noticing of tenants (without providing confidential tenant information to the City); and
6. After the seismic engineering analysis is complete, and if the seismic engineering analysis requires structural modifications to the building, the owner should be given an opportunity to cure any seismic issue prior to recordation of a certificate against the property. If the owner fails to complete the necessary structural modifications within a proscribed period of time, the owner should then face enforcement procedures.

While Munger Properties recognizes that the City of Berkeley has had previous success with the drafting and implementation of a state-mandated ordinance, the issues presented by the Draft Ordinance are different than those faced during the drafting and adoption of the similarly-structured URM ordinance. Lenders and insurers have greater control in the diminishing California markets, thereby creating terms and conditions more favorable to underwriters, banks and other lending institutions. As such, building owners face increasing challenges in balancing property improvements and business costs.

Accordingly, Munger Properties respectfully requests that the City Council carefully consider the unintended consequences of this Draft Ordinance prior to adoption, and make the recommended changes with an eye towards balancing improved housing safety with the inherent costs of providing housing in the California market. As previously proposed, we would be happy to work with staff to mitigate or eliminate these unintended consequences.

Very truly yours,

MILLER, STARR & REGALIA



Dana C. Tsubota

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