

ADDING CHAPTER 19.39 TO THE BERKELEY MUNICIPAL CODE ESTABLISHING AN INVENTORY OF POTENTIALLY HAZARDOUS BUILDINGS CONTAINING SOFT, WEAK, OR OPEN FRONT STORIES AND ADOPTING CHAPTER A4 OF THE INTERNATIONAL EXISTING BUILDING CODE WITH AMENDMENTS

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

Section 1. That Chapter 19.39 is hereby added to the Berkeley Municipal Code 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 Adoption of Chapter A4 of the 2003 International Existing Building Code, with certain amendments.**
- 19.39.040 Establishment of the Inventory of Potentially Hazardous Soft Story Buildings.**
- 19.39.050 Notice to owners and administration.**
- 19.39.060 Owner and tenant obligations.**
- 19.39.070 Analysis of structural seismic adequacy.**
- 19.39.080 Removal of building from the inventory.**
- 19.39.090 Compliance schedule for submittal of seismic analysis.**
- 19.39.100 Fifteen-year exemption for retrofitted buildings.**
- 19.39.110 Public nuisance.**
- 19.39.120 Remedies cumulative.**
- 19.39.130 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.
 - 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 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 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 are made, can be expected to substantially reduce the likelihood of excessive building drift or collapse and substantially lessen the loss of human life.

C. The purpose of this chapter is 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.

D. This chapter requires the establishment of an inventory of potentially hazardous buildings that contain a soft 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.

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 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, 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 Levels above.

B. 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 may be permitted when such modifications are consistent with the provisions of the State Historical Building Code.

19.39.030 Adoption of Chapter A4 of the 2003 International Existing Building Code, with certain amendments.

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 podia and non-wood-frame ground floors, and for filing the report required by this chapter. 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. Terms in capital case used in this chapter are as defined in Chapter A4 of the IEBC and FEMA 356, unless otherwise defined in this chapter.

19.39.040 Establishment of the Inventory of Potentially Hazardous Soft Story Buildings.

Multi-unit wood frame residential buildings with five or more residential units identified by a 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 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 1997 or later Uniform Building Code, or that the building has been retrofitted in compliance with Article 11 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. 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 form in Appendix A below, and notify each new tenant at a change of tenancy, that the building is included on the inventory.

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" 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 service, a copy of each tenant notification form in compliance with this section and a completed proof of service addressed to: 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.

B. Obligations of Tenants to Cooperate. Each tenant of a building on the inventory shall cooperate with the owner and the owner's agents, including but not limited to engineers, contractors, and inspectors, to accomplish the required analysis. 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 1954.

Appendix A
Notice to Tenants re: Soft Story 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 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 are those buildings constructed prior to 1997, 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 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 Weak, Soft, or Open Front Story and meets the applicable standards;
- 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;
- C. A determination by the Building Official or a decision on appeal that the building is not a building with Soft, Weak, Or Open Front Stories; or
- D. Lawful demolition of the building.

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 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 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, be identified as a potentially hazardous 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.

19.39.110 Public nuisance.

Any building for which the owner fails to file the required analysis of structural seismic adequacy in compliance with Section 19.39.070 or fails to comply with Section 19.39.060 or fails to comply with any order of the Building Official is hereby declared to be a public nuisance and may be abated pursuant to the procedures set forth in BMC Chapter 1.24.

19.39.120 Remedies cumulative.

Remedies provided by this chapter are cumulative.

19.39.130 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.