



Office of the City Manager

CONSENT CALENDAR
February 12, 2008

To: Honorable Mayor and Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development

Subject: Amendment to the Zoning Ordinance (ZA 1-07): Public Safety Exceptions for Structural Alterations

RECOMMENDATION

Adopt first reading of an Ordinance altering Berkeley Municipal Code (BMC) Chapter 23C.04 to exempt structural alterations, for the purpose of public safety improvements for buildings subject to BMC Chapter 19.39 - *Potentially Hazardous Buildings Containing Soft, Weak or Open Front Stories* also known as the Soft Story Ordinance and BMC Chapter 19.38 - *Seismic Hazard Mitigation Program for Unreinforced Masonry Buildings (URM)*, from certain Zoning Ordinance restrictions and some levels of discretionary review.

SUMMARY

The proposed amendments were first presented to the City Council for adoption on January 15, 2008. At this meeting, the Council adopted the amendments. Later, staff identified a change that was needed to correct a section reference. The attached ordinance has this correction. What follows is the January 15th report in its entirety for reference.

January 15, 2008 Staff Report:

The proposed amendments limit discretionary review for certain alterations that are required for public safety improvements as part of the Soft Story Ordinance and/or the URM Ordinance. The amendments allow owners of buildings subject to these Ordinances to perform, with limited review, seismic upgrades and associated architectural screening that could do the following:

1. Encroach into required yards;
2. Exceed height restrictions;
3. Exceed the allowable lot coverage; and
4. Reduce, relocate or remove parking.

Additionally, when Public Safety Structural (URM or soft story) alterations are being performed, these amendments would waive the requirement to obtain a Use Permit to:

5. Alter a non-conforming building with a non-conforming use on the property; and
6. Alter a building that is over its allowed residential density.

The amendments do not waive the requirement for a Building Permit, Design Review, or required approval of the Landmarks Preservation Commission when that would normally be required. Any modifications to properties will be limited to the minimum necessary to accomplish the retrofit work, at the discretion of the zoning administrator.

FISCAL IMPACTS OF RECOMMENDATION

No Impact.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed revisions are categorically exempt from environmental review under the California Environmental Quality Act (CEQA) Guidelines Section 15305, which consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density.

CURRENT SITUATION AND ITS EFFECTS

The City Council adopted the Soft Story Ordinance (BMC Chapter 19.39) on October 18, 2005. BMC Chapter 19.39 applies to structures with five or more residential units and a soft, weak, or open type construction on the ground floor. The approach to correcting soft stories is modeled after the successful URM (un-reinforced masonry) Program through the URM Ordinance (BMC Chapter 19.38), which currently requires retrofit work.

The Planning and Development Department's Building & Safety Division staff and structural engineers have determined that approximately 649 buildings, with five or more residential units each (containing over 5,000 residential units in Berkeley) are considered "soft story structures". The buildings identified within Berkeley were constructed prior to the 1997 Building Code, which was the first to adequately require stronger support and connections for soft story structures. A majority of the identified structures are concentrated around the University and in parts of South and West Berkeley (See Map 1: Soft Story Sites).

The Soft Story Ordinance does not require construction to retrofit the building at this time; however, it does require an engineering report identifying seismic weaknesses within 2 years of being identified by the City as subject to the Soft Story Ordinance. Although not currently required, a number of owners of soft story structures have expressed interest in repairing identified weaknesses immediately and have begun the process to obtain permits.

Soft Story Structures Background

Soft stories are buildings with soft or weak ground floor stories due to large openings for storefronts or parking, and with inadequate support in the ground floor and inadequate connections to the second story of these buildings. Soft stories can create structural weakness subject to collapse in a significant earthquake, as expected in the Bay Area. Recent California earthquakes, including the Northridge earthquake, have caused this type of building to collapse resulting in death and injuries.

BACKGROUND

The original purpose for amending the Zoning Ordinance was to exempt public safety structural alterations for soft story buildings subject to BMC 19.39 from various zoning restrictions. Staff believes and the Commission concurred that it would be valuable to expand these exemptions to buildings subject to the Unreinforced Masonry Ordinance, since seismic retrofits in either set of structures have the potential to save lives. Although the URM Program has been underway for years, there are 48 structures that have not yet been improved and these amendments may provide the needed incentive to encourage these property owners to make the seismic improvements.

In an effort to facilitate structural alterations to buildings subject to the Soft Story and URM Ordinances, the amendments allow for discretion in the following zoning requirements:

- Required yards— Encroachment into a required yard requires a variance or AUP, depending on the situation;
- Height Restrictions—Additions and or alterations that exceed residential height restrictions require an AUP;
- Lot Coverage—Additions to parcels over allowed lot coverage require a variance or AUP depending on the situation; and
- Parking Reduction—removal, reduction or relocation of parking could require a variance, AUP, or Use Permit, depending on the situation.

Additionally, when Public Safety Structural (URM or soft story) alterations are being performed, the amendments waive the requirement to obtain a Use Permit to:

- Alter a non-conforming building with a non-conforming use on the property; and
- Alter a building that is over its allowed residential density.

The proposed modifications to the Zoning Ordinance may have negative effects on immediate neighbors and the community through enlargement of buildings or expansion into required setbacks. However, the potential for life saving and injury reduction outweighs these potential impacts. It is expected that the structural alterations for buildings subject to the Soft Story Ordinance, and any remaining buildings that have not performed seismic retrofit work under the URM Ordinance, will be minimal in nature due to the limitations of the work to be performed.

Examples of Seismic Construction

In many cases, the retrofit work will include minor construction and installation of supports to provide stronger connections for soft stories. The table below identifies the most common approaches to retrofitting soft story construction along with the associated zoning requirements and/or permits needed to exceed existing limits.

Typical Seismic Construction	Potential Zoning Regulations	Typical Zoning Requirement to exceed limit
Installation of shear walls	No restrictions	Not applicable
Replacement of columns with larger columns (typically going from 4" columns to 9" columns)	Reduction of the size of a parking space	Traffic Engineer's approval to reduce the size of the required parking space
	Relocation of parking	AUP to locate residential parking in some required yards
	Removal of required parking space	Variance to remove a required parking space
Installation of exterior walls (or interior walls)	Increase in lot coverage	Variance to exceed maximum lot coverage
	Encroachment into required yards	AUP or Variance depending on situation/design
New exterior framing	May be considered a residential addition	May be subject to AUP or Variance

AUP: Administrative Use Permit; UP: Use Permit

Applicability

Applicability to Design Review

Any project subject to design review per BMC Section 23E.08.020.A (commercial, manufacturing, mixed use and all other non-residential districts and all commercial and mixed-use projects in the R-4 District) will be reviewed at the staff level unless the Zoning Officer recommends that the Design Review Committee review the project or if the project is appealed to the Committee.

The existing design review will adequately address aesthetic issues for structures subject to design review. However, the majority of identified soft story buildings are in districts that do not require design review. Section 23C.04.075.G of the proposed amendments would allow the Zoning Officer to require aesthetic improvements or screening where necessary to reduce visual impacts of the structural alteration; these improvements would be considered part of the structural alterations. As a result, screening would also be able to exceed allowed height limits, lot coverage, required yards and parking restrictions.

Applicability to Landmark Preservation

A total of 29 of the 649 structures subject to the Soft Story Ordinance have been identified as a City of Berkeley Landmark (See Map 2: Soft Story Sites with Landmark Status). In order to perform any exterior modifications for seismic retrofits, the project must be reviewed and approved by the Landmarks Preservation Commission (LPC). Staff does not recommend altering this process or waiving LPC review since retrofits may affect the historical significance of the structure.

General Plan Consistency

The amendments comply with Berkeley's General Plan in supporting the mitigation of potentially hazardous buildings and preserving historic structures. Specifically, the amendments meet Goal #6, Action A under Policy S-11, Actions B through D under Policy S-20, and Action A under Policy H-15 (below).

Goal #6 Make Berkeley a disaster-resistant community that can survive, recover from, and thrive after a disaster.

Policy S-11 Historic Structures

Encourage and support the long-term protection of historic or architecturally significant structures to preserve neighborhood and community character.

- A. Create incentives for owners of historic or architecturally significant structures to undertake mitigation to levels that will minimize the likelihood of demolition and maximize the ability to repair or avoid damage in the event of a natural disaster.

Policy S-20 Mitigation of Potentially Hazardous Buildings

Pursue all feasible methods, programs, and financing to mitigate potentially hazardous buildings.

- B. Create a program similar to the URM Program to reduce risks to people and property for all potentially hazardous buildings in Berkeley, with a priority on multi-family soft-story buildings.
- C. Consider requiring disclosure of potential hazards to occupants and residents of potentially hazardous buildings, along with mitigation and safety information and technical assistance.
- D. Investigate and adopt financial, procedural, and land use incentives and provide technical assistance for owners of potentially hazardous structures, such as soft-story buildings, to facilitate retrofit.

Policy H-15 Seismic Reinforcement

Maintain housing supply and reduce the loss of life and property caused by earthquakes by requiring structural strengthening and hazard mitigation in Berkeley housing.

- A. Consider enacting additional incentive programs and requirements to encourage retrofitting of seismically unsafe buildings, such as unreinforced-masonry buildings and soft-story buildings.

Analysis

Policy S-11 Historic Structures—The proposed amendments encourage and support the long-term protection of historic or architecturally significant structures to preserve neighborhood and community character by removing significant financial and regulatory barriers.

Policy S-20 Mitigation of Potentially Hazardous Buildings—The proposed amendments will assist in mitigating the dangers of potentially hazardous buildings by removing significant financial and regulatory barriers.

Policy H-15 Seismic Reinforcement—The proposed amendments allow seismic retrofits to occur more easily which will assist in maintaining the housing supply and could potentially reduce the loss of life and property caused by earthquakes.

Planning Commission Recommendation

The zoning amendments were prepared and provided to the Commission on January 10, 2007. Noticing of the public hearing was distributed through the newspaper, email to the City's registered neighborhood groups, email to structural engineers that have been involved in soft story training, and through hard copy to all identified soft story parcels affected by BMC Chapter 19.39, the remaining URM buildings that have not completed the required retrofit work and all neighborhood groups registered with the Planning and Development Department.

On February 14, 2007 the Planning Commission heard public testimony on this matter prior to discussing and approving the staff recommendations (8 yes, 1 no).

Note: Subsequent to Planning Commission review, the City Attorney identified unclear language within the amendments. Based on the City Attorney's suggestions, staff made minor changes intended to clarify the ordinance without altering its meaning.

Rational for Recommendation

Adoption of the proposed ordinance will eliminate or reduce the discretionary permit process and related fees for Public Safety Structural Alterations. By enacting the proposed amendments, the City hopes to encourage property owners to perform structural alterations that will improve the safety and structural integrity of soft story and URM buildings.

Alternative Actions Considered

The following alternative proposals were considered but rejected, as they would not accomplish the goal of encouraging soft story seismic retrofits:

1. *Waive Design Review and Landmark Preservation Commission review.* This alternative was rejected due to the belief that additional review would improve the final product for the tenants, property owners and community at large.
2. *Leave the Ordinance As Is.* If no amendments were made to the Zoning Ordinance, it is anticipated that many of the seismic retrofits would not be permitted without a Use Permit (or AUP) or Variance. This option did not follow Council's direction.

3. *Limit the zoning exceptions or require a lower threshold of discretionary review.* Consideration was given to limiting the list of recommended exceptions; however, certain encroachments would have to be valued more highly than others. A rationale to support the encroachment of some zoning requirements over others could not be appropriately developed and still encourage seismic retrofits which would be likely to protect citizens' lives.

CONTACT PERSON

Debbie Sanderson, Acting Land Use Manager, Planning and Development, 981.7411

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

AN AMENDMENT TO THE ZONING ORDINANCE, BERKELEY MUNICIPAL CODE
CHAPTER 23C.04, CONFORMING AND NONCONFORMING BUILDINGS,
STRUCTURES AND LOTS, AND BMC SUBTITLE 23F, ADDING THE DEFINITION OF
PUBLIC SAFETY STRUCTURAL ALTERATION, EXEMPTING CERTAIN
STRUCTURAL ALTERATIONS FOR THE PURPOSES OF PUBLIC SAFETY FROM
CERTAIN ZONING REGULATIONS

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

Section 1. That Berkeley Municipal Code Section 23C.04.075 is added to the Code to read as follows:

Section 23C.04.075 Exemptions for Public Safety Structural Alterations to Conforming and Non-conforming Buildings

- A. Public safety structural alterations that vertically and/or horizontally extend a non-conforming yard and/or horizontally extend a non-conforming height, and alterations of a portion of a building that encroaches into a non-conforming yard or extends above the permitted height, are permitted by right to the extent necessary, as determined by the Zoning Officer.
- B. Public safety structural alterations that vertically extend above the residential district height limit for residential additions are permitted by right to the extent necessary, as determined by the Zoning Officer.
- C. Public safety structural alterations, whether to conforming or lawful non-conforming buildings, which exceed the maximum allowable lot coverage are permitted by right to the extent necessary, as determined by the Zoning Officer.
- D. Public safety structural alterations to lawful non-conforming buildings that are non-conforming by reason of residential density are permitted by right to the extent necessary, as determined by the Zoning Officer.
- E. Public safety structural alterations to lawful non-conforming buildings located on a property that also contains a lawful non-conforming use, whether or not that use occupies the subject building or structure, are permitted by right to the extent necessary, as determined by the Zoning Officer.
- F. Public safety structural alterations to a conforming or lawful non-conforming building or structure that reduce, relocate, or remove required parking spaces are permitted as set forth below:
 - 1. Parking spaces may be converted to substandard compact spaces with if approved by the Traffic Engineer.
 - 2. Parking spaces may be relocated into a yard or other location by right to the extent necessary, as determined by the Zoning Officer, if:
 - a. The requirements of Section 23C.04.075.F.1 cannot be met;

- b. Screening of the parking is provided as required in BMC Chapter 23D.12, 23E.28 or by the district;
 - c. Landscaped areas adjacent to parking are provided as required in BMC Chapter 23D.12, 23E.28 or by the district; and
 - d. The parking relocation is approved by the Traffic Engineer.
3. Required parking may be removed if the Traffic Engineer determines that the requirements of Sections 23C.04.075.H.1 and 23C.04.075.F.2 cannot be met.
- G. Any aesthetic improvement or screening that the Zoning Officer determines is associated with a public safety structural alteration shall be treated as part of the public safety structural alteration.

Section 2. That the following definition is added to Berkeley Municipal Code Section 23F.04.010 to read as follows:

Structural Alteration, Public Safety: Any structural alteration or physical change to a building that provides greater safety to the public or occupants by strengthening the building against seismic activity, which does not result in new floor area except that created by necessary structural improvements or physical changes as required under BMC Chapter 19.38 and 19.39.

Section 3. The proposed action is exempt from review under the California Environmental Quality Act Guidelines Section 15301 which includes repair, maintenance or minor alteration to existing structures involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination and also under Guideline Section 15301 (f) where additions of safety or health protection devices for use in conjunction with existing facilities are exempt.

Section 4. 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 15 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.

