



Planning & Development Department
Building & Safety Division

Case #: «Case_»; APN: «APN»

Notice and Order Regarding «Situs_House_NoHouse_Alpha» «Situs_DirectionStreetSuffix» «case address» & Compliance with Berkeley Soft Story Ordinance (BMC 19.39)

«notice_date»

«Owner_Name_First_Name_First»«Owner_2»

«Mail_Care_Of_Name»

«Mail_Address»

«Mail_CityStateZIPZIP4_DWL»

Dear Owner:

The City of Berkeley has determined that the building at the above address (the “Building”) is of a structure type subject to the Berkeley Soft Story Ordinance and has placed it on the City’s Inventory of Potentially Hazardous Buildings (“Inventory”).

Berkeley Soft Story Ordinance (Berkeley Municipal Code Chapter 19.39)

The Ordinance (enclosed), adopted by the City Council as Berkeley Municipal Code (BMC) Chapter 19.39, requires owners of buildings on the Inventory to obtain an engineering assessment of the building’s ability to withstand earthquake forces. **You must file the report with the City within two years of the date of this notice and meet other requirements** unless you appeal the designation within 6 (six) months of this Notice and Order by filing the enclosed Request for Reconsideration. The two-year deadline can be extended or accelerated under certain conditions as explained below.

Your Building was included because it has five or more residential units and the Building’s ground floor was identified as being of soft, weak, or open front type construction. Structures of this type have performed poorly in recent earthquakes with some buildings collapsing and causing serious injury and death. To determine whether your particular Building needs seismic strengthening, an engineer must do the analysis using chapter A4 of the 2003 International Existing Building Code as the technical standard.

The engineering report must also provide a description of recommended retrofit elements for all identified seismic weaknesses. However, the ordinance, at this time, does not require the actual retrofit of the Building or filing of plans to get a building permit. The City will later develop a retrofit program based, in part, on the information received from the engineer reports.

The City has prepared a Framework for the report. Engineers should use this framework in completing the report. The City also presented a seminar for engineers on the requirements. The City cannot recommend an engineer, but enclosed for your convenience is a list of engineers who attended the City's seminar.

Request for Reconsideration (Section 19.39.050 C.)

No later than 6 months from the date of this notice and order you may request the Building Official to reconsider the determination to include the Building on the Inventory by completing the enclosed form and submitting information:

1. that the Building's ground floor is not soft, weak, or open as defined by the applicable standard,
2. that the Building has been substantially reconstructed in accordance with the 1997 or later Uniform Building Code, or
3. that the Building has been retrofitted in compliance with Article 11 of the current Berkeley Building Code or the International Existing Building Code.

If you do not request reconsideration, you will be deemed to have waived any right in the future to challenge the Building's listing on the Inventory.

Appeal (Section 19.39.050 D.)

If you disagree with the Building Official's decision on reconsideration, you may appeal that decision within 30 (thirty) days to the Housing Advisory Commission.

If you do not appeal the Building Official's decision on reconsideration, you will be deemed to have waived any right in the future to challenge the Building's listing on the Inventory.

Finality of Notice (Section 19.39.050 A.)

This notice and order shall be final and conclusive if no request for reconsideration is filed within 6 months of the date of this notice, or if a Building is retained on the Inventory after any request for reconsideration and appeal are concluded.

Recording (Section 19.39.050 E.)

Upon finality of this notice and order, the Building Official will file with the Office of the County Recorder a certificate stating that the Building is within the scope of this Chapter and that the owner has been ordered to conduct a structural analysis of the Building in compliance with this Chapter.

Other Obligations of Owners (Section 19.39.060 A.)

In addition, once 6 months expires and this notice and order is final, you must do the following:

1. Within 30 (thirty) days, notify each tenant of the building in writing, using the form provided in Appendix A of the Ordinance.
2. Notify each new tenant at a change of tenancy, prior to execution of any lease or rental agreement, that the Building is included on the Inventory.
3. Within 30 (thirty) days, 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.”
4. Within 30 (thirty) days of notifying the tenants, mail a copy of each tenant notification form with the 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.

Acceleration of Deadline (Section 19.39.090 B.)

The deadline shall be accelerated, and the required analysis will become due immediately (with certain exceptions), when one or more of the following occur:

1. The building or any major portion thereof will be reoccupied after being vacant for six (6) months or longer;
2. The building will undergo a remodel, alteration, addition or structural repairs valued at more than \$75,000;
3. Title to the building is transferred in whole or part or the building is sold to a new owner or owners;
4. Additional financing is obtained which is secured by a deed of trust or mortgage recorded on the title to the building
5. The use of the building changes such that Section 502 of the Berkeley Building Code (BMC Chapter 19.28) applies.

Extension of Deadline (Section 19.39.090 C.)

You may request that the City Manager extend the deadline for submittal of the required analysis for up to 6 months by:

- Submitting a detailed written statement explaining why the extension should be granted, and
- Clearly documenting the reasons for the request in accordance with the requirements of the Ordinance.

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. There are unique and exceptional circumstances that prevent compliance.

Enforcement Actions

If you do not comply with this order, enforcement actions can include issuing you a citation for violation of the Berkeley Municipal Code. **You may be cited for a separate violation for each day you fail to comply with this order's timeline for action.** The administrative penalties for violation of the Berkeley Municipal Code can be as much as \$5000 per violation, and up to \$10,000 per violation if any injury results. In addition, penalties for second and subsequent violations can be increased. Furthermore, you can be charged any fees authorized for the costs of enforcement and administration.

Further Information

If you have any questions, believe this notice was issued in error, or want to request a hardship extension, **please contact Dan Lambert, Building Mitigation Manager, at 510 981-7406.** You also have the right to appeal this order by filing the enclosed Request for Redetermination within six months of the date of this order. Additionally, information, including the ordinance, engineering analysis guidelines, the list of engineers, and background on the issue are available on the City's Website at <http://www.ci.berkeley.ca.us/buildingandsafety/>. The Association of Bay Area Governments web site has a great deal of useful information on earthquakes including a listing of additional engineers at <http://www.abag.ca.gov/cqi-bin/structeng.pl>.

Very truly yours,

Daniel Lambert, Building Mitigation Manager,
for
Joan MacQuarrie, Building Official

Enclosures

cc:

Case file
Master file

PROOF OF SERVICE

I, the undersigned, certify that I am employed in the City of Berkeley, County of Alameda, California; that I am over the age of eighteen years and not a party to the within action; that my business address is 2118 Milvia Street, Berkeley, California 94704. On this date, I served City of Berkeley Notice and Order Regarding «Situs_House_NoHouse_Alpha» «Situs_DirectionStreetSuffix» and Compliance with Berkeley Soft Story Ordinance (BMC 19.39).

Name «Owner_Name_First_Name_First» «Owner_2»
 «Mail_Care_Of_Name»

Street «Mail_Address»

City, State, Zip Code «Mail_CityStateZIPZIP4_DWL»

by the following means of service:

___ By Personal Service - I personally gave the citation to the person whose name appears above.

___ By Posting - I posted the citation in a conspicuous place on the property of the person whose name appears above, specifically:

Description of location where posted

X By First Class Mail - I am readily familiar with the City's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the U.S. Postal Service on the same day as collected, with first-class postage thereon fully prepaid, in Berkeley, California, for mailing to the office of the addressee following ordinary business practices.

___ By Certified Mail, Return Receipt Requested - I mailed the citation by certified mail at the U.S. Post office, return receipt requested.

___ By Facsimile - I caused the citation to be transmitted to the person whose name appears above following ordinary business practices in compliance with applicable rules of civil procedure and rules of court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on «notice_date» at Berkeley, California.

(Name)