



Office of the City Manager

CONSENT CALENDAR

June 10, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning Department

Subject: Soft Story Ordinance Accelerated Deadlines; Amending BMC Subsection 19.39.110.B

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Subsection 19.39.110.B to eliminate language inadvertently added pertaining to the acceleration of deadlines in the Soft Story Ordinance.

FISCAL IMPACTS OF RECOMMENDATION

Implementation of the recommendation would save staff time by eliminating confusion among staff, building owners and lenders.

CURRENT SITUATION AND ITS EFFECTS

On December 3, 2013 Council adopted phase two of the Soft Story Ordinance BMC Chapter 19.39 requiring owners of soft story buildings to retrofit their buildings by 2018. The intention of Subsection 19.39.110.B is to provide for circumstances where deadlines to retrofit are accelerated, such as when the building is sold. The intent of 19.39.110.B has always been to accelerate compliance for building permits and retrofit work to six months and 1½ years respectively from the trigger event. However, right before the final text of the ordinance went to Council for a first reading on November 19, 2013, the words “from the effective date of this Chapter” were inadvertently added to the six month and 1½ years deadlines making the six months and 1½ years deadlines in effect from January 4, 2014 instead of from the trigger event.

The seven words to eliminate are indicated by ~~strike-out~~ below:

“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:”

Strictly interpreted, this Subsection could require owners to get a building permit and retrofit within six months and 1½ years respectively from the date of the Ordinance

(January 4, 2014). However, the trigger events, such as the sale of the building, could occur 6 months or more after the effective date of the Chapter. The intention was for the deadline to be six months after the event (e.g. sale of the building) not six months from the adoption of the Chapter.

The Soft Story Ordinance presented in public meetings and commission hearings did not include these seven extra words. The Planning Commission, Rent Stabilization Board, Housing Advisory Committee, and Disaster and Fire Safety Commission all saw the intended version of 19.39.110.B without the additional seven words. The two public hearings on July 25, 2013 and on October 10, 2013 also presented the intended language. The staff report submitted to the City Council also indicated the deadline to be 6 months and 1½ years respectively after the trigger event. The 141 Notice and Orders issued to owners in January 2014 also specify the accelerated deadline to be six months and 1½ years respectively after the trigger event. Approval of the proposed amendment would bring the text of 19.39.110.B in alignment with all other versions of the Chapter seen by stakeholders. It would also allow staff to implement the Ordinance as it was intended and not render new owners technically instantly out of compliance upon ownership.

### BACKGROUND

On December 3, 2013 City Council adopted Ordinance No. 7,318-N.S. amending Berkeley Municipal Code Chapter 19.39 to require property owners of soft, weak or open front ("SWOF") buildings with five or more dwelling units to retrofit their buildings within the next five years. Owners have three years to apply for a building permit and two years to complete the work after submitting their permit application. The law applies to buildings constructed prior to 1978 and took effect January 4, 2014. This is the second phase of the Soft Story Program.

Under the first phase of the soft story program, since 2005, SWOF building owners were required to submit an engineering evaluation report identifying their building's weaknesses and ways to remedy those weaknesses, to post an earthquake warning sign and notify their tenants of the building's potentially hazardous condition.

A soft, weak or open front ("SWOF") building is a wood-frame building with more than one story that typically has parking, a commercial storefront or other similar open floor spaces on the ground floor. This leads to a relatively soft or weak lateral load resisting system in the lower story and makes the building potentially hazardous in the event of an earthquake.

### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the specific action recommended in this report. However, there are beneficial environmental effects associated with the Soft Story Ordinance in general including potential energy reductions associated with compliance with state energy codes as triggered by permit

applications for seismic retrofits, and, as a result of less damage following a major seismic event, a reduction in construction and demolition debris and the need for virgin building materials.

RATIONALE FOR RECOMMENDATION

The proposed amendment will eliminate any potential confusion and inability of staff and owners to implement the requirements of the ordinance, since it is not possible to get a building retrofitted within 6 months from the effective date of this Chapter (January 4, 2014) if the building is purchased anytime after June 4, 2014.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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Attachments:

1. Ordinance

ORDINANCE NO.

AMENDING SUBSECTION 19.39.110.B ACCELERATION OF DEADLINES OF THE  
BERKELEY MUNICIPAL CODE PERTAINING TO SOFT STORY ORDINANCE

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

Section 1. That Berkeley Municipal Code Subsection 19.39.110.B is amended to read as follows:

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.

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 Council Chambers, 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.