

# Memorandum

**To:** Housing Advisory Commission  
**From:** Alejandro Soto-Vigil and Igor Tregub, Commissioners  
**Date:** October 3, 2013  
**Re:** Recommendations on Draft Phase II of the SWOF (Soft Story) Ordinance

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## Introduction

The Planning Department and City staff has indicated that passage and implementation of the Structures with Soft, Weak, or Open Floors Conditions (Soft Story) Phase II Ordinance (also known as the Soft-Story Ordinance) is a high priority and that the goal is for the law to become effective prior to January 1, 2014. In order to meet this deadline, the council will need to vote on the ordinance twice (first and second reading) with enough time to allow for a required 30- day phase-in period before the ordinance would become law. Hence, it is imperative that the HAC exercise its only remaining opportunity to vote on recommendations at its October 3, 2013 meeting.

## Recommendations

That the HAC express its support of the proposed Phase II of Soft Story Ordinance by making the following recommendations for how the Ordinance can be improved and that this memo be submitted to the Berkeley City Council as an official communication and included in the agenda when the Council considers the proposed Soft Story Phase II ordinance.

In supporting the proposed ordinance, the HAC requests that the following:

- 1. Remove parking as an impediment to safety.** If necessary, the City Council should create exemptions to parking requirements so that retrofitting a building can be more cost-effective. The City Council should make it clear that life safety, not compliance with Zoning Code-mandated parking requirement, is the priority in situations where the two conflict. [Examine impacts on tenants and property owners.](#)

**2. Allow owners to delay in reinforcing the building if they truly lack the financial means to do so.** The City Council should support a fair hardship exemption process that allows owners to delay reinforcement if they genuinely lack the financial means to do so. The City Council should require that when requesting their hardship claim, property owners submit **proof of all assets** (not limited solely to the property in question) **in the United States under penalty of perjury**. Hardship extensions should include a specific plan for how the hardship will be overcome. If the hardship is based upon financial need, it must include a credible financing plan approved by the City. **Staff should be authorized to approve no more than two annual hardship extensions. Any additional extensions would only be approved by the [Housing Advisory Commission](#).**

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**b. Approval of every hardship extension subsequent to the first approval would be conditioned on a determination by the appropriate reviewer (staff or City Council) that good-faith efforts were made by the property owner or designee in the previous year to obtain the financing outlined in the plan submitted in the previous year.**

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Deleted: <#>That the City only allows hardship extension for individual owners and general partnerships, not for Corporations, Limited Liability Corporations, or derivatives thereof. .

**3. Explore all feasible avenues to establishing a loan program or other financing mechanism for owners that have demonstrated a real financial hardship.**

**a. Creating a loan program or loan guarantee program for properties that are unable to get financing to complete the required retrofit.**

**b. Waiving permitting fees for seismic retrofits only when owners demonstrate financial hardship.**

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**c. Exploring other potential tools to ease the burden of committing to a retrofit, including but not limited to a city-administered revolving loan program, transfer tax incentives, entrance into a financing Joint Powers Agreement with other cities, and expediting the permitting process associated with the retrofit.**

**4. Improve the warning sign requirements.** The earthquake warning sign requirements in BMC 19.39.096 should be amended to require the inclusion of the following language on the warning sign "this sign shall not be removed unless a sign (or plaque) indicating that the building has been retrofitted is installed in its place", and to require a sign (or plaque) provided by the City be

installed on all retrofitted buildings. Additionally, until a building on the SWOF inventory list has been retrofitted to the satisfaction of the City, BMC 19.39.096 should be amended to include that the property owner or designee must provide the same warning language in lease agreements for new tenancies as is currently required for signage.

**5. Clearly spell out the enforcement mechanisms that will be used when compliance deadlines have passed.** There are still a handful of owners that have neither completed the engineering report nor posted the signage required in Phase I of the Ordinance (adopted in 2005). Given that this is a life-safety issue, enforcement is a key tool the City should use to achieve compliance. Staff has indicated that enforcement may include fines, liens, and if necessary, having a receiver appointed. These enforcement mechanisms should be explicitly denoted in the ordinance.

**6. Require that properties that are not in compliance with both Phase 1 and Phase 2 become ineligible for the natural disaster exemption in the Relocation Ordinance.** The Relocation Ordinance currently states that tenant households shall not be eligible for relocation assistance and payments if relocation is required because of an earthquake or other natural disaster. This exemption should be amended so that SWOF properties that are out of compliance with either Phase 1 or 2 of the ordinance do not receive this exemption. The policy should not reward individuals that fail to follow essential laws designed to protect life, health, and safety of Berkeley's residents.

**7. In Section 19.39.060. A.4. "Private right of action," substitute the word "party" for "Plaintiff(s)".**

[Vote: M/S/C Soto-Vigil/Tregub. Ayes: Feller, Soto-Vigil, Lam, Tregub, Wolfe, Sawicki, Casalaina, Droste, Skjerpung. Noes: None. Abstentions: None.]

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