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# AGENDA REPORT

**TO:** Honorable City Council

**FROM:** Councilmember Dan Kalb  
and Mayor Libby Schaaf

**SUBJECT:** Mandatory Seismic Retrofit Ordinance

**DATE:** November 2, 2018

## RECOMMENDATION

We respectfully request that the City Council adopt of the following ordinance:

An Ordinance, As Recommended, In Part, By The Planning Commission, Amending The Oakland Municipal Code To: (1) Add Building And Construction Code Chapter 15.27 Entitled "Mandatory Seismic Evaluation and Retrofit Of Certain Multi-Unit Residential Buildings," (2) Add Planning Code Section 17.102.250 To Create Special Exceptions to Buildings Undergoing Permitted Retrofit Work In Compliance With Chapter 15.27, (3) Make Conforming Changes to Section 1.08.020 and 15.26.230, And (4) Make Clarifying Amendments Relating to Capital Improvements in Chapter 8.22, Article I (Residential Rent Adjustment Program); And Directing The Rent Board to Modify Its Capital Improvement Amortization Schedule for Work In Compliance With Chapter 15.27; And Adopting CEQA Exemptions.

## EXECUTIVE SUMMARY

Oakland faces the high likelihood of a major earthquake occurring along the Hayward Fault, which runs through the city, in the near future. After a major earthquake, many residential tenants are likely to be displaced from damaged buildings. Soft-story buildings are particularly vulnerable. Soft-story buildings are multi-unit, wood-frame residential buildings with a first story that lacks adequate strength or stiffness to prevent leaning or collapse in an earthquake.

We are proposing legislation that requires owners of soft-story buildings containing **five or more units** to do the following:

- Within one year, document that the building is exempt from the seismic retrofit program; or
- Within four to six years, depending upon the type of building, perform a mandatory structural evaluation, obtain retrofit permit(s), and complete retrofit work per specified engineering criteria.

The proposal is designed to limit potential impacts to building owners as follows:

Item: \_\_\_\_\_  
CED Committee  
November 13, 2018

1. Preventative seismic retrofits will likely cost owners less than repair or rebuild work after a major earthquake;
2. Some financial assistance is available for owners doing seismic retrofit work; and
3. Zoning incentives apply, such as waived parking, setback and height regulations, and one or two additional dwelling units are permitted depending upon the size of the building.

The proposal is designed to reduce potential impacts to tenants as follows:

- A. Preventative seismic retrofits will prevent occupant injury and loss of life and will reduce residential displacement in the event of a major earthquake;
- B. Tenants that need to be temporarily relocated during seismic retrofit work are entitled to relocation payments by the owner under the City's Code Compliance Relocation Program to cover the cost of temporary housing elsewhere; and
- C. The ordinance directs the City Administrator to develop administrative regulations requiring owners to notify tenants of proposed construction schedules and provisions for tenant relocation, if applicable.

Seismic retrofits are considered capital improvements under the City's Rent Adjustment Program (RAP). Under existing RAP regulations, up to 70 percent of the cost of the capital improvement may be passed on to the tenant. The proposed ordinance directs the Housing, Residential Rent and Relocation Board ("Rent Board") to approve an amortization schedule for the pass-through of mandatory seismic-related capital improvement costs to tenants.

## **BACKGROUND / LEGISLATIVE HISTORY**

### ***Soft-Story Buildings in Oakland***

In 2008, the City and the Association of Bay Area Governments (ABAG) identified 24,273 residential units in 1,479 potential soft-story buildings in Oakland based on criteria representing the greatest risk – five or more units, two to seven stories tall, built before 1991, and parking or commercial uses on the ground floor.

### ***Previous Policy Actions***

In 2007, the City Council created a voluntary seismic strengthening program (Ordinance 12812 C.M.S.; O.M.C. Chapter 15.30) that contained seismic strengthening standards for single-family homes and financial incentives for property owners.

In 2009, the City Council passed a mandatory soft-story screening ordinance (Ordinance 12966 C.M.S.; O.M.C. Chapter 15.26) that required owners of potential soft-story multi-unit residential buildings to conduct a seismic screening assessment to determine potential seismic risk.

In 2012, the City Council amended the Safety Element of the Oakland General Plan to include a Local Hazard Mitigation Plan (LHMP). The LHMP called for the development of a comprehensive soft-story retrofit program to require or encourage retrofits, including financial, procedural, and land use incentives for property owners.

In 2014, the City Council adopted the 2015-2023 Housing Element of the General Plan which called for the creation of a seismic safety retrofit program (Action 4.3.9; Seismic Safety Retrofit Policy).

In 2015, the City Council approved the Housing Action Plan and Policy Framework contained within the Housing Equity Roadmap, which called for a mandatory soft-story retrofit ordinance that limits rent increases and provides resources and incentives to property owners.

In 2016, the Oakland Resilience Office released the Resilient Oakland playbook, which promotes the development and implementation of a soft-story retrofit program to prevent injury and loss of life, reduce displacement, and reduce recovery time in the event of a major earthquake.

### **Other Cities**

Other Bay Area cities have adopted seismic retrofit programs. Some examples are provided below.

**San Francisco:** After the 1989 Loma Prieta Earthquake, the City and County of San Francisco initiated the Community Action Plan for Seismic Safety (CAPSS). Working with industry experts and community members to understand the likely impacts on San Francisco from the next major earthquake, the CAPSS program included an extensive study of soft story buildings. The CAPSS report *Earthquake Safety for Soft-Story Buildings* (ATC 52-3) describes the expected performance of these buildings in several scenario earthquakes, as well as their impact on the city. Among the CAPSS recommendations was a call for mandatory retrofit of soft-story buildings. The mandatory retrofit ordinance, which added administrative and technical provisions to the San Francisco Building Code was signed into law in 2013 at the annual commemoration of the 1906 San Francisco Earthquake and became operative as of June 17, 2013. The program requires screening of all notified buildings within the first year and retrofit of confirmed deficient buildings in phases through September 2020.

**Berkeley:** The City of Berkeley requires owners to retrofit soft-story buildings with five or more units. The law took effect January 4, 2014, and applies to wood-frame buildings constructed prior to 1978. Owners had until December 31, 2016, to apply for a building permit and two years to complete the work after submitting the permit application. Soft-story building owners must also post an earthquake warning sign and notify tenants of the building's potentially hazardous condition. Under the first phase of the soft-story program, started in 2005, building owners were required to submit an engineering evaluation report identifying their building's weaknesses and ways to remedy those weaknesses.

**Alameda:** The City of Alameda identified 178 buildings as soft-story structures. The City has taken steps to inform property owners and contractors about residential seismic strengthening requirements. Alameda also provides safety guidance for properties within Alameda's city

limits. The City adopted a soft-story upgrade ordinance with mandatory compliance requirements in 2009.

**Fremont:** In 1999, the City of Fremont identified 26 buildings, with up to 1,000 units, as potential soft-story structures. The City adopted a voluntary retrofit ordinance in 1999 followed by a more recent mandatory retrofit ordinance notification to the owners encouraging retrofit improvements. The City then adopted a mandatory retrofit program.

**San Leandro:** The City of San Leandro conducted a preliminary inventory of 350 multi-family residential, commercial/office, and mixed-use buildings containing approximately 4,000 units. Staff is developing a validation form to be mailed to building owners that will discuss options for having their buildings further evaluated and taken off the existing list.

The City of Los Angeles recently adopted a mandatory seismic retrofit ordinance for soft-story and certain concrete buildings.

Oakland's program will benefit technically and financially by following these existing retrofit programs. The Bay Area engineering community, construction industry, and financial lenders are establishing efficient practices and developing a competitive market, which will greatly benefit Oakland.

### ***Planning Commission Action***

On October 3, 2018, the Oakland City Planning Commission conducted a public hearing on the proposed amendments to the Planning Code and recommended that the City Council approve the proposed amendments and find that the proposed ordinance is exempt from the California Environmental Quality Act. In addition, the Planning Commission recommended the proposal include the following:

1. Clarification that the proposed parking, setback, and height exceptions must be related to retrofit work;
2. A requirement for building owners to submit information concerning the potential effect of retrofit work on residential tenants; and
3. Setting aside of the proposed density bonus provision in cases where an additional residential unit would significantly impact an existing residential unit.

All of the above recommendations have been incorporated into the current proposal and are further discussed below.

### **PROGRAM DESCRIPTION**

The elements of the proposed soft-story seismic retrofit program are described below.

### ***Evaluation***

Each owner of a soft-story building would have one year to (a) document that the building is not a subject building or that the building is eligible for a later compliance tier or (b) perform a mandatory evaluation and obtain permit(s) and complete retrofit work per the established engineering criteria and within the timeframe corresponding to the compliance tier.

### ***Retrofit Compliance***

The retrofit program would occur over a six-year period with buildings divided into the following three tiers:

- Tier 1: The largest buildings, those with 20 or more residential units (without ground-floor residential units or commercial space), would be required to comply first. They would be required to obtain retrofit permits within three years of the ordinance effective date and to complete construction within four years of the ordinance effective date. In lieu of fines, owners who failed to comply with the 2009 mandatory screening (Ordinance 12966 C.M.S.; O.M.C. Chapter 15.26) would be assigned to Tier 1 as well.
- Tier 2: Buildings with at least five units and fewer than 20 residential units would be required to obtain retrofit permits within four years of the ordinance effective date and complete construction within five years of the ordinance effective date. Any building with a legally permitted commercial occupancy in a Wood Frame Target Story, as defined by the ordinance, would be assigned to Tier 2 as well.
- Tier 3: Buildings with a legally permitted residential occupancy in a Wood Frame Target Story are expected to need more time to plan the retrofit work. These buildings would be required to obtain permits within five years of the ordinance effective date and complete construction within six years of the ordinance effective date. Any building owned by a nonprofit whose purpose of providing affordable housing or that has an annual budget of less than \$2 million would be assigned to Tier 3 as well.

Table 1 summarizes the proposed tiers and phases. The proposed ordinance allows these time periods to be extended up to one year based on the owner demonstrating financial hardship.

|  |                       |
|--|-----------------------|
| <b>Table 1:<br/>Program Tiers<br/>and<br/>Phases</b> | Compliance Scope Item |
| Building<br>Group or<br>Compliance Tier              |                       |

|                       | Document that building is not a subject building (optional) (15.27.050.A) | Document that building is eligible for a later compliance tier (optional) (15.27.050.B) | Complete mandatory evaluation and submit initial affidavit of compliance (15.27.050.C and E) | Obtain retrofit permit or submit Target Story evaluation report (15.27.050.D.1 or D.2) | Perform retrofit work and obtain approval on final inspection; submit final affidavit of compliance (15.27.050.D.3 and E) |
|-----------------------|---|---|--|--|---|
| Non-subject buildings | 1 year  | NA  | NA   | NA   | NA  |
| Tier 1                | NA  | 1 year  | 2 years  | 3 years  | 4 years   |
| Tier 2                | NA  | 1 year  | 3 years  | 4 years  | 5 years   |
| Tier 3                | NA  | 1 year  | 4 years  | 5 years  | 6 years   |

**Tenants and Rent Adjustment**

Although the purpose of the soft-story seismic retrofit program is to prevent occupant injury and loss of life and to reduce displacement in the event of a major earthquake, existing tenants of soft-story buildings undergoing seismic retrofit work may be impacted by the program through temporary relocation and/or rent increases.

Certain tenants may need to be temporarily relocated during seismic retrofit work if the work impacts their unit. In that case, the City's Code Compliance Relocation Program would require property owners to make payments to residential tenants to cover the cost of temporary housing elsewhere. The proposed ordinance also directs the City Administrator to develop administrative regulations requiring owners to notify tenants of proposed construction schedules and provisions for tenant relocation, if applicable.

Seismic retrofits are considered capital improvements under the City's Rent Adjustment Program (RAP). Under existing RAP regulations, up to 70 percent of the cost of the capital improvement may be passed on to the tenant. The proposed ordinance directs the Housing, Residential Rent and Relocation Board ("Rent Board") to approve an amortization schedule for the pass-through of seismic-related capital improvement costs to tenants that conforms with the Rent Board's final motion during Item 5 of their July 9, 2015 meeting, when the Board considered amortization for mandatory seismic retrofits. Per the minutes of that meeting, the Board's motion required the following:

1. 70% of retrofit costs over a 25-year period;
2. Roll back the retrofit rent increase after the 25 year period;
3. Apply imputed financing;

4. Include a mechanism to allow landlords to claim Fair Return based on maintenance of net operating income;
5. Consider extraordinary tax benefits when calculating the total costs of the project.

The code amendments in the proposed ordinance define "Mandatory Seismic Capital Improvement," as opposed to "Voluntary Seismic Capital Improvement," so that the Rent Board can set a specific amortization schedule for improvements made as part of the mandatory retrofit program. The ordinance also includes an additional code amendment authorizing tenants to file petitions in the event that an owner receives reimbursement for a capital improvement cost after a capital improvement rent increase is approved. This code amendment is intended to make the code consistent with existing RAP Regulations. Depending upon the Rent Board's action on the pass-through amortization, the City may decide to use Community Development Block Grant (CDBG) funding to provide financial assistance to lower income tenants that experience a financial hardship from the program.

### ***Financial Assistance to Owners***

The City has received funding to provide financial assistance to property owners conducting seismic retrofit work. The Safer Homes for Oakland Program (SHOP) was established in 2016 and offers reimbursement of up to 75 percent of the cost to retrofit soft-story buildings, subject to funding guidelines and availability. The Program was established by the City's Department of Housing and Community Development (DHCD) using Hazard Mitigation Grant Program (HMGP) funds from the Federal Emergency Management Agency (FEMA) and the California Governor's Office of Emergency Services (CalOES). In addition to up to 75 percent reimbursement of project costs through HMGP, low-to-moderate income SHOP participants may also apply for additional financial assistance. Reimbursement for project costs that exceed the approved HMGP amount may be available through CDBG funds dedicated for SHOP, and low-cost loans may be available for up-front project expenses using existing City Residential Lending and Rehabilitation programs through DHCD.

The first HMGP grant for SHOP was awarded to the City in 2016 for up to \$3,000,000 in federal assistance for both administrative and project costs. Out of the 240 applications received during Phase I of that award, 60 projects were submitted for the required preliminary FEMA and CalOES review in early 2017. That review is still ongoing, but the City expects to receive clearance to allow projects to move forward with the design and construction process by October 2018. Of projects that receive preliminary approval, 25 to 40 retrofits are predicted to be completed before the funds expire. Two additional applications for up to a total of \$10,000,000 in assistance exclusive to retrofit costs were also submitted in 2018 to fund as many additional approved projects as possible. The outcome of those applications is still pending.

### ***Zoning Exceptions***

The proposed retrofit program includes certain exceptions to the City's zoning regulations. The goal of these exceptions is to provide further incentives to property owners performing seismic retrofit work and to make the retrofit work more financially feasible. The included incentives are listed below.

1. Parking, setback, and height requirements – The parking, setback, and height requirements normally applicable to a building would be waived if necessary to comply with the seismic retrofit requirements.
2. Density bonus – The residential density limitation applied to properties undergoing mandatory seismic retrofit work would be increased by one dwelling unit for properties with at least five units but less than 20 units, and by two dwelling units for properties with 20 or more units. The additional unit(s) must be located either within (a) the building envelope or (b) the height and setback requirements normally applicable to the building. If the additional unit(s) is(are) not constructed at the same time as the retrofit work, the building permit for the additional unit(s) would need to be issued within three years of the completion of the retrofit work. Parking requirements that would normally apply to the additional unit would be waived if the property is located within a Transit Accessible Area as defined in the Planning Code. Open space requirements would also be waived, regardless of the location. The density bonus would not apply if the additional unit would reduce the number of bedrooms or bathrooms in an existing unit or reduce the total amount of floor area in an existing unit by ten percent or more.

The Planning Commission believed the zoning exceptions were appropriate because they would facilitate seismic retrofits to make housing safer in the city, could result in additional needed housing (through the proposed density bonus), and are not likely to result in significant impacts. At the time the Planning Commission reviewed the proposal, the density bonus was limited to one additional unit. Since then, the proposed density bonus has been increased to two additional units for properties with 20 or more units in order to increase the value of the incentive. The proposal was also modified after the Planning Commission's review to more precisely define when an existing unit is impacted such that the density bonus does not apply (reducing bedrooms/bathrooms or more than ten percent of the floor area).

### ***Implementation***

Upon the ordinance becoming effective, Planning and Building Department staff would notify property owners of the program and compliance requirements based on a mailing list from the 2009 screening program (Ordinance 12966 C.M.S.; O.M.C. Chapter 15.26) and property characteristics data. The Department's Building Bureau would provide technical guidance on structural evaluations and retrofit designs.

If City inspectors discover other, unrelated, code violations while inspecting seismic retrofit work, it is anticipated that the City would continue to process the retrofit work separately and independently from work needed to correct the other code violations, unless the other code violations represent imminently hazardous conditions. Code violations that do not represent imminently hazardous conditions would still need to be corrected on their own timeline.

### **FISCAL IMPACT**

As mentioned above, the financial assistance to property owners is funded through a FEMA grant. The staff costs associated with reviewing and inspecting permits for seismic retrofit work will be covered through existing permit fees in the Master Fee Schedule.

## **PUBLIC OUTREACH / INTEREST**

The City, led by Councilmember Kalb and his staff, has engaged with the public extensively to develop and receive feedback on the proposed program. Below is a summary of the community engagement.

1. Steering Committee Meetings with tenant and owner stakeholders:
  - a. May 15, 2014
  - b. May 20, 2014 (property owners only)
  - c. May 23, 2014 (tenants only)
  - d. July 2014
  - e. September 2014
  - f. January 2015
2. Community forum to discuss the informational memo: October 30, 2014
3. Community meetings to share progress and get feedback:
  - a. February 5, 2015
  - b. February 7, 2015
  - c. February 9, 2015
  - d. February 11, 2015
  - e. February 18, 2015
4. Stakeholder review of current proposal: October 2018

Additionally, City staff conducted an online survey to receive feedback about the program elements. The survey received over 300 respondents.

Per the direction of City Council, the Rent Board formed a sub-committee in April 2014 to discuss possible changes on how to pass through seismic retrofit costs to tenants. The committee met on the following dates:

- April 24, 2014
- May 8, 2014
- June 12, 2014
- July 24, 2014
- September 25, 2014
- October 9, 2014
- October 23, 2014

## **COORDINATION**

Collaboration for this effort has included the Mayor's Office, the Office of Councilmember Kalb, the City Administrator's Office, the Housing and Community Development Department, the Planning and Building Department, the Office of the City Attorney, and the Controller's Bureau.

## **SUSTAINABLE OPPORTUNITIES**

**Economic:** Performing seismic retrofits to vulnerable soft-story buildings in Oakland increases the likelihood that local Oakland residents will remain as Oakland residents in the event of a major earthquake, thereby expediting the recovery of the local economy. Furthermore, performing seismic retrofits now is less costly than repairing or rebuilding damaged buildings after an earthquake. Additionally, with the adoption of a seismic retrofit program, local engineers and contractors will receive additional business opportunities performing seismic upgrades.

**Environmental:** Performing retrofits, and improving the physical integrity of buildings, has waste reduction benefits. In the event of a major earthquake, retrofitted buildings will be less likely to collapse, thereby reducing the amount of building rubble that will go to landfills.

**Social Equity:** Experience from other disaster recovery processes shows that when people are displaced due to substantial damage to housing stock, repaired or rebuilt buildings are often offered to tenants at rents that previous renters can no longer afford. Retrofitting apartment buildings will ensure that renters are more likely to survive a major disaster and be able to stay in their homes rather than face displacement.

### CEQA

The Planning Commission found that the proposal is exempt from the California Environmental Quality Act (CEQA). The proposal relies on the previously certified Final Environmental Impact Reports for the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan (2013); Land Use and Transportation Element of the General Plan (1998); Oakland Estuary Policy Plan (1998); West Oakland, Central City East, Coliseum, and Oakland Army Base Redevelopment Areas; 1998 Amendment to the Historic Preservation Element of the General Plan; 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, "EIRs").

The proposal would not result in any significant effect that has not already been analyzed in the above EIRs, and there will be no significant environmental effects caused by the change that have not already been analyzed in the EIRs. As a result, none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 are present in that: (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3).

In addition, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the environment), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15302 (replacement or reconstruction), and 15309 (inspections).

**ACTION REQUESTED OF THE CITY COUNCIL**

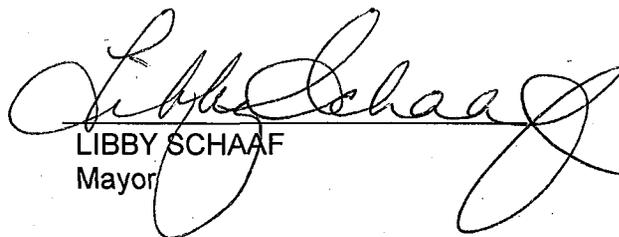
We respectfully request that the City Council adopt the proposed ordinance establishing the mandatory soft-story seismic retrofit program.

For questions regarding this report, please contact Oliver Luby in the Office of Councilmember Dan Kalb (District 1) at (510) 238-7013 or [oluby@oaklandca.gov](mailto:oluby@oaklandca.gov), or Darin Ranelletti in the Office of Mayor Libby Schaaf at (510) 238-3460 or [dranelletti@oaklandca.gov](mailto:dranelletti@oaklandca.gov).

Respectfully submitted,



DAN KALB  
District 1



LIBBY SCHAAF  
Mayor

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APPROVED AS TO FORM AND LEGALITY

**DRAFT**

Office of the City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

*INTRODUCED* By COUNCILMEMBER KALB and MAYOR SCHAAF

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ORDINANCE, AS RECOMMENDED, IN PART, BY THE PLANNING COMMISSION, AMENDING THE OAKLAND MUNICIPAL CODE TO: (1) ADD BUILDING AND CONSTRUCTION CODE CHAPTER 15.27 ENTITLED MANDATORY SEISMIC EVALUATION AND RETROFIT OF CERTAIN MULTI-UNIT RESIDENTIAL BUILDINGS, (2) ADD PLANNING CODE SECTION 17.102.250 TO CREATE SPECIAL EXCEPTIONS TO BUILDINGS UNDERGOING PERMITTED RETROFIT WORK IN COMPLIANCE WITH CHAPTER 15.27, (3) MAKE CONFORMING CHANGES TO SECTIONS 1.08.020 AND 15.26.230, AND (4) MAKE CLARIFYING AMENDMENTS RELATING TO CAPITAL IMPROVEMENTS IN CHAPTER 8.22, ARTICLE I (RESIDENTIAL RENT ADJUSTMENT); AND DIRECTING THE RENT BOARD TO MODIFY ITS CAPITAL IMPROVEMENT AMORTIZATION SCHEDULE FOR WORK IN COMPLIANCE WITH CHAPTER 15.27; AND ADOPTING CEQA EXEMPTIONS

**WHEREAS**, the City of Oakland is subject to major earthquake-related hazards including very violent ground shaking, liquefaction, and landslide; and

**WHEREAS**, the United States Geological Survey in 2015 forecast a 72 percent probability of one or more magnitude 6.7 or greater earthquakes in the San Francisco Bay Area by 2045. The Hayward and Rodgers Creek faults system have the highest probability of such an earthquake in the Bay Area; and

**WHEREAS**, the Hayward fault, which bisects the City of Oakland, has an average recurrence rate of about 140 years, and last experienced a damaging earthquake in 1868, 147 years ago; and

**WHEREAS**, the City of Oakland endeavors to maintain its housing stock and to enhance its disaster resiliency, reducing potential for loss of life and property damage while accelerating economic recovery; and

**WHEREAS**, the Housing Element of the City of Oakland's General Plan specifically includes policies to promote seismic safety and retrofitting, including Action

4.3.9, "Seismic Safety Retrofit Policy," which seeks to "[d]evelop and explore funding sources for a new seismic retrofit policy, coupled with tenant protections, to preserve about 14,000 soft story housing units in Oakland's flatland neighborhoods at risk for destruction in a major earthquake;" and

**WHEREAS**, the Safety Element of the City of Oakland's General Plan contains Policy GE-3, which provides that the City of Oakland "[c]ontinue to enhance or develop regulations and programs designed to minimize seismically related structural hazards from new and existing buildings;" and

**WHEREAS**, the City of Oakland is committed to helping meet the needs of Oakland residents for safe and disaster-resistant housing in buildings that are architecturally diverse and serve a variety of household sizes and incomes; and

**WHEREAS**, in 2008, the City and the Association of Bay Area Governments (ABAG) conducted a survey and identified 24,273 residential units in approximately 1,479 potential soft-story buildings in Oakland based on criteria representing the greatest risk – five or more units, two to seven stories tall, built before 1991, and parking or commercial uses on the ground floor; and

**WHEREAS**, in 2009, the City Council passed a mandatory soft-story screening ordinance (Ordinance 12966 C.M.S.; Oakland Municipal Code ("O.M.C.") Chapter 15.26) that required owners of potential soft-story multi-unit residential buildings to conduct a seismic screening assessment to determine potential seismic risk; and

**WHEREAS**, the survey conducted by ABAG and the screening program conducted in accordance with O.M.C. Chapter 15.26 have determined that these "soft story" residential buildings number between 1,400 and 2,600 and likely contain over 24,000 residential units, representing at least eleven percent (11%) of Oakland's rental units but as much as two-thirds of the expected housing losses in a future damaging earthquake; and

**WHEREAS**, these so-called multi-family "soft story" residential buildings, permitted for construction before 1991 and built with soft, weak, open, or otherwise vulnerable wood framing in the lower stories, are inherently subject to severe earthquake damage and possible collapse; and

**WHEREAS**, these "soft story" residential buildings pose a substantial safety risk to tenants, a substantial financial risk to owners, and a substantial recovery risk to Oakland neighborhoods and to the City of Oakland as a whole; and

**WHEREAS**, California Health and Safety Code section 19161 authorizes the City of Oakland to assess the earthquake hazard in its jurisdiction and to identify buildings that are potentially hazardous to life in the event of an earthquake. Health and Safety Code section 19162 authorizes the City Council to establish by ordinance seismic retrofit standards for these buildings; and

**WHEREAS**, sections 19161 and 19162 of the California Health and Safety Code authorize the City of Oakland to establish building seismic retrofit standards applicable to the seismic retrofit of any buildings identified pursuant to paragraphs 1 and 2 of 19161(a)(1) and 19161(a)(2), which includes woodframe, multi-unit residential buildings constructed before January 1, 1978; and

**WHEREAS**, sections 17958.5 and 17958.7 of the California Health and Safety Code authorize the City to make findings that any modifications to the California Building Standards Code and other regulations are reasonably necessary because of local climatic, geological, or topographical conditions; and

**WHEREAS**, as set forth herein, the City's local climatic, geological, and topographical conditions require modifications from the requirements of California Health and Safety Code section 17922, where applicable, as a result of technical information developed through the ABAG survey, the City's screening program, and other technical information; and

**WHEREAS**, seismic retrofit of "soft story" buildings is expected to save lives, reduce injuries, reduce expected property damage and financial losses, avoid renters' costs of relocating from damaged buildings, avoid owners' costs of repair, demolition, rebuilding, and loss of business, avoid costs to the public of emergency services and lost tax revenue, and help keep Oakland residents in their homes after a damaging earthquake; and

**WHEREAS**, the City has a policy interest in preserving existing affordable housing options and in preserving its current housing stock from potential destruction from earthquakes, fires, and other natural disasters; and

**WHEREAS**, Article XI, Section 5 of the California Constitution provides that the City, as a home rule charter city, has the power to make and enforce all ordinances and regulations with respect to municipal affairs, and Article XI, Section 7, empowers the City to enact measures that protect the health, safety, and/or welfare of its residents; and

**WHEREAS**, the City desires to further the public health, safety and/or welfare by requiring seismic strengthening of certain "soft story" buildings; and

**WHEREAS**, Section 106 of the Oakland City Charter provides that the City has the right and power to make and enforce all laws and regulations with respect to municipal affairs; and

**WHEREAS**, this Ordinance meets constitutional standards, State law, the Oakland City Charter, and the City's General Plan; and

**WHEREAS**, on October 3, 2018, the City Planning Commission conducted a duly noticed public hearing to consider the proposed amendments to the Oakland Planning Code and recommended that the City Council approve amendments to the Oakland

Planning Code and find that the proposed amendments are exempt from the California Environmental Quality Act ("CEQA"); and

**WHEREAS**, after a duly noticed public meeting on [DATE], the Community and Economic Development Committee of the City Council voted to recommend approval of the proposed amendments to the Oakland Municipal Code; and

**WHEREAS**, the City Council held a duly noticed public hearing on [DATE] to consider the proposed amendments to the Oakland Municipal Code, and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

**WHEREAS**, the City Council recognizes that seismic retrofit Capital Improvements are critically important to protect lives and maintain Oakland's housing stock in the case of an earthquake; and

**WHEREAS**, this action is exempt from the requirements of CEQA pursuant to CEQA Guidelines sections 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the environment), 15612 and 15163 (no further environmental review required), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15302 (replacement or reconstruction), and 15309 (inspections), each as a separate and independent basis, and when viewed collectively provide an overall basis for CEQA clearance; now therefore,

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Recitals.** The Council of the City of Oakland finds and determines the foregoing recitals to be true and correct and are hereby incorporated herein as findings and determinations of the City Council.

**SECTION 2. Addition of Chapter 15.27 to the Oakland Municipal Code.** The following O.M.C. Chapter 15.27 Mandatory Seismic Evaluation and Retrofit of Certain Multi-Unit Residential Buildings is hereby adopted and shall read as follows (the entirety of O.M.C. Chapter 15.27 is new text and is shown as normal text):

**Title 15 – Buildings and Construction**  
**Chapter 15.27 Mandatory Seismic Evaluation and Retrofit of Certain Multi-Unit Residential Buildings**

**Sections:**

**Article I – Scope**

**15.27.010 – Title**

**15.27.020 – Intent**

**15.27.030 – Subject Buildings**

**15.27.040 – Conformance Period**

**Article II – Compliance**

- 15.27.050 – Scope**
- 15.27.060 – Design Professionals**
- 15.27.070 – Schedule**
- 15.27.075 – Extension for Financial Hardship**
- 15.27.080 – Submittals**
- 15.27.090 – Approval**

**Article III – Administrative**

- 15.27.100 – Notification**
- 15.27.110 – Fees**
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**Article IV – Technical**

- 15.27.150 – Definitions**
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- 15.27.180 – Technical Bulletins and Administrative Regulations**
- 15.27.190 – Related Requirements**

**ARTICLE I. SCOPE**

**15.27.010 Title.** This Chapter shall be known as “Mandatory Seismic Evaluation and Retrofit of Certain Multi-Unit Residential Buildings,” may be cited as such, and will be referred to herein as “this Chapter.”

**15.27.020 Intent.** This Chapter is intended to promote public safety and welfare through a program of mandatory seismic evaluation and retrofit of certain residential buildings vulnerable to earthquake damage and collapse. The program is intended to reduce earthquake-related deaths and injuries, improve the durability of Oakland’s housing stock, facilitate post-earthquake emergency response, improve community stability, minimize displacement during retrofits and after an earthquake, and reduce the economic impacts of a damaging earthquake.

**15.27.030 Subject Buildings.** This Chapter shall apply to buildings constructed or permitted for construction before January 1, 1991 or designed based on an adopted version of the 1985 or earlier edition of the Uniform Building Code, and contain five or more Dwelling Units, and have a Wood Frame Target Story.

**15.27.040 Conformance Period.** No subject building for which permitted retrofit work is completed in compliance with this Chapter and properly maintained shall be required by the City to undergo additional seismic retrofit of its seismic force-resisting system within a period of fifteen (15) years after the effective date of this Chapter,

except that any provisions in Title 15 related to addition, alteration, repair, or change of occupancy shall still apply.

## ARTICLE II. COMPLIANCE

**15.27.050 Scope.** The Owner of each building subject to this Chapter shall, in accordance with the schedule given in Section 15.27.070, complete the following compliance scope.

- A. **Demonstrate That a Building is Not a Subject Building.** This scope item is required only for those owners who claim that their building is not a subject building. In such cases, the Owner shall submit documentation for review and approval by the Building Official demonstrating that a building is not a subject building as described in Section 15.27.030.
- B. **Demonstrate Eligibility for a Later Compliance Tier.** This scope item is required only for those owners who claim that their subject building should be assigned to a later compliance tier. The Owner may submit documentation demonstrating that a building is eligible for a later compliance Tier pursuant to Section 15.27.070.
- C. **Perform Mandatory Evaluation.** If Section 15.27.050(A) does not apply, then the Owner shall commission and receive a written seismic evaluation and schematic retrofit report for the building based on the Engineering Criteria given in Section 15.27.165(A).
- D. **Complete Mandatory Retrofit Work.** If Section 15.27.050(A) does not apply, then the Owner shall complete the following:
  - 1. Submit to the Bureau of Building a Target Story evaluation report demonstrating compliance of each Wood Frame Target Story with Section 15.27.170 Engineering Criteria; or
  - 2. Obtain a building and any other required permit(s) to retrofit the subject building in compliance with Section 15.27.170 Engineering Criteria; and
  - 3. Complete or cause to be completed all permitted construction; and obtain Bureau of Building approval on final inspection.
- E. **Residential Tenants.** For those buildings containing residential tenants, the Owner shall submit documentation of compliance with any technical bulletins and/or administrative regulations issued by the City Administrator pursuant to Section 15.27.180 regarding residential tenants of the building.
- F. **Submit Affidavits of Compliance.** If paragraphs C and D of this section apply, the Owner shall submit one or more affidavits confirming compliance with the required scope and with other administrative regulations, including any

requirements to acknowledge receipt of information about retrofit options, developed by the Bureau of Building.

**15.27.060 Design Professionals.** All work intended to comply with this Chapter shall be performed by appropriately licensed individuals. Evaluation reports shall be sealed by a licensed Architect or Civil Engineer. Documents demonstrating that a building is not a subject building shall be sealed by a licensed Architect or Civil Engineer.

**15.27.070 Schedule.** The Owner of a building subject to this Chapter shall comply with each of the Chapter's requirements in accordance with the deadlines given in Table 15.27.070.

A. Each subject building shall be assigned to a Compliance Tier as follows:

1. **Tier 1:** Subject Buildings assigned to Tier 1 shall include:

- a. Buildings not eligible for Tier 2 or Tier 3, with twenty (20) or more residential units;
- b. Buildings whose owners failed to comply with O.M.C. Section 15.26.230 (Mandatory Screening Ordinance) on or before July 28, 2011, regardless of the number of residential units or nominal eligibility for Tier 2 or Tier 3.

2. **Tier 2:** Subject Buildings assigned to Tier 2 shall include:

- a. Buildings not eligible for Tier 3 with between five (5) and nineteen (19) residential units;
- b. Buildings with legally permitted Business or Mercantile occupancy in a Wood Frame Target Story. A building assigned to Tier 2 due to Business or Mercantile occupancy may be reassigned to Tier 3 upon demonstration by the Owner that at least one commercial unit is non-vacant on the day one year from the effective date of this Chapter, and has been occupied for at least one month.

3. **Tier 3:** Subject Buildings assigned to Tier 3 shall include:

- a. Buildings with legally permitted Residential occupancy in a Wood Frame Target Story;
- b. Any Subject Building owned by a nonprofit organization whose purpose is providing affordable housing or that has an annual budget of less than \$2 million.

B. Failure to fully comply with any deadline or to receive approval of submitted materials shall not alter other applicable deadlines.

C. In no case shall transfer of title cause any deadline in Table 15.27.070 to be extended. If transfer of title occurs within eighteen (18) months of the effective date of this Chapter, the building shall be re-assigned to Tier 1. If transfer of title occurs more than eighteen (18) months but less than thirty (30) months after the

effective date of this Chapter, a building initially assigned to Tier 3 shall be re-assigned to Tier 2.

Re-assignment of the compliance tier shall not be made where the transfer of title is to a spouse, to a registered domestic partner, or to one or more immediate family members or as an inheritance.

**TABLE 15.27.070. Compliance Deadlines**  
[Years after the Effective Date of this Chapter]

| Building Group or Compliance Tier | Compliance Scope Item   |   |  |  |   |
|-----------------------------------|---|---|--|--|---|
|                                   | Document that building is not a subject building (optional) (15.27.050.A) | Document that building is eligible for a later compliance tier (optional) (15.27.050.B) | Complete mandatory evaluation and submit initial affidavit of compliance (15.27.050.C and E) | Obtain retrofit permit or submit Target Story evaluation report (15.27.050.D.1 or D.2) | Perform retrofit work and obtain approval on final inspection; submit final affidavit of compliance (15.27.050.D.3 and E) |
| Non-subject buildings             | 1 year  | NA  | NA   | NA   | NA  |
| Tier 1                            | NA  | 1 year  | 2 years  | 3 years  | 4 years   |
| Tier 2                            | NA  | 1 year  | 3 years  | 4 years  | 5 years   |
| Tier 3                            | NA  | 1 year  | 4 years  | 5 years  | 6 years   |

**15.27.075 Extension for Financial Hardship.** The City Administrator or designee is authorized to extend any of the compliance deadlines in Table 15.27.070 by up to one year based on a demonstration of financial hardship related to the cost of the required work.

- A. To request such an extension, the Owner shall submit a request to the Bureau of Building, together with such documentation as the City Administrator might require regarding the required work, Owner records, and Owner and resources.
- B. As a condition of the extension for financial hardship, the Owner may be required to confer with city staff and to demonstrate a good faith effort to secure funding or financing.
- C. Any extension for financial hardship shall apply only to work required by this Chapter.
- D. In the event of a transfer of title, any extension for financial hardship shall not transfer automatically to the new owner.

**15.27.080 Submittals.** In addition to submittals required by O.M.C. Chapter 15.04, the Bureau of Building shall develop and make available, and is authorized to require the use of, certain forms, templates, checklists, and other tools as needed to facilitate compliance, review, approval, and records maintenance contemplated by this Chapter. The Bureau of Building is authorized to require separate submittals and permit applications for work required for compliance with this Chapter and for voluntary work to be performed simultaneously, as well as separate submittals and permit applications for any non-structural seismic retrofit work.

**15.27.090 Approval.** Except for conditions deemed imminently hazardous and new work triggered by the program scope, the Bureau of Building shall not withhold approval of submitted materials for reasons unrelated to the program scope and the engineering criteria.

### ARTICLE III. ADMINISTRATIVE

**15.27.100 Notification.** Within 120 days of the effective date of this Chapter, the Bureau of Building shall send a written notice to the Owner of each known subject building informing the Owner(s) of the requirement to comply with this Chapter.

Failure of the Bureau of Building to send or provide a written notice to unidentified Owners of subject buildings or to Owners of buildings not known to be subject buildings shall not relieve the Owner of a subject building from the requirement to comply with this Chapter. Failure of an Owner to receive a written notice shall not relieve the Owner of a subject building from the requirement to comply with this Chapter.

**15.27.110 Fees.** The fees for the review of various submittals intended to comply with this Chapter shall be specified in the master fee schedule.

**15.27.120 Violations.** An Owner of a building subject to this Chapter who fails to comply with any of this Chapter's requirements shall be subject to fines and penalties contained in Titles 1 and 15. The Building Official shall be authorized to impose the following additional penalties on any Owner in violation of this Chapter.

- A. Failure to obtain a Building Permit or file a Target Story evaluation report on Time. Each Owner who fails to obtain a building permit or file a Target Story evaluation report in accordance with Section 15.27.050 and Section 15.27.070 shall be subject to the fines and penalties set forth in O.M.C. Chapter 1.08.
- B. Failure to Complete Permitted Construction. Each Owner who fails to complete the permitted construction in accordance with Section 15.27.050 and Section 15.27.070 shall be subject to the fines and penalties set forth in O.M.C. Chapter 1.08.

C. Noncompliance Actions. In addition to the fines authorized by subsections A and B, the following shall apply in the event of any failure to comply with the requirements of this Chapter:

1. The Owner shall notify, in a manner prescribed by the Bureau of Building, all parties with financial interest in the property (such as mortgage lenders, lien holders, insurance bearers) and the tenants, current and prospective, that the building is potentially a seismically hazardous building and is in violation of this Chapter. The Owner shall be required to send written notice (in English, Spanish, and Chinese) to all tenants and to inform prospective tenants in writing.
2. The Bureau of Building may file a statement with the County Recorder office describing violations of this Chapter. Upon correction of any violation of this Chapter, the Bureau of Building will file a release of any order that may have been recorded for noncompliance with this Chapter.
3. The Bureau of Building may require the Owner to post one or more signs on the building to designate it as potentially a seismically hazardous building. Location, form and content of the signs shall be at the discretion of the Bureau of Building. The Owner shall be responsible for installing and maintaining the signs and immediately replacing them, at the Owner's expense, as necessary. When the Owner corrects all violations of this Chapter, the Bureau of Building shall authorize removal of the signs.

D. Injunctive Relief. The City Attorney may file suit or take appropriate action to compel compliance of the provisions in this Chapter.

**15.27.130 Retention of Plans.** Notwithstanding any provision or exception in Title 15, including Exception 1 to Section 1.8.4.3.1 of the California Building Code and its successors, the Bureau of Building shall retain an official copy of any approved Target Story evaluation reports and retrofit design plans submitted to comply with this Chapter.

**15.27.140 Record Keeping.** The Bureau of Building shall maintain a listing of buildings subject to this Chapter and shall make that listing readily accessible to the public. The Bureau of Building shall convey that listing with a summary of the compliance status of each subject building and its parcel number to the County Clerk-Recorder once every six months.

#### ARTICLE IV. TECHNICAL

**15.27.150 Definitions.** In addition to the definitions in Title 15 of this Code, the following definitions shall apply for purposes of this Chapter.

**Dwelling Unit.** A Dwelling Unit shall include any individual residential unit in a building with R-1 or R-2 occupancy, as well as any guest room, with or without a

kitchen, in either a tourist or residential hotel or motel but shall not include a housekeeping room. Any unit occupied as a Dwelling Unit, whether approved or not approved for such use, shall be counted as a Dwelling Unit.

**Nonprofit Organization.** An organization that has received tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

**Owner.** "Owner" shall have the same definition as O.M.C. Section 15.26.100, which means "any individual or group of individuals or firm or any other entity holding legal or equitable title to the real property."

**Soft Story Building.** A Soft Story Building shall mean any building subject to this Chapter in accordance with Section 15.27.030, and shall mean only such a building.

**Target Story.** A Target Story shall mean either (1) a basement story or underfloor area that extends above grade at any point or (2) any story above grade, where the wall configuration of such basement, underfloor area, or story is substantially more vulnerable to earthquake damage than the wall configuration of the story above; except that a story is not a Target Story if it is the topmost story or if the difference in vulnerability is primarily due to the story above being a penthouse, or an attic with a pitched roof.

**Wood Frame Target Story.** A Wood Frame Target Story means a Target Story in which a significant portion of lateral or torsional story strength or story stiffness is provided by wood frame walls.

**15.27.160 Engineering Intent.** The evaluation criteria and Target Story engineering criteria, given in Section 15.27.170, have been selected as appropriate to the intent of this Chapter. The retrofit criteria, when properly applied, are expected to significantly reduce the collapse risk of subject buildings and to increase the likelihood that these buildings will be structurally safe to repair and occupy shortly after an earthquake.

The Target Story engineering criteria are intended to apply to existing Wood Frame Target Stories in order to improve building performance while limiting retrofit costs and impacts. It is not the intent of this Chapter to require other mitigation of structural or nonstructural deficiencies, seismic or non-seismic, that might lawfully exist but are beyond the purview of this Chapter. The Target Story engineering criteria might not achieve the same performance as design requirements for new buildings or any full-building retrofit objective for existing buildings.

**15.27.165 Building Evaluation Criteria.** The following criteria shall be used for seismic evaluation, including structural and non-structural elements, except that Target Story structural evaluation shall use the criteria given in Section 15.27.170.

- A. The "Screening" provisions in the latest edition of Seismic Evaluation and Retrofit of Existing Buildings [ASCE/SEI 41], published by the American Society of Civil

Engineers, with a performance objective of Structural Life Safety and Nonstructural Life Safety with the BSE-1E hazard (Basic Safety Earthquake 1 for use with existing buildings). The Bureau of Building is authorized to determine the required scope of the building evaluation.

- B. If compliance with this Chapter will require retrofit of a Target Story, the building evaluation shall consider conditions expected in the post-retrofit building.

**15.27.170 Target Story Engineering Criteria.** Any of the following criteria may be used to demonstrate compliance with this Chapter. Regardless of the criteria applied, the strength of a retrofitted Target Story need not exceed that required to develop the strength of stories above.

- A. For retrofit design only, Appendix Chapter A4 of the latest edition of the *International Existing Building Code*, "Earthquake Risk Reduction in Wood-Frame Residential Buildings With Soft, Weak or Open Front Walls."
- B. For evaluation or retrofit design, the latest edition of *Seismic Evaluation and Retrofit of Existing Buildings* [ASCE/SEI 41], published by the American Society of Civil Engineers, with a performance objective of Structural Life Safety in the BSE-1E hazard (Basic Safety Earthquake 1 for use with existing buildings).
- C. For evaluation or retrofit design, the latest edition of FEMA P-807, *Seismic Evaluation and Retrofit of Multi-Unit Wood-Frame Buildings With Weak First Stories* [FEMA P-807], published by the Federal Emergency Management Agency, with a performance objective and detailed provisions as provided in a Technical Bulletin to be developed by the Bureau of Building.
- D. Historic buildings. Subject buildings qualified as historic are not exempt from this Chapter, but shall be permitted to use alternate building regulations set forth in the California Historical Building Code.

**15.27.180 Technical Bulletins and Administrative Regulations.** The City Administrator or designee is responsible for the administration of this Chapter, and is authorized to develop and require compliance with one or more technical bulletins and/or administrative regulations containing interpretations, clarifications, and commentary to facilitate implementation of the engineering criteria and other requirements set forth in this Chapter.

**15.27.190 Related Requirements.** Except as follows and as specified elsewhere in this Chapter, all provisions of Title 15 for existing buildings apply to buildings subject to this Chapter. Work on subject buildings that is neither required by this Chapter nor triggered by compliance with this Chapter shall be subject to applicable provisions of Title 15.

- A. **Alteration Provisions.** Prior to compliance with this Chapter, buildings subject to this Chapter shall be considered substandard buildings per California Health and

Safety Code section 17920.3(o). When considering the Target Story work required by this Chapter as an alteration, 2016 California Existing Building Code section 403.4 and its successor provisions may be waived by the Building Official.

- B. **Zoning Exceptions.** Buildings subject to this Chapter may be entitled to special zoning exceptions as described in Section 17.102.250 of the Oakland Planning Code.
- C. **Rent Adjustment.** Allowable adjustments of rents due to seismic retrofit work required by this Chapter shall be governed by relevant requirements in Chapter 8.22 as amended.

### **SECTION 3. Amendment of Oakland Planning Code Chapter 17.102.**

Oakland Planning Code Chapter 17.102 is hereby amended and shall read as follows (the entirety of Section 17.102.250 is new text; additions are shown as double underline and deletions are shown as ~~strikethrough~~):

#### **Chapter 17.102 Regulations Applicable to Certain Activities and Facilities**

##### **Sections:**

- 17.102.010 Title, purpose, and applicability.
- 17.102.020—17.102.080 Reserved.
- 17.102.090 Shared access facilities.
- 17.102.100 Reserved.
- 17.102.110 Expansion of use into adjacent zones.
- 17.102.120 Removal of dirt or other minerals—Residential and S-1, S-2, S-3 and OS Zones.
- 17.102.130 Reserved.
- 17.102.140 Private stables and corrals.
- 17.102.160 Adult Entertainment Activities.
- 17.102.170 Massage Activities.
- 17.102.180 Restriction on vertical location of activities in buildings containing both Residential and Nonresidential Activities—Commercial Zones.
- 17.102.190 Joint Living and Work Quarters.
- 17.102.195 Residentially-Oriented Joint Living and Working Quarters.
- 17.102.200 Pedestrian bridges constructed over City streets.
- 17.102.210—17.102.220 Reserved.

17.102.230 Demolition of a facility containing rooming units or to the conversion of a living unit to a Nonresidential Activity—Nonresidential Zones.

17.102.240 Microwave and satellite dishes over three (3) feet in diameter located in or near Residential Zones.

17.102.250 Special exceptions allowed for multi-unit residential buildings undergoing mandatory seismic retrofit.

17.102.255—17.102.265 Reserved.

17.102.270 An additional kitchen for a single dwelling unit.

17.102.280, 17.102.290 Reserved.

17.102.300 Dwelling units with five (5) or more bedrooms.

17.102.310—17.102.335 Reserved.

17.102.340 Electroplating Activities in the Industrial Zones.

17.102.350 Tobacco-oriented activities.

17.102.360—17.102.390 Reserved.

17.102.400 Exterior security bars and related devices.

17.102.420—17.102.430 Reserved.

17.102.440 Crematories.

17.102.450 Laundromats.

**17.102.250 Special exceptions allowed for multi-unit residential buildings undergoing mandatory seismic retrofit.**

The following special exceptions apply to any building undergoing permitted retrofit work in compliance with Chapter 15.27 of the Oakland Municipal Code:

- A. Parking, Setback, and Height. The parking, setback, and height requirements normally applicable to any building, pursuant to the City's Planning Code, undergoing permitted retrofit work shall be waived if said requirements cannot be met due to alterations resulting from retrofit work required by Chapter 15.27 of the Oakland Municipal Code.
- B. Additional Unit(s). The number of legal living units in any building undergoing permitted retrofit work may be increased by one (1) unit for properties containing at least five (5) but fewer than twenty (20) living units and by two (2) units for properties containing twenty (20) or more living units, regardless of any resulting nonconformity as to the normally required maximum density, as long as the additional unit is located either within the building envelope resulting from the permitted retrofit work or outside of such building envelope, but within the height and setback requirements normally applicable to the subject building. The building permit for the additional unit must be issued no later than three (3) years from the date of the final inspection of the retrofit work. An additional unit is not allowed if

the new unit would reduce the number of bedrooms or bathrooms in any existing unit, or reduce the total amount of floor area in any existing unit by ten percent (10%) or more.

1. Parking. The normally required parking requirements of the Oakland Planning Code shall not apply to such additional unit(s) if the site is located within a Transit Accessible Area, as defined in Chapter 17.09.
2. Open Space. The normally required open space requirements of the Oakland Planning Code shall not apply to such additional unit(s) regardless of site location.

#### **SECTION 4. Amendment of Oakland Municipal Code Section 1.08.020.**

O.M.C. Section 1.08.020 is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

##### **1.08.020 - Scope.**

A. This Chapter authorizes the administrative assessment of civil penalties to effect abatement of:

1. Any violations of provisions of the following Oakland Municipal Codes: Oakland Building Code (O.M.C. Chapter 15.04), the Oakland Housing Code (O.M.C. Chapter 15.08), Uniform Fire Code (O.M.C. Chapter 15.12), Fire Damaged Area Protection & Improvement Code (O.M.C. Chapter 15.16), Mandatory Seismic Evaluation and Retrofit of Certain Multi-Unit Residential Buildings (O.M.C. Chapter 15.27), Bedroom Window Security Bar & Smoke Detector Permit Code (O.M.C. Chapter 15.64), Oakland Planning Code (O.M.C. Title 17), Transient Occupancy Tax Code (O.M.C. Chapter 4.24), Hotel Rates & Register Code (O.M.C. Chapter 5.34), Animal Code (O.M.C. Title 6), Health & Safety Code (O.M.C. Title 8), Public Peace, Morals and Welfare Code (O.M.C. Title 9), Vehicles and Traffic Code (O.M.C. Title 10), Streets, Sidewalks & Public Places Code (O.M.C. Title 12), Creek Protection, Storm Water Management and Discharge Control Code (O.M.C. Chapter 13.16) and the Oakland Sign Code (O.M.C. Chapter 14); or,
2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects-at-the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or

3. The occurrence of any public nuisance as known at common law or in equity jurisprudence, or
4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.

B. Civil penalties established in this Chapter are in addition to any other administrative or legal remedy which may be pursued by the city to address violations of the codes and ordinances identified in this chapter.

**SECTION 5. Amendment of Oakland Municipal Code Section 15.26.230.**

O.M.C. Section 15.26.230 is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

**15.26.230 Compliance.**

The owner shall submit a written Level 1 Screening or a written Level 2 Evaluation to the Building Official within two calendar years following the effective date of this Chapter, or by such earlier date as may be required by the Building Official upon notification to the owner as set forth in Section 15.26.160. Failure of the owner to comply fully with the provisions of this Chapter and this Section shall be sufficient cause for administrative and non-administration actions set forth in Sections 15.26.130 and 15.26.140.

An owner in full compliance with Chapter 15.27 shall be considered to be in compliance with this Chapter.

**SECTION 6. Amendment of Oakland Municipal Code Chapter 8.22, Article 1, Residential Rent Adjustment Program.** O.M.C. Section 8.22.020 and 8.22.090 are hereby amended to read as follows (additions are shown as double underline and deletions are shown as a ~~strikethrough~~):

Article I. - Residential Rent Adjustment Program

8.22.020 - Definitions.

As used in this chapter, Article I:

"1946 notice" means any notice of termination of tenancy served pursuant to California Civil Code Section 1946. This notice is commonly referred to as a thirty (30) or sixty (60) day notice of termination of tenancy, but the notice period may actually be for a longer or shorter period, depending on the circumstances.

"1946 Termination of tenancy" means any termination of tenancy pursuant to California Civil Code § 1946.

"Anniversary date" is the date falling one year after the day the tenant was provided with possession of the covered unit or one year after the day the most recent rent adjustment took effect, whichever is later. Following certain vacancies, a subsequent tenant will assume the anniversary date of the previous tenant (Section 8.22.080).

"Appeal panel" means a three-member panel of board members authorized to hear appeals of Hearing Officer decisions. Appeal panels must be comprised of one residential rental property owner, one tenant, and one person who is neither a tenant nor a residential rental property owner. Appeal panels may be made up of all regular board members, all alternates, or a combination of regular board members and alternates.

"Banking" means any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the regulations.

"Board" and "Residential Rent Adjustment Board" means the Housing, Residential Rent and Relocation Board.

"~~Capital improvements~~Capital Improvements" means those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner. Capital improvement costs that may be passed through to tenants include seventy percent (70%) of actual costs, plus imputed financing. Capital improvement costs shall be amortized over the useful life of the improvement as set forth in an amortization schedule developed by the Rent Board ~~Capital improvements~~Capital Improvements do not include the following as set forth in current and future the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving") excluding: improvements approved in writing by the tenant, improvements that bring the unit up to current building or housing codes, or the cost of a substantially equivalent replacement; or costs for which a landlord is reimbursed (e.g., insurance, court awarded damages, subsidies, tax credits, and grants.)

"CPI—All items" means the Consumer Price Index—All items for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

"CPI—Less shelter" means the Consumer Price Index—All items less shelter for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

"CPI Rent Adjustment" means the maximum rent adjustment (calculated annually according to a formula pursuant to Section 8.22.070 B.3) that an owner may impose within a twelve (12) month period without the tenant being allowed to contest the rent increase, except as provided in Section 8.22.070B.2 (failure of the owner to give proper notices, decreased housing services, and uncured code violations).

"Costa-Hawkins" means the California state law known as the Costa-Hawkins Rental Hawkins Act codified at California Civil Code § 1954.50, et seq. (Appendix A to this chapter contains the text of Costa-Hawkins).

"Covered unit" means any dwelling unit, including joint living and work quarters, and all housing services located in Oakland and used or occupied in consideration of payment of rent with the exception of those units designated in Section 8.22.030A as exempt.

"Ellis Act Ordinance" means the ordinance codified at O.M.C. 8.22.400 (Chapter 8.22, Article III) setting out requirements for withdrawal of residential rental units from the market pursuant to California Government Code § 7060, et seq. (the Ellis Act).

"Fee" means the Rent Program Service Fee as set out in O.M.C. 8.22.500 (Chapter 8.22, Article IV).

"Housing services" means all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

"Mandatory Seismic Capital Improvement" means Capital Improvements that consist of mandatory seismic retrofitting as required in O.M.C. Chapter 15.27. Allowable adjustments of rents for work required by O.M.C. Chapter 15.27 shall be governed by Article 1. Chapter 8.22.

"Owner" means any owner, lessor or landlord, as defined by state law, of a covered unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord.

"Owner of record" means a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property, but not including any lessor, sublessor, or agent of the owner of record.

"Just Cause for Eviction Ordinance" means the ordinance adopted by the voters on November 5, 2002 (also known as Measure EE) and codified at O.M.C. 8.22.300 (O.M.C. Chapter 8.22, Article II).

"Rent" means the total consideration charged or received by an owner in exchange for the use or occupancy of a covered unit including all housing services provided to the tenant.

"Rent Adjustment Program" means the department in the city that administers this chapter and also includes the board.

"Regulations" means the regulations adopted by the board and approved by the City Council for implementation of this chapter, Article I (formerly known as "Rules and Procedures") (After regulations are approved, they will be attached to this chapter as Appendix B).

"Security deposit" means any payment, fee, deposit, or charge, including but not limited to, an advance payment of rent, used or to be used for any purpose, including but not limited to the compensation of an owner for a tenant's default in payment of rent, the repair of damages to the premises caused by the tenant, or the cleaning of the premises upon termination of the tenancy exclusive of normal wear and tear.

"Tenant" means a person entitled, by written or oral agreement to the use or occupancy of any covered unit.

"Uninsured repairs" means that work done by an owner or tenant to a covered unit or to the common area of the property or structure containing a covered unit which is performed to secure compliance with any state or local law as to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds.

"Voluntary Seismic Capital Improvement" means Capital Improvements that consist of "seismic strengthening" as defined in O.M.C. Section 15.30.100, but is not required for compliance under Chapter 15.27.

8.22.090 - Petition and response to filing procedures.

A. Tenant Petitions.

1. Tenant may file a petition regarding any of the following:
  - a. A rent increase was given that is not based on the CPI Rent Adjustment, Banking; and/or a final decision in an owner petition
  - b. The owner set an initial rent in excess of the amount permitted pursuant to Section 8.22.080 (Rent increases following vacancies);
  - c. A rent increase notice failed to comply with the requirements of Subsection 8.22.070H;
  - d. The owner failed to give the tenant a notice in compliance with Section 8.22.060 and State law;
  - e. The owner decreased housing services to the tenant;
  - f. The tenant alleges the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Subsection 8.22.070 D.6;
  - g. The owner fails to reduce rent on the month following the expiration of the amortization period for ~~capital improvements~~Capital Improvements, or to pay any interest due on any rent overcharges from the failure to reduce rent for a capital improvement.
  - h. The owner noticed a rent increase of more than the ten (10) percent annual limit or that exceeds the rent increase limit of thirty (30) percent in five years.
  - i. The petition is permitted by the Just Cause for Eviction Ordinance (Measure EE) O.M.C. 8.22.300 or its regulations.
  - j. The petition is permitted by the Ellis Act Ordinance, O.M.C. 8.22.400, or its regulations.
  - k. The tenant contests an exemption from this O.M.C. 8.22, Article I or Article II.
  - l. The tenant claims the owner has received reimbursements for any portion of cost or financing of Capital Improvements after a capital improvement rent increase has been approved, and has not prorated and refunded such reimbursement.
2. For a petition contesting a rent increase, the petition must be filed as follows:
  - a. If the owner provided written notice of the existence and scope of this chapter as required by section 8.22.060 at the inception of tenancy:
    - i. The petition must be filed within 90 days of the date the owner serves the rent increase notice if the owner provided the RAP notice with the rent increase; or
    - ii. The petition must be filed within 120 days of the date the owner serves the rent increase if the owner did not provide the RAP notice with the rent increase.
  - b. If the owner did not provide written notice of the existence and scope of this chapter as required by section 8.22.060 at the inception of tenancy, within 90 days of the date the tenant first receives written notice of the existence and scope of this chapter as required by section 8.22.060.

3. For a petition claiming decreased housing services:
    - a. If the decreased housing is the result of a noticed or discrete change in services provided to the tenant (e.g., removal of parking place, requirement that tenant pay utilities previously paid by owner) the petition must be filed within 90 days of whichever of the following is later:
      - i. The date the tenant is noticed or first becomes aware of the decreased housing service; or
      - ii. The date the tenant first receives written notice of the existence and scope of this chapter as required by section 8.22.060.
    - b. If the decreased housing is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for 90 days before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing service.
  4. In order to file a petition or respond to an owner petition, a tenant must provide the following at the time of filing the petition or response:
    - a. A completed tenant petition or response on a form prescribed by the Rent Adjustment Program;
    - b. Evidence that the tenant's rent is current or that the tenant is lawfully withholding rent; and
    - c. A statement of the services that have been reduced or eliminated; if the tenant claims a decrease in housing services;
    - d. A copy of the applicable citation, if the tenant claims the rent increase need not be paid because the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Section 8.22.070D.6.
  5. A tenant must file a response to an owner's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that an owner petition was filed.
- B. Owner Petitions and Owner Responses to Tenant Petitions.
1. In order for an owner to file a response to a tenant petition or to file a petition seeking a rent increase, the owner must provide the following:
    - a. Evidence of possession of a current city business license;
    - b. Evidence of payment of the Rent Adjustment Program Service Fee;
    - c. Evidence of service of written notice of the existence and scope of the Rent Adjustment Program on the tenant in each affected covered unit in the building prior to the petition being filed;
    - d. A completed response or petition on a form prescribed by the Rent Adjustment Program; and
    - e. Documentation supporting the owner's claimed justification(s) for the rent increase or supporting any claim of exemption.
  2. An owner must file a response to a tenant's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that a tenant petition was filed.

**SECTION 7. Direction to Rent Board Regarding Rent Adjustments and Capital Improvement Pass-Through.** Allowable adjustments of rents due to seismic

retrofit work required by Chapter 15.27 shall be governed by Article 1, Section 8.22. et seq. Notwithstanding the authority provided by Section 8.22.020, "Capital Improvements," the Housing, Residential Rent and Relocation Board shall revise the capital improvements amortization schedule in the Rent Program Regulations to provide an amortization period for Mandatory Seismic Capital Improvements that conforms with the Rent Board's final motion passed during Item 5 of their July 9, 2015 meeting. Rent Program Regulations shall clearly delineate between Mandatory Seismic Capital Improvements and Voluntary Seismic Capital Improvements.

**SECTION 8. Direction to City Administrator Regarding Administrative Regulations.** The City Administrator or designee shall develop and require compliance with technical bulletins and/or administrative regulations to facilitate compliance with this Ordinance as authorized by O.M.C. Section 15.27.180 in Section 2 of this Ordinance. Said technical bulletins and/or administrative regulations shall include, but not be limited to, requirements for owners concerning subject buildings with residential tenants. Said requirements shall address, at a minimum, tenant notification regarding proposed construction schedules and provisions for tenant relocation if the proposed retrofit work requires tenant relocation.

**SECTION 9. California Environmental Quality Act.** The City Council has reviewed the proposed amendments to the Oakland Municipal Code and independently finds and determines that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15162 & 15163 (no further environmental review required), 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the environment), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15302 (replacement or reconstruction), and 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

**SECTION 10. Undertaking for the General Welfare.** In enacting and implementing this Ordinance, the City of Oakland is assuming an undertaking to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

**SECTION 11. Authority.** This Ordinance is enacted by the City Council pursuant to the police powers accorded to the City by and through Section 106 of the Charter of the City of Oakland and Article XI of the Constitution of the State of California.

**SECTION 12. Severability.** The provisions of this Ordinance are severable, and if any article, section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by

decision of any court of competent jurisdiction, such decision shall not affect the validity of remaining portions of the Ordinance which shall remain in full force and effect.

**SECTION 13. Effective Date.** Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately on final adoption if it receives six (6) or more affirmative votes on final adoption. Otherwise, it shall become effective upon the seventh day after final adoption.

**SECTION 14. Conflict.** Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

**SECTION 15. Directions to Clerk of the Council.** The Clerk of the Council is directed to send a copy of the finally-passed Ordinance to the California Department of Housing and Community Development for informational purposes, as required by Health and Safety Code section 19165.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Date of Attestation:

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## NOTICE AND DIGEST

**ORDINANCE, AS RECOMMENDED, IN PART, BY THE PLANNING COMMISSION, AMENDING THE OAKLAND MUNICIPAL CODE TO: (1) ADD BUILDING AND CONSTRUCTION CODE CHAPTER 15.27 ENTITLED MANDATORY SEISMIC EVALUATION AND RETROFIT OF CERTAIN MULTI-UNIT RESIDENTIAL BUILDINGS, (2) ADD PLANNING CODE SECTION 17.102.250 TO CREATE SPECIAL EXCEPTIONS TO BUILDINGS UNDERGOING PERMITTED RETROFIT WORK IN COMPLIANCE WITH CHAPTER 15.27, (3) MAKE CONFORMING CHANGES TO SECTIONS 1.08.020 AND 15.26.230, AND (4) MAKE CLARIFYING AMENDMENTS RELATING TO CAPITAL IMPROVEMENTS IN CHAPTER 8.22, ARTICLE I (RESIDENTIAL RENT ADJUSTMENT); AND DIRECTING THE RENT BOARD TO MODIFY ITS CAPITAL IMPROVEMENT AMORTIZATION SCHEDULE FOR WORK IN COMPLIANCE WITH CHAPTER 15.27; AND ADOPTING CEQA EXEMPTIONS**

The Ordinance will add a new Chapter 15.27 to the Oakland Municipal Code to establish a mandatory seismic evaluation and retrofit program for multi-family residential buildings permitted for construction before 1991 and built with soft, weak, open, or otherwise vulnerable wood framing in the lower stories, which are known to be seismically vulnerable. The new Chapter 15.27 will describe the administrative provisions, compliance requirements, and technical criteria to be implemented by the Bureau of Building. The Ordinance will also add a new Section 17.102.250 to the Oakland Planning Code to create special exceptions to buildings undergoing permitted retrofit work in compliance with Chapter 15.27 and various sections of the Oakland Municipal Code for consistency purposes.