



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Chris Burton
Raymond Riordan
Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: July 24, 2023

Approved

Date

7/31/23

**SUBJECT: SOFT STORY SEISMIC RETROFIT PROGRAM APPLICATION FOR
THE FEDERAL EMERGENCY MANAGEMENT HAZARD MITIGATION
GRANT PROGRAM FUNDS**

RECOMMENDATION

Adopt a resolution authorizing the City Manager or designee to:

- (a) Submit an application and all required documentation to the California Office of Emergency Services Hazard Mitigation Program Grant for a grant award in an amount not to exceed \$25,000,000 with the following scope to implement the Soft Story Seismic Retrofit program and fund partially the seismic retrofitting of selected soft story multifamily buildings in San José as determined by the Notice of Intent submitted by staff on May 10, 2023;
- (b) Allocate an amount not to exceed \$6,250,000 for the duration of the grant, subject to the appropriation of funds, as local matching funds required for the Hazard Mitigation Program Grant; and
- (c) Negotiate and execute the Hazard Mitigation Program Grant application package, including a State of California Standard Agreement in a total amount not to exceed \$25,000,000, as well as all other documents required or deemed necessary or appropriate to procure and accept a Hazard Mitigation Program Grant award as required by the State of California.

SUMMARY AND OUTCOME

Consistent with previous direction from the City Council to develop and incentivize programs to enable the retrofit of soft story multifamily buildings in San José, on May 10, 2023, the City submitted a Notice of Interest for a Federal Hazard Mitigation Program Grant to continue the City's effort to implement a Soft Story Seismic Retrofit Program.

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On May 31, 2023, California Office of Emergency Services (CalOES) notified City staff that the City was eligible to complete a new application for the Hazard Mitigation Program Grant (HMGP) funds under the “Seismic Retrofit” category. The City is prepared to submit a competitive application for the Soft Story Seismic Retrofit Program. The due date for this application is August 4, 2023. Due to the City Council July recess, CalOES agreed that staff could submit the application on August 4, 2023, with a placeholder for the local share commitment letter to be submitted once City Council takes action on the recommendation in this memorandum. The total amount of the new grant requested is \$25,000,000 with a federal share of \$18,750,000 and a local share of \$6,250,000.

The City currently has an HMGP grant that provides funds to develop an inventory of potential properties that may be considered as soft story properties. The scope also includes the development of a mandatory citywide Soft Story Seismic Retrofit Ordinance, outreach and engagement with property owners and tenants, implementation of a compliance program, and the establishment of a rebate pilot program to help defray the cost of retrofitting for building owners. Should the City receive the new Grant, the proposed rebate pilot program could be expanded to include an additional 300 to 400 properties.

City Council approval of staff recommendation will allow staff to complete the requirements to submit and complete the new Grant application. With approval of this action, the City will need to identify funding for the local share as part of future budget development processes.

BACKGROUND

The City of San José has adopted building standards to ensure that newly constructed buildings can withstand most seismic events. However, older buildings in San José were built to previous building code standards that were less stringent with respect to seismic safety. One type of seismically vulnerable building is multifamily “soft story” buildings. These soft story buildings are existing wood frame, multi-unit residential buildings of two or more stories and three or more dwelling units; the ground floor contains parking, large windows or garage doors, or other similar open floor or basement space that cause soft, weak, or open-front wall lines.

According to the California Earthquake Authority, earthquake retrofitting prevents a building from displacing from the structure’s concrete foundation. This makes a building safer and less likely to suffer damage during an earthquake. It is one of the least expensive seismic improvements available. A foundation bolting process usually costs a few thousand dollars and can be done within several days without the residents moving out.¹ Benefits include:

- Preserving health and safety during an earthquake;

¹ [Benefits of Seismic Upgrades: Is Earthquake Retrofitting Worth It in CA? | California Earthquake Authority \(earthquakeauthority.com\)](https://www.earthquakeauthority.com/News/2022/07/20/benefits-of-seismic-upgrades-is-earthquake-retrofitting-worth-it-in-ca/)

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- Reducing the number of displaced individuals that require mass care and shelter; cost of mass care and shelter is estimated at \$222 per person per day (\$666,000 for 100 people per month) compared to the cost of Soft Story Mitigation (\$40,000 to \$130,000 per property); and
- Preserving the number of available habitable spaces.

On June 19, 2018, City Council directed staff to develop a multifamily soft story seismic mitigation ordinance, identify potential incentives and funding mechanisms for San José building owners to retrofit soft story buildings, and develop and implement a pilot program to fund the partial or full seismic retrofitting of selected soft story multifamily buildings. Subsequently, City staff applied to CalOES for a pass-through of Federal Emergency Management Agency (FEMA) funds in the state’s Hazard Mitigation Grant Program.

On February 25, 2021, City Council approved the Fiscal Year (FY) 2021-2022 City Initiatives Roadmap which included the “Soft Story Building Earthquake Retrofit Policy” initiative (CR 26) as part of the “Emergency Management and Preparedness” Enterprise Priority. On May 16, 2022, City Council approved the FY 2022-2023 City Initiatives Roadmap which continued the prioritization of the “Soft Story Building Earthquake Retrofit Policy” as part of the scope of the “Disaster Ready and Climate Smart” initiative.

On October 19, 2021, the City received final notification from CalOES that the grant (HMGP DR-4344-212-106R) was approved by City Council on March 29, 2022) in two phases, as shown in Table 1 below. Phase II funding will be released upon successful completion of Phase I.

Table 1: Existing CalOES Grant Funding

Phase	Total Amount	Federal Share	Local Share
Phase I	\$1,924,054	\$1,443,041	\$481,013
Phase II	\$4,325,946	\$3,224,460	\$1,081,486

Because the grant is administered on a reimbursement basis, the full amount of the Phase I grant funds is allocated in the General Fund (City-Wide Expenses HMPG appropriation). No allocations have been made for the Phase II, as funding for the local share has yet to be identified. Initially, the source of funds for the local share for Phase I was identified as the Community Development Block Grant. However, it has been determined that Community Development Block Grant funds should not be used as a local share due to the complex requirements of the grant, related documentation requirements, lack of availability for staffing costs, and limitations on the buildings where these funds may be applied. In FY 2022-2023, budget adjustments were made to make the General Fund the source of funds for Phase I.

The Phase I scope includes:

- Development of an inventory of potential soft story properties;
- Development of a mandatory citywide Soft Story Seismic Retrofit Ordinance;

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- Outreach and engagement with property owners and tenants;
- Creation of a Compliance Program; and
- Establishment of rebate pilot program.

City staff conducted a procurement process in summer 2022 to hire a consultant with expertise in structural and/or civil engineering and entered into an agreement with David Bonowitz, Structural Engineer in October 2022. Staff has been working with the consultant to develop an inventory of potential soft story properties. This analysis and report are expected to be completed in August 2023. Phase II includes the implementation of the compliance program and rebate pilot program for approximately 90 to 100 eligible properties.

ANALYSIS

On March 1, 2023, The California Governor's Office of Emergency Services (CalOES) opened a mitigation funding opportunity for FEMA's HMGP through the Presidential Major Disaster Declarations, DR-4683 (Severe Winter Storms, Flooding, Landslides, and Mudslides) DR-4699 (Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides).² This opportunity provides funding for communities to implement mitigation activities that reduce risk to life, property, and infrastructure from natural hazards. HMGP funding can support the development of hazard mitigation planning, project scoping activities, and mitigation projects.

As an "interested applicant," the City submitted a Notice of Interest through the CalOES portal on May 10, 2023. CalOES reviewed submitted Notices of Interest for eligibility and invited approved applicants to complete and submit a full project application by August 4, 2023. The City was approved to submit the application on August 4, 2023, with a placeholder for the Local Share commitment letter to be submitted once City Council approves the recommendation in this memorandum.

The application package includes the following materials:

1. Project Gantt Chart
2. Cost Estimate Narrative
3. Maintenance Letter
4. Match Commitment Letter
5. Benefit-Cost Analysis Toolkit and Calculator PDF
6. Benefit-Cost Analysis Methodology
7. Benefit-Cost Analysis Documentation for Non-Default Values
8. FEMA Environmental, Historical and Preservation Checklist

In accordance with the FEMA HMGP requirements, the period of performance for all applications can be up to 36 months. HMGP grants require a local cost share of 25%. Eligible applicants will be responsible for covering the required 25% non-federal share (local share)

² [DR-4683 Hazard Mitigation Grant Program Notice of Interest \(ca.gov\)](#)

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while the grant award provides a 75% federal share that will be on a reimbursement basis. CalOES recommends that at least 30% of the local share must come from City sources such as staff time, rebates, and administrative costs. The remainder may be satisfied through the costs paid for by the property owner. Additional cost share information has been included in the “Cost Summary/Implications” section of this memorandum.

The new program of \$25 million, if awarded, will expand the City’s ability to offer rebates or incentives to additional property owners to complete seismic retrofits of their properties. The new funding will assist with the soft story seismic retrofitting of approximately 300 to 400 additional properties. The strategy is to develop a large enough pool of properties to ensure that the maximum number of properties may be eligible for rebates under the new Grant. Through the post-ordinance outreach notification and property evaluation process, City staff will identify properties eligible to receive rebates under this grant. The property evaluation, permit process, and the rebate application process is expected to remain the same as in the existing grant.

Status of Existing HMPG Grant

The City currently has an HMGP grant (DR-4344-212-106R) for the development of an inventory of potential soft story buildings, development of a mandatory citywide Soft Story Ordinance, engagement with property owners and tenants, creation of a compliance program and a rebate pilot program. It is anticipated that the number of potentially impacted properties could be upwards of 3,000. After the City Council considers the draft ordinance and a local share funding source has been identified, funds from the existing grant will be used to pilot a rebate program during Phase II, the implementation phase. Staff is currently working on developing the rebate program which will include eligibility requirements and prioritization of building types or areas where a higher number of under-resourced communities may be impacted. The intent of the pilot rebate program is to incentivize property owners to seismically retrofit their impacted properties. Funds will assist property owners to partially defray the cost of the seismic retrofit. Potentially 90 to 100 properties may benefit from this initial pilot rebate program. Guiding principles in developing the program include:

- Health and safety of residents;
- Equity and inclusion of vulnerable and disadvantaged residents; and
- Cost avoidance for mass care and shelter in the event of an earthquake.

Staff provided an informational briefing to the Housing and Community Development Commission on May 11, 2023, answered Commissioner questions, and received feedback from Commissioners and members of the public on conducting outreach and engagement with building owners and residents, as well as the importance of developing a rebate program to help defray retrofit costs.

Outreach and engagement were initiated in May and will continue through August 2023. Staff will conduct individual and focus group meetings with tenant groups, affordable housing organizations, affordable housing providers, building and property owners, apartment and

building associations, building trade organizations, and real estate organizations. Using the new on-call bench of community engagement consultants, staff has contracted with Community Planning Collaborative to assist in outreach and engagement activities. Additionally, as part of the City's pilot Promotores Program that is extended through FY 2023-2024, staff is training Promotora to conduct outreach and engagement with residents in neighborhoods who will potentially be impacted.

The following is the current project schedule for Phase I and II for the existing HMPG grant:

- Pre-ordinance outreach and engagement – May to August 2023
- Housing and Community Development Commission – September 14, 2023
- Community and Economic Development Committee – October 23, 2023
- Draft ordinance to City Council – November 2023
- Post-ordinance outreach and engagement – December 2023 to March 2024
- Program implementation begins – spring/summer 2024

EVALUATION AND FOLLOW-UP

Staff anticipates it will bring the proposed Soft Story Seismic Retrofit Ordinance and Implementation Plan to City Council in November 2023. At that time, staff will provide an update on the HMPG grant application, and additional considerations regarding the potential structure of the rebate program.

COST SUMMARY/IMPLICATIONS

HMGP grants are reimbursable grants; therefore, grantees must first incur the expenses and submit for reimbursement. At the same time, so that the burden of outlay is minimized, FEMA allows HMGP grantees to draw down funds with requests accompanied by supporting documentation certifying the amount being requested is eligible, reasonable, and in alignment with federal procurement regulations.

The Grant award provides a 75% federal share and requires a 25% non-federal share provided by the City. The federal share is expected to be \$18,750,000 with a local share requirement of \$6,250,000. Except for any grant administration expenses and any agreements with consultants assisting with reviews, grant funds will be expended for providing rebates to property owners. From time to time, if additional funds are available, FEMA/CalOES may provide the City with more funds utilizing the same cost-share ratio. Approval of this memorandum authorizes the submission of a City commitment letter of the local non-federal share which must be included with the application submission. The commitment letter covers the entire period of the grant which is expected to begin during FY 2024-2025 for a maximum performance period of 36 months (FY 2026-2027) and must include all potential sources of funds for each year of the grant.

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The FEMA Hazard Mitigation Cost Share guide³ allows for the local share to come from a variety of different sources including funds from the applicants, property owners, insurance, and other third parties. In this case, expenses paid by the property owners towards the total project cost may be considered as part of the local share. Amounts may vary for each individual property as total costs, rebates received, and owner costs vary based on the property size, condition, permits, and design costs. While the specific rebate program has not yet been developed, Table 2 below provides examples of how retrofit costs may be shared between the rebate and owner.

Table 2: Anticipated Cost Range of Seismic Retrofit (including soft and hard costs): \$40,000 to \$130,000; Anticipated 300 Properties Mitigated.

Rebate Percentage of Total Cost	Rebate Amount (Total Cost * Rebate Percentage)	Owner Pays (Difference between Total Cost and Rebate)	Potential Local Share (A)	Anticipated for 300 properties 300*(A)
50%	\$20,000 - \$65,000	\$20,000 - \$65,000	\$20,000 - \$65,000	\$6,000,000 - \$19,500,000
60%	\$24,000 - \$78,000	\$16,000 - \$52,000	\$16,000 - \$52,000	\$4,800,000 - \$15,600,000
75%	\$30,000 - \$97,500	\$10,000 - \$32,500	\$10,000 - \$32,500	\$3,000,000 - \$9,750,000

As described previously, the property owners’ payments may serve as the 25% local match requirement. However, FEMA/CalOES recommends that the jurisdiction provide at least 30% of the local match; which, for this application, would be \$1,875,000 (30% of the \$6,250,000 local match requirement). Therefore, the City’s future obligation for this application would be, at minimum, \$1,875,000. A City minimum contribution is also anticipated to be applied to the Phase II grant of \$324,446 (30% of the \$1,081,486 local match requirement).

As a result, the City will need to identify a minimum amount of \$2.2 million as part of the 2024-2025 budget development process. However, the City’s obligation could increase should the City Council choose to further subsidize the owners’ retrofit costs. More information regarding the development of the rebate program will be brought forward in November 2023. While the City will look to other potential funding sources, it is likely that all or a majority of the City’s portion of the match will need to come from the General Fund.

COORDINATION

This memorandum has been coordinated with the City Attorney’s Office and the City Manager’s Budget Office.

³ [Hazard Mitigation Assistance Cost Share Guide \(fema.gov\)](https://www.fema.gov/hazard-mitigation-assistance-cost-share-guide)

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PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the August 15, 2023 City Council meeting. The City will be engaging the community from July through August 2023 on the development of the mandatory retrofit ordinance and rebate program to ensure inclusion of those most affected by the implementation of the program.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (new or amended) resulting in no physical changes to the environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
Christopher Burton, Director
Planning, Building
and Code Enforcement

/s/
Raymond Riordan, Director
Office of Emergency
Management

/s/
Rosalynn Hughey, Deputy
City Manager and Acting
Director of Housing

The principal authors of this memorandum are Abraham Chacko, Project Manager and Raymond Riordan, Director of the Office of Emergency Management. For questions, please contact Abraham Chacko at Abraham.chacko@sanjoseca.gov or Ray.riordan@sanjoseca.gov.