



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand
Kip Harkness

**SUBJECT: DEVELOPING A MULTIFAMILY
SOFT STORY SEISMIC RETROFIT
PROGRAM**

DATE: June 14, 2018

Approved

D. D. S. L.

Date

6/14/18

RECOMMENDATION

- 1) Accept the staff report on potential ways to incentivize the seismic retrofit of multifamily “soft story” buildings and direct the City Manager or designee to return to the City Council with recommendations on:
 - a) Options or amendments of Property Assessed Clean Energy (PACE) charters for seismic retrofits of multifamily soft story buildings.
- 2) Direct the City Manager or his designee to return to the City Council with:
 - a) A policy framework for a mandatory multifamily soft story seismic mitigation ordinance; and
 - b) Potential strategies that incentivize the redevelopment of multifamily soft story buildings into quality, affordable housing while minimizing displacement.

OUTCOME

The Council will be informed by staff’s research on the feasibility of various soft story retrofit incentives. With the City Council’s direction, staff can also move forward with additional outreach and policy analysis on the possible creation of a soft story seismic retrofit ordinance and program in support of San José’s broader emergency management efforts.

EXECUTIVE SUMMARY

This memorandum provides an update and response to City Council direction to explore possible incentives for soft story retrofits and to conduct public outreach. Following are analysis and recommendations on the following topics:

- Creating a PACE program for use with soft story improvements.
- Waiving City permitting, inspection, and potential impact fees for seismic retrofits.
- Identifying grant funding and other financing options to facilitate seismic improvements.
- Allowing parcel owners to obtain Expedited Plan Review Service for rezoning or permits that would allow for redevelopment of those sites with hazardous soft story buildings.
- Allowing exemptions to soft story building retrofits from costly building code improvements triggered by the renovation/improvement but unrelated to the seismic safety of the structure.
- Facilitating full and complete outreach with affected property owners, tenants, renters' rights advocates, the Silicon Valley Organization, the California Apartment Association, seismic experts, and other stakeholders about options, incentives, and best practices to promote safety of soft story buildings.

In analyzing these topics, staff found that the City's current practices with respect to plan review and building code enforcement already meet the objectives of the referral. Other program elements, such as definition of building code standards as compared to analysis of potential tenant displacement, would be accomplished during a detailed program design effort if the City Council so directs staff.

Further work on soft story seismic hazard mitigation requires additional direction from the City Council in two areas, as reflected in the Recommendations. First, the use of PACE in San José could be expanded to include soft story retrofits. This direction should be part of a broader consideration of the PACE program with the City Council, which is anticipated to occur in September 2018. Second, the granting of fee waivers generally requires funding to reimburse foregone revenues. Staff requests that the City Council give direction to return with potential sources of funding to backfill the fee waivers.

Best practices research on local government soft story programs done by the Association of Bay Area Governments (ABAG) indicates that incentives alone are not enough to make soft story retrofit programs successful. For this reason, ABAG's model ordinance and guidance incorporate both incentives and mandatory elements. Therefore, staff recommends that the City Council direct staff to expand its scope of work on soft story mitigation beyond incentives, and to return to the City Council with a framework for a soft story mitigation ordinance incorporating mandatory elements and a workplan to implement the ordinance. Development of this framework would be done with wide-ranging outreach with the identified array of stakeholders.

Ultimately, the redevelopment of low-density, dilapidated soft-story buildings may be preferable to making soft-story improvements.

BACKGROUND

San José and the San Francisco Bay Area are prone to regular earthquake activity, which is considered the region's greatest natural threat. In 1989, the Loma Prieta earthquake registered 6.9 on the Richter scale and caused damage from Oakland to Santa Cruz. The earthquake was devastating – it caused 63 deaths, nearly 3,800 injuries, and an estimated \$6 billion in property damage from failed buildings and the collapse of portions of major freeways. The United States Geological Survey (USGS) estimates that the Bay Area has a 72% likelihood of experiencing a 6.7 earthquake, most likely centered along the Hayward fault which runs east of San José. A 2003 report from the ABAG estimated that soft story buildings would account for two-thirds of the uninhabitable buildings that could result from a major earthquake along the Hayward fault.¹ An earthquake of this magnitude could cause significant impacts in San José. This memo discusses the impact of a potential major earthquake to a subset of housing in San José, soft story multifamily residential homes.

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 than today's with respect to seismic safety. One type of seismically-vulnerable building is multifamily "soft story" buildings. Soft story buildings pose a concern because one floor of the building (usually the ground floor parking or commercial space) has significantly less lateral rigidity than stories on top of them. These buildings have a greater risk than average of collapsing during an earthquake, which would render homes uninhabitable and could physically endanger residents.

There are numerous studies that describe soft story buildings and the risks they may pose for residents who live in them. According to a 2016 report from the ABAG, renters are especially vulnerable to earthquakes and natural disasters because they have fewer financial assets to recover if their homes are significantly damaged. A 2016 study by the Economic Roundtable² on San José's rent stabilized housing shows that renters living in these units are more likely to be younger, have lower incomes than other San José renters, live in overcrowded conditions, and house a higher proportion of the City's limited English proficiency population.

A study conducted in 2002 by San José State University's Engineering Department estimated that San José had approximately 1,100 soft story multifamily buildings accounting for nearly 11,000 apartments housing more than 22,000 residents.³ The study examined individual buildings to determine their soft story status, but the exact addresses of those buildings were never released. Staff estimates that most of the City's soft story buildings are also rent stabilized and make up

¹ The HayWired Scenario: https://pubs.usgs.gov/sir/2017/5013/sir20175013ah_v1.1.pdf

² Study of the Apartment Rent Ordinance of the City of San José (2016), Economic Roundtable
<https://www.sanjoseca.gov/DocumentCenter/View/53420>

³ Assumes an average of two persons per apartment.

16% of the City's overall multifamily rental stock of buildings with three units or more.⁴ Put another way, a major earthquake could render thousands of the City's most vulnerable residents homeless and in need of emergency shelter.

Retrofitting multifamily housing is critical to protecting vulnerable tenants and to preserving much needed affordable housing from irreparable damage in a major earthquake. Recent flooding and fires have painfully demonstrated how difficult it is to quickly rehouse low-income households in apartments that are safe and affordable.

Several Bay Area jurisdictions have recognized the need to address the risks of soft story buildings. San Francisco, Berkeley, Oakland, and other cities have created soft story building retrofit programs. However, recent news articles have criticized Bay Area jurisdictions for stalled efforts to mitigate and prepare for a major earthquake. This slow progress is reportedly in contrast to the region's previous leadership on seismic safety following Loma Prieta.⁵ In 2016, the ABAG published a best practices report along with a sample "soft story" ordinance to encourage local action on this issue.

It is important to acknowledge that soft story housing is only part of the City's overall seismic risk portfolio. There are multiple types of fragile buildings, including hillside homes, single-family cripple walls, houses built over garages, multifamily cripple walls, and multifamily non-ductile concrete, to name a few. ABAG plans to launch a Santa Clara County-wide effort to inventory fragile buildings in Summer 2018 and hopes to have a completed inventory by 2019. This inventory will inform the City's future seismic mitigation efforts.

Past Efforts to Incentivize Seismic Retrofits

San José has taken some actions in the past to address seismically-vulnerable privately-owned buildings. In the 1990s, the City required owners of some unreinforced masonry buildings to retrofit their structures. In addition, in 2010, the Housing Department funded seismic retrofits of 650 mobilehomes in 10 San José mobilehome parks through a State of California award of Federal Emergency Management Agency (FEMA) funds.

In 1997, the City developed model soft story retrofit plans for multifamily buildings and hosted workshops for building owners in hopes of encouraging voluntary retrofits. The Housing Department made available guidance documents and generic blueprints upon request. Ultimately, only three building owners applied for a soft story retrofit permit.

On October 22, 2014, Councilmembers Sam Liccardo, Johnny Khamis, and Rose Herrera introduced a memo to the Rules Committee in remembrance of the 25th anniversary of the Loma

⁴ Collaborative for Disaster Mitigation, San José State University, *Inventory of Soft First Story Multi Family Dwellings in Santa Clara County*, 2003, <http://resilience.abag.ca.gov/wp-content/documents/Soft%20First-Story%20Multifamily%20Dwellings%20and%20Imp.pdf>.

⁵ "Bay Area falling behind on quake safety despite booming tech economy," L.A. Times, Apr. 22, 2018. <http://www.latimes.com/local/lanow/la-me-quake-safety-bay-area-20180422-htmistory.html>

Prieta earthquake. The memorandum (included as **Attachment A**) directed staff to explore incentives for the seismic retrofit of soft story buildings in San José. On October 23, 2017, the City Council ranked the development of a Soft Story Retrofit Program as the City's eighth highest policy priority.

The City of San José also contributed to the Santa Clara County Multi-Jurisdiction Local Hazard Mitigation Plan, which the County submitted to Cal OES in 2017. One of the goals in this County-wide plan was to use collateral materials to educate building owners, local government staff, engineers, and contractors about soft story retrofit procedures and incentives.⁶

Per City Council direction, Housing Department staff convened an interdepartmental working group on soft story residential buildings to discuss various options for possible incentives. Represented in the team are the following departments: Housing; Planning, Building and Code Enforcement; Environmental Services; Office of Emergency Management; and the City Manager's Office.

On January 30, 2018, the Housing Department submitted a Notice of Intent (NOI) to apply for grant funding from the California Office of Emergency Services Hazard Mitigation Program (Cal OES HMPG). This HMPG grant, if awarded, would fund planning and incentives for soft story retrofit construction. In March, Cal OES approved the City's NOI and invited the City to submit a full application by July 2, 2018. The State will notify award winners in late fall 2018, and funding would be available in early 2019. On June 19th, staff will seek City Council approval to apply for the Cal OES grant.

Following is background on the need for a soft story retrofit program, followed by responses to the City Council's direction and staff's recommended approaches.

ANALYSIS

The October 22, 2014, memorandum from Councilmembers Liccardo, Herrera, and Khamis directed staff to explore six options to incentivize retrofits of multifamily soft story buildings. Responses on the viability of these options and recommendations on next steps follow below.

a. Creating a city wide or county wide PACE program that allows for bond financing for participating properties, whereby participating property owners finance the capital costs of the improvement through their property tax bill;

Staff interprets this recommendation as modifying existing PACE charters in San José so that they are eligible to provide funds for seismic retrofits of soft story buildings. PACE financing is based on the available equity in a property. PACE loans are repaid through a special assessment on the owner's property tax bill over a period that varies with the loan amount and the upgrades

⁶ 2017 Santa Clara County Multi-Jurisdiction Hazard Mitigation Plan, Page 13-1, SJ-24.

that are completed. PACE financing can be spread over a longer term than a traditional loan depending on the upgrades being performed. However, PACE loans tend to have higher interest rates and fees. While use of PACE for single family homes can be speedier than traditional loans or home equity lines of credit, PACE for commercial properties requires the provider to gain approval from the primary mortgage holder. This requirement often causes PACE financing to take almost as long as a traditional loan.

The City’s Environmental Services Department (ESD) tracks PACE activity. If new uses of PACE were desired, such as for seismic retrofitting of soft story buildings, or additional PACE providers, the charters for approved PACE providers would need to be amended, and new charters created for any new providers. Several PACE providers have expressed interest in providing financing within San José. Staff intends to bring forward options and analysis on a set of potential PACE amendments for the City Council’s consideration in September 2018.

Recommendation: Direct the City Manager or designee to return to City Council in September 2018 with recommendations on possible options or amendments of PACE charters for seismic retrofits of multifamily soft story buildings.

b. Waiving City permitting and inspection fees, along with any potential impact/mitigation fees for seismic retrofits.

The City’s Development Services functions (Building Division, Fire Prevention Division, Planning Division, and Public Works Development Services Division) are funded entirely by fee revenue. When fees are waived, an alternative funding source, such as the General Fund or a grant, is needed to recover staff costs. Table 1 below shows the estimated average cost per building for a typical soft-story seismic retrofit project:

Table 1: Estimated Average Cost Per Building for Soft Story Retrofit

Department Division	Amount Based on Current Cost Rate
Building Plan Review	\$ 800
Building Inspection Services	\$ 500
Planning	\$ 292
*Total Estimated Fee Waiver:	\$ 1,592 per building \$1,751,200 all buildings

**Note: Estimated development fees do not include other Citywide impact fees, school fees, or construction taxes.*

In addition to the costs above, a fire inspection may be required if a soft story retrofit would alter an existing sprinkler or fire alarm system or the building is demolished and reconstructed. Soft Story retrofits usually only affect ground level parking of a building, and most soft story buildings were built in a time when fire sprinklers were not required by building code. Staff anticipates there will be few instances when soft story retrofit work will trigger a fire inspection. There also may be additional review required by the Public Works Department if the soft story

building is located within a flood zone. This additional cost, estimated to range from \$180 to \$518 depending on the structure and type of review performed, is not included in Table 1.

A soft story retrofit does not trigger any impact fees.

Recommendation: No action needed. Staff will return with funding recommendations.

c. Assisting in identifying grant funding and other financing options, such as retrofit-friendly local lenders, to facilitate seismic improvements.

Table 2 below approximates the cost to evaluate and retrofit a single soft story apartment building and the cost to retrofit all residential soft story buildings in San José.

Table 2: Cost to Evaluate and Retrofit Residential Soft Story Buildings

	One Building*	All Buildings in San José Life Safety
Seismic Evaluation	\$2,000 - \$5,000**	\$2.2 – \$5.5M
Seismic Retrofit	\$105,000**	>\$160M***
Total	\$107,000 – \$110,000	\$162.2 - \$165.5M

* Note: Assumes two-stories, 10-units, wood frame residential

** Note: Per Palo Alto Seismic Risk Assessment Study Final Report 2016

*** Note: City of San José Seismic Retrofit Program Fact Sheet May 23, 2000

Following are potential sources of funding for soft story evaluation and retrofit work:

CalOES Grant: A more precise cost estimate for all soft story buildings can be generated once the City creates a complete inventory of soft story residential buildings in San José. The Cal OES Hazard Mitigation Program Grant mentioned above, if awarded to San José, could fund an inventory study and could provide rebates to offset the retrofit costs for a subset of the City’s soft story buildings.

Rents: A typical source of funding for seismic retrofits for many soft story buildings is increased rents, if the rental demand will support the cost increase. Further increasing rents on San José’s tenants would exacerbate the housing cost burden that is extreme for many of our residents. Most multifamily soft story buildings in San José were built before 1978 and are therefore covered by the City’s Apartment Rent Ordinance (ARO) which is overseen by the City of San José’s Housing Department. ARO allows property owners to petition for a rent increase in excess of 5% if they incur costs from defined specific capital improvements. Included in that provision is the ability to pass through seismic retrofit costs. The total capital improvement pass-through may not exceed 3% of the monthly rent charged. The improvement must have been completed within 12 months prior to the filing of the petition, and the cost can be recovered over a 20-year period. An initial staff analysis indicates that this capital improvement pass-through could allow a property owner to fully recover the cost of a typical seismic retrofit by year 14.

Transfer tax: The City of Berkeley provides rebates for up to one-third of the 1.5% transfer tax for qualified seismic retrofit on residential properties or mixed-use buildings with two or more dwelling units. The rebates were paid for by increasing the City's transfer tax rate.⁷ In 2008, San Francisco voters approved Measure N, to increase the transfer tax for properties sold for \$5 million or greater. Measure N also enabled one-third of transfer taxes for all properties to be rebated to property owners for seismic mitigations or installing solar systems.

Bank financing: Property owners who wish to finance their retrofit can access loans or lines of credit from most major banks. The City of San Francisco has worked with local banks to help owners achieve better financing for soft story retrofits. At first, some lenders planned to create specialized products for soft story retrofits, but they found that low interest rates and high property values enabled many property owners instead to refinance their properties and take cash out, rather than taking out a rehabilitation loan. As interest rates rise, landlords may prefer to use rehabilitation loans or lines of credit.

After San Francisco required soft story property owners to retrofit, the banks responded by requiring borrowers to be in compliance with the soft story retrofit program in order to access credit. In areas such as San José, where there is no legal requirement to retrofit, lenders do not require borrows to retrofit their buildings even when the building may be seismically fragile. However, staff interviewed a lender who believes that some property owners in San José may proactively choose to perform a seismic retrofit given the high value of their investment and the strong residential market.

Mills Act: It is possible to create incentive programs to reduce taxes for historic properties that complete seismic mitigation work. The Mills Act allows local government to contract with owners to maintain their historic properties for property tax savings. An owner would be able to use the Mills Act to help fund a seismic retrofit for their soft story building if it is considered historic. The Mills Act is typically administered by the Department of Planning, Building and Code Enforcement.

If the City is awarded a Cal OES HMGP grant for soft story, staff plans to use a portion of the grant to procure a consultant to analyze and make detailed recommendations regarding financing and incentive scenarios that would be feasible in today's market.

Recommendation: No action needed at this time. Staff will return with funding recommendations.

d. Allowing parcel owners to obtain Expedited Plan Review Service for re-zoning or permits that would allow for redevelopment of those sites with hazardous soft-story buildings.

In the past, some retrofit programs have encouraged demolition. The unreinforced masonry buildings (URM) program is one example. However, URM buildings constituted a smaller

⁷ ABAG Resilience Policy Guidance, "Soft Story Retrofit Program Development" http://resilience.abag.ca.gov/wp-content/documents/Soft%20Story%20Report_web%20version_v2.pdf

portion of the City's building stock (99 buildings) than does soft story. In addition, many URM buildings did not contain residential uses. In comparison, there are approximately 1,100 residential; soft story buildings in San José which house approximately 33,000 residents or more. Expedited plan review and reduced entitlement costs could encourage redevelopment, eliminating problems of owner neglect and deferred maintenance on current buildings.

Seismic retrofits for structural changes that do not involve the exterior of the building do not require review by the Planning Division, and typically do not displace occupants.

However, the redevelopment of older buildings will likely displace existing low-income residents. Such displacement combined with an insufficient supply of rent- and income-restricted affordable housing in San José could lead many residents to move away, to overcrowd apartments with other households, or to lose their homes altogether and enter into homelessness. If a building is four units or more and is rent stabilized, the demolition of that building would trigger the City's Ellis Act which would require the landlord to provide relocation benefits. However, relocation assistance does not fully mitigate the resulting displacement in San José's expensive housing market.

Any Planning review that would be required can usually be done through the conformance review process or the Adjustment process, both of which are ministerial processes. When a building can be seismically retrofitted, expedited plan review may be an option if funding is made available for additional staff time or to hire consultants strictly dedicated to the review of these seismic upgrade projects. This added capacity would supplement the resources needed to provide prompt permit processing for Building review.

If a building is truly hazardous and cannot be retrofitted to current safety standards, total demolition and redevelopment of the site could be required. Rezoning properties to allow for redevelopment of soft story building is likely not needed. However, if it is required, staff suggests that a rezoning request continue go through the normal Planning Division entitlement process so that impact to the neighborhood be analyzed in the usual way.

It is more likely that the sites that need to be redeveloped would require some sort of Site Development Permit, or other site-specific entitlement permit. To avoid this permitting process, staff may be able to implement a similar process that is already used for buildings that fall victim to a natural disaster, such as flood, fire, or earthquake. Instead of requiring a full entitlement process, a building could be allowed to be reconstructed in a "like-for-like" manner, without any expansion of the use, without going through the entitlement process. Using this process, a building could be reconstructed with the same footprint and could keep any non-conforming component without having to meet the development standards of the current zoning ordinance. Some ministerial design review could be required.

As part of program development and identification of specific building standards to be used, staff will develop a standard for determining whether a soft story residential building should be retrofitted or demolished and redeveloped that weighs the loss of naturally affordable housing

and the displacement of residents that would result. In addition, staff will establish a timeframe within which an owner must commence needed demolition and reconstruction of the new building, or a development permit will be required.

Recommendation: No action needed at this time.

e. Allowing exemptions to "soft story" building retrofits from costly building code improvements triggered by the renovation/improvement but unrelated to the seismic safety of the structure (e.g., plumbing, electrical, etc. improvements that could be required but have no bearing on building safety).

The similar logic as described above already exists for seismic retrofit of existing buildings. Modifications or replacements of existing plumbing, electrical, and mechanical components directly associated with seismic retrofit work will only be required to maintain compliance with the adopted code standards which were in effect at the time of original construction, unless the property owners choose to upgrade those components to the current adopted codes. This application would not apply to any additional improvement unrelated to the seismic retrofit. The same principle will apply to soft story retrofit as well.

Recommendation: No changes needed in implementation of current City procedures.

f. Facilitate full and complete outreach with affected property owners, tenants, renters' rights advocates, the San José -Silicon Valley Chamber of Commerce, the California Apartment Association, seismic experts, and other stakeholders about options, incentives, and best practices to promote safety of "soft story" buildings.

Staff has begun discussions with organizational stakeholders such as the California Apartment Association and the Renters' Rights Coalition regarding soft story retrofit incentives. Staff intends to host additional stakeholder and public meetings after receiving input at the June 19, 2018, City Council meeting. This outreach on potential elements of a City soft story program will include targeted outreach to landlords, tenants, design professionals, and engineers. In addition, staff will create an ad hoc advisory body to help structure the dialogue between stakeholders on this issue.

Recommendation: No action needed at this time. Staff will complete outreach to owners and tenants as part of the development of the framework.

Bay Area Cities' Implementation of Soft Story Retrofit Programs

In 2016, ABAG released policy guidance and a model ordinance to help cities and counties assess their soft story buildings and to "increase resilience of the region's housing." The report highlighted the importance of recognizing soft story risks and building consensus among decision-makers to take action. The report then explored the following key elements:

- *Building Inventory:* Cities identify the number and location of soft story buildings.

- *Owner Notification:* Once an inventory is created, cities notify property owners their building is potentially a soft story.
- *Tenant Notification:* Notification of tenants can be done in various ways. Cities have disclosed soft stories to tenants in the newspaper, required property owners notify their tenants in writing, required official notices recorded on the deed, required that placards be placed on buildings, and used other methods.
- *Mandatory Screening:* Some cities have required a process to filter out properties that are not soft story buildings or that do not meet the city's program criteria. This process is usually completed by property owners who hire a licensed engineer or design professional to determine if their building is a soft story and submit a signed form to the City.
- *Mandatory Engineering Evaluation:* Some cities have required property owners to hire an engineer to evaluate the building and determine the level of retrofit that would be necessary.
- *Mandated Retrofit:* Cities have required property owners to retrofit their buildings.

The following chart, prepared by ABAG, summarizes the scope of several local soft story programs:

Table 3: ABAG Assessment of Bay Area Cities' Soft Story Programs

City	Number of Soft Story Buildings*	Building Inventory	Notified Owners	Notified Tenants	Mandated Screening Form	Mandated Engineering Evaluation**	Mandated Retrofit
San Francisco	6,700	√	√		√	√	√
Oakland	1,479	√	√	√	√		
Berkeley	400	√	√	√		√	√
Alameda	70	√	√	√		√	
Fremont	22	√	√	√		√	√
Santa Clara County	2,630	√					
San Leandro	350	√					
Sebastopol	55	√					

* Identified in initial inventory. The number of buildings actually subject to retrofit may be less.

** This indicates that an engineering report was a formal deliverable. San Francisco did not require an engineering evaluation to be submitted, but it is implicit that a building owner would have an engineering evaluation performed prior to submitting plans for permit.

As indicated above, program structures vary between jurisdictions. Many programs include an inventory and owner notification at a minimum, while others notify tenants or mandate evaluations and actual retrofits. The City of Palo Alto continues to employ a mandatory seismic evaluation and reporting program (established in 1986) and has created a Seismic Risk Management Advisory Group. The group recently completed a study of seismically fragile buildings in Palo Alto and the City Council is slated to hear the group's recommendations in late 2018. The City of Mountain View is researching soft story retrofit programs.

The ABAG report also discusses key questions about which buildings to include in a program, retrofit standards, which floors to include, non-structural seismic issues, deadlines and phasing, enforcement, who should ultimately pay for retrofits, and more. The ABAG report does not explore incentives in depth, but acknowledges they can help as part of a broader program. Due to ABAG's extensive and recent study of the issue, staff recommends using ABAG's model soft story ordinance as a starting point in the City's exploration of a soft story retrofit program. The ABAG handbook and model ordinance are included as **Attachment B**.

Incentives Help But Alone Are Not Enough

ABAG created a high-level list of seismic retrofit incentives, but there has not been a comprehensive study on the comparative effectiveness of different incentives. According to ABAG, a wide variety of incentives have been used to encourage seismic retrofits, but few have been found to be effective on their own and many have been discontinued. As mentioned above, the City of San José rolled out a voluntary seismic retrofit program for multifamily soft story buildings in 2002, but the program generated little participation. One of the key lessons from the 2016 ABAG report is that mandatory retrofit programs are feasible and have been the most effective at reducing seismic risk.

Post-earthquake repair costs can be significantly lower when a building is retrofitted. Property owners may find the decision to retrofit their building difficult when considering their risk (which can be difficult to predict), the need to increase rent to recoup costs, and the effect of the retrofit on the long-term value of their property.

Oakland, San Francisco, and Berkeley began with voluntary programs and later shifted to mandated programs. This has been the trend with local soft-story retrofit programs. Oakland began their soft story program with a mandatory screening approach. The City created an inventory of buildings with volunteers and using a non-engineered analysis. This low-barrier screening process eventually led to confusion with property owners. The non-engineered analyses also possibly led to giving exemptions mistakenly because there was not accurately recorded data. This experience contributed to Oakland's current decision to incorporate a mandatory evaluation phase in their movement toward a mandatory retrofit program.⁸ These types of experiences and lessons learned by early-adopter jurisdictions helped to form the ABAG

⁸ Palo Alto Seismic Risk Assessment Study Final Report 2016,
<https://www.cityofpaloalto.org/gov/depts/ds/srmag.asp>

model ordinance. According to ABAG, a successful program will likely require mandatory elements.

Staff Should Develop a Soft Story Ordinance Framework for City Council Consideration

The City will need to take a range of actions to reduce seismic vulnerabilities in San José. However, given the resources and best practices currently available on soft story buildings, San José’s should focus on creating a comprehensive soft story program.

Therefore, staff recommends that the City Council direct the City Manager or designee to expand the scope of work on soft story risk mitigation to develop the framework for a soft story ordinance and a program to implement it. Staff would use the ABAG Soft Story Model Ordinance Handbook and program development guidance as a starting point. Staff would conduct outreach to property owners, tenants, renter’s rights advocates, The California Apartment Association, the Silicon Valley Organization, seismic experts, and other stakeholders to understand how ABAG best practices might work in San José. Staff would also conduct policy analysis to develop recommendations on issues including, but not limited to, the following:

- Develop an inventory of soft story buildings;
- Determine which buildings should be subject to a mitigation program;
- Determine if a preliminary screening phase would be helpful;
- Determine if the program should mandate evaluations and retrofits;
- Determine if structural work should go beyond the first “target” story;
- Determine if the program should address non-structural seismic hazards;
- Determine which engineering standards should apply to the work;
- Determine if the compliance schedule should be phased; and,
- Further evaluate incentives and determine who pays for evaluation and construction.

Staff would return to City Council in spring 2019 with detailed recommendations for the framework of a soft story ordinance and program, as well as a staffing plan.

Soft Story Program Development Timeline

Stakeholder Outreach	Spring 2018 – Winter 2018-19
Public Meetings	Summer/Fall 2018
Analysis	Fall 2018
Cal OES Grant Award Announcement	November 2018
Housing and Community Development Commission	Winter 2018-19
Community and Economic Development Committee	Winter 2018-19
City Council	Spring 2019

Recommendation: Direct the City Manager or designee to return to the City Council with the framework elements of a mandatory multifamily soft story seismic mitigation ordinance.

Redevelopment of Multifamily Soft Story Buildings Could Create Affordable Housing

The City has adopted ambitious production goals for both market-rate and affordable housing in the next five years. It is also possible that owners of low-density soft story multifamily buildings may desire to sell their properties rather than perform seismic upgrades. If such properties are redeveloped into higher-density multifamily developments, they could become an important source of new affordable homes with long-term affordability restrictions.

As part of soft story program development, staff will therefore examine possible incentives that could result in the redevelopment of soft story buildings into restricted affordable apartments. As with any redevelopment, staff will also evaluate the Ellis Act's requirements of such actions. Staff will consider other approaches that could minimize or mitigate the displacement of current residents from their homes and neighborhoods.

EVALUATION AND FOLLOW-UP

Staff intends to continue its public outreach in summer and fall 2018 with stakeholder focus groups of property owners, tenants, and design professionals. Staff also plans to provide an update on the Hazard Mitigation Program Grant award and the results from public outreach to the City Council's Community and Economic Development Committee (CEDC) in winter 2018-19. Staff would then return to the full City Council with a detailed framework for a soft story ordinance by spring 2019.

City staff also plans to participate in the ABAG Santa Clara County soft story working group and will keep the City Council apprised on the outcome of this effort in follow-up soft story items.

POLICY ALTERNATIVES

Alternative #1: Continue with existing City Council direction to develop a voluntary program based only on incentives.

Pros: A voluntary program could be easier to implement and would be less expensive for property owners.

Cons: Past voluntary seismic retrofit programs have not been shown to be effective. Buildings that are not seismically safe endanger neighboring buildings and occupants. It is the City's job to ensure health and safety conditions for our community.

Reason for not recommending: Current best practices suggest that seismic retrofit programs with a mixture of incentives and voluntary and mandatory elements are most likely to be successful at reducing seismic risk.

PUBLIC OUTREACH

Staff started initial discussions with the California Apartment Association and the Renters' Rights Coalition to gather input on ways to encourage multifamily soft story seismic retrofit. All stakeholders support the safety of residents and retrofitting seismically fragile buildings.

The California Apartment Association (CAA) was particularly interested in the City playing a role in preventing price gouging from the retrofit industry. It was suggested the City extend the timeline for compliance and provide financial incentives/expedited processes to alleviate some of the property owner's costs. The CAA also noted that other City initiatives, including energy benchmarking, that may also impact the same building owners.

Representatives of the Renters' Rights Coalition advised the City not to incentivize the redevelopment of soft story buildings because it would result in direct displacement with little support for displaced tenants. They emphasized the 3% capital improvement pass through on top of the 5% annual allowable increase for ARO buildings can also lead to displacement. The representatives of the Renters' Rights Coalition suggested soft story buildings which are in disrepair and in need of retrofit might be opportunities to preserve affordable housing by encouraging acquisition and rehab by nonprofits, co-ops, or turning the building into social housing. They suggested tenants be notified they live in seismically fragile buildings and suggested this information be required in apartment leases.

Staff will conduct additional public and stakeholder outreach in Fall 2018 if the City Council directs staff to develop a framework for a soft story seismic retrofit ordinance and program.

This memorandum will be posted on the City's Council Agenda website for the June 19, 2018, Council Meeting.

COORDINATION

This memorandum was coordinated with the City Manager's Budget Office, the Department of Planning Building and Code Enforcement, the Office of Emergency Management, the Environmental Services Department, and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action. If the City Council directs staff to develop a soft story ordinance framework, an item would be brought to the Housing and Community Development Commission prior to returning to the City Council.

COST SUMMARY/IMPLICATIONS

Should the City Council decide to waive soft story retrofit inspection and permitting fees, an alternative funding source is needed for costs currently supported by those fees. Initial estimates for the subsidy are a minimum of \$1.75 million and it is not clear how high they could reach until further analysis can be completed.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/
Jacky Morales-Ferrand
Director, Housing

/s/
Kip Harkness
Deputy City Manager

For questions, please contact Kristen Clements, Division Manager at (408) 535-8236.

Attachment A: Rules Memorandum dated October 22, 2014
<http://sanjoseca.gov/DocumentCenter/View/36442>

Attachment B: ABAG Soft Story Retrofit Handbook and Model Ordinance
http://resilience.abag.ca.gov/projects/soft_story_2016/